



INVITATION FOR BID

SUBJECT: THREE-YEAR SUPPLY OF FLEET SHAMPOO W/TWO-YEAR OPTION

DATE: April 13, 2021

INVITATION NO.: 21-08

BID DUE: May 6, 2021 TIME: 11:00 a.m.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Best", is written over a light gray horizontal line.

Ashley Best
Contract Administrator

COMMON PROBLEMS WITH BID SUBMITTALS

- Missing or unsigned copies of certain forms and certifications. The following must be included in the Bid:
 - Addenda Acknowledgment Form
 - Affidavit of Non-Collusion
 - Buy America Certificate
 - Certification of Primary Participation Regarding Debarment, Suspension, and other Responsibility Matters
 - Certification of Lower Tier Participants Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
 - Certification of Restrictions on Lobbying
 - 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"
 - Bid Form

- Incomplete or outdated information on client references and/or insufficient number of references provided.

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

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

- Failure to properly label Bid package with Bid/Proposal label.

- Bid received late. All Bids must be in MATA's possession by the deadline shown in the Bid. All Bids received after the deadline will be returned unopened. If delivered by hand, the Bid package must be deposited as specified in Section A, 1.4.



MEMPHIS AREA TRANSIT AUTHORITY

LEGAL NOTICE TO BIDDERS

Bids 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 Thursday, May 6, 2021**, at this time, bids will not be read aloud due to the current social climate for furnishing the following:

THREE-YEAR SUPPLY OF FLEET SHAMPOO WITH TWO-YEAR OPTION

Bidders must submit their bid electronically via email to abest@matatransit.com.

MATA hereby notifies all BIDDERS that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids 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 bidder. The contractor will be required to comply with all applicable Equal Employment Laws and Regulations.

Further information and bid requirements may be obtained by contacting Ashley Best, Contract Administrator at (901) 722-7182 or via email: abest@matatransit.com or Shelia Maclin, Manager of Purchasing, (901) 722-7102 or via email: smaclin@matatransit.com.

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

MATA reserves the right to reject any and all bids, and to waive any informality in bidding.

April 13 April 30 & May 4, 2021

Gary Rosenfeld
Chief Executive Officer

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ADVERTISEMENT

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- Affidavit of Non-Collusion
- Buy America Certificate
- Certification of Primary Participation Regarding Debarment, Suspension, and other Responsibility Matters
- Certification of Lower Tier Participants Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Certification of Restrictions on Lobbying
- 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"
- Exhibit V Performance Bond
- Bid Form

SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

ATTACHMENT 1 GENERAL CONTRACT PROVISIONS

SECTION A

INSTRUCTION TO BIDDERS

SECTION A INSTRUCTIONS TO BIDDERS

1.0 GENERAL

- 1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) seeks Bids for professional services from qualified firms capable of providing the scope of services described in Section B.

These instructions provide detailed legal and technical requirements for the acquisition of these services. This Invitation for Bid (IFB) will become part of the contract.

MATA will enter into a contract with the successful bidder 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 conflict between the General Contract Provisions and Section A, the provisions of

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

- 1.2 “Purchaser” or “Grantee” or “Authority” means MATA. The words “Invitation for Bid”, “IFB”, and “solicitation” are synonymous. The words “proposal”, “bid” and “offer” are also synonymous and it is understood that once MATA accepts same, the document will constitute a portion of the contract contemplated by these instructions. The words “proposer”, “bidder” and “offerer” are also synonymous.
- 1.3 This Invitation For Bids (IFB) does not commit MATA to award a contract or pay any costs incurred in preparation of bids in response to the IFB. Bidders shall be responsible for all costs incurred as part of their participation in the pre-award process.
- 1.4 **Bids will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN. 38108 until 11:00 a.m. local time on Thursday, May 6, 2021. At this time, bids will not be read aloud due to the current social climate.**

All Bids shall be deemed received at the above address. Bidders are solely responsible for ensuring that his/her Bid is timely delivered. Bidders 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 Bid and assume all risk of late delivery, miss-delivery and non-delivery.

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

Bidders are reminded that all Bids must be securely sealed, have the enclosed label attached and be clearly marked “Bid”.

After normal business hours (4:30 p.m. – 8:00 a.m.), bids will be accepted at the MATA dispatcher’s office, 1370 Levee Road, Memphis, TN 38108; however, bidders are reminded of their sole responsibility for ensuring that their bid is deposited in the Purchasing Department.

Bidders may verify receipt of Bids by contacting MATA at (901) 722-7182 or email: abest@matatransit.com

1.5 All bids and related documents shall be subject to a financial assistance contract between MATA and the United States Department of Transportation, under the Federal Transit Act, as amended, and terms and conditions established under the Act will apply.

2.0 BID REQUIREMENTS

2.1 Bids must set forth full, accurate, and complete information required by this IFB including any attachments.

2.2 An electronic file(s) of the Bid and all related documents shall be submitted to MATA.

2.3 MATA has prepared and attached to these instructions the required bid form. This bid form and all accompanying documents or certifications and materials submitted by the bidder will be deemed to constitute part of the bid.

3.0 BID FORMAT

3.1 Bidders are required to submit bids in the following information: (via an electronic file)

A. Bid Forms and Attachments in triplicate

1. Exhibit I – Affidavit of Non-Collusion
2. Exhibit II – Buy America Certificate
3. Exhibit III – Certification of Primary Participant/Certification of Lower-Tier Participant
4. Exhibit IV – Certification of Restrictions on Lobbying
5. Addenda Acknowledgment
6. References According to General Provisions
7. Letter of Intent to Perform as a DBE Contractor or Subcontractor
8. Certification of Utilization of Disadvantaged Business Enterprises
9. Schedule of DBE Participation
10. Explanation of “No Response”
11. Exhibit V Performance Bond
12. Bid Form

4.0 BID PROCEDURES

4.1 MATA reserves the right to postpone the bid opening for its own convenience and to waive any minor bid informalities, which do not go to the heart of the bid or prejudice other bidders, or to reject, for good and compelling reasons, any and all bids submitted.

4.2 Conditional bids or those, which take exception to the specifications, will be considered “non-responsive”.

- 4.3 Changes to the specifications will be made by written addendum by MATA and will be forwarded to all persons and firms to whom documents have been submitted.
- 4.4 Requests for Clarifications or Approved Equals 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 on Wednesday April 21, 2021** in accordance with the Approved Equals procedures described in the General Contract Provisions. Any unapproved deviations, exceptions, substitutes, alternates or conditional qualifications contained in a bid may be cause for its rejection.

Requests may be emailed to abest@matatransit.com or faxed to (901) 274-5866. **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY BIDDER.**

- 4.5 **Bidders shall submit an electronic copy** of their respective bid. Bids shall be submitted via email or files share program.
- 4.6 Bids shall be valid for a minimum period of ninety- (90) days subsequent to the bid closing date. Bids offering less than ninety- (90) days for acceptance by MATA from the bid closing date will be considered non-responsive.

5.0 BID EVALUATION AND CONTRACT AWARD

- 5.1 The contract will be awarded to the lowest responsive and responsible bidder. Lowest and best will mean that the bid presented by the responsible bidder which conforms with all material items and conditions of this IFB and is lowest in price.
- 5.2 MATA reserves the right to reject any and all bids or to waive minor informalities and irregularities in offers received.

6.0 PROTESTS

- 6.1 MATA will consider all protests filed in a timely manner regarding the award. All protests are to be submitted in writing, in accordance with the protest procedures described in the General Contract Provisions.
- 6.2 Under certain limited circumstances, a potential Bidder may protest to FTA the award of a contract pursuant to an FTA grant. FTA's review of any protest is limited to:
- A. An alleged failure to MATA to have written protest procedures or alleged failure to follow such procedures.
 - B. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure, which shall be submitted in accordance with the Federal regulation.

7.0 DISADVANTAGED BUSINESS ENTERPRISE

7.1 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 bidding and award process and to assist DBE firms to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Prime Contractor will cooperate with MATA in meeting these commitments and objectives.

Accordingly, the Prime Contractor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime Contractors and subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Prime Contractor and any subcontractors to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MATA deems appropriate.

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

DBEs must be certified in Tennessee.

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

Memphis Area Transit Authority

Tennessee Department of Transportation Unified Certification Program

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

A list of firms currently certified in Tennessee can be found at:

www.tdot.state.tn.us/dbedirectinternet/

Certification in the State of Tennessee must be achieved by the time the bids 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 bids are due and, as a result, the goal is not met, then the bid 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.

7.2 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 26 % percent for this contract. However DBE participation is encouraged either the capacity of the prime contractor or subcontractor. Bidders 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.

7.3 DBE ELIGIBILITY AND PARTICIPATION

A. Evaluation of DBE Certification Status

MATA shall require that any DBEs listed by bidders for participation in the contract be certified, as eligible DBEs at the time of bid submittal. The DBE Officer shall review the Bidder'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

**SECTION B
BID REQUIREMENTS AND CONDITIONS**

1. **Contract Award**: Award of the contract(s) will be made on the basis of the lowest and best responsible Bid as selected by the Authority, provided it is in their best interest to do so.
2. **Escalation Clause**: If Bidder chooses to Bid his prices allowing for price escalation, he must specify the manner in which his prices will change and be able to show written justification of such escalation.
3. **Bid Form**: The Bid must be submitted on the Bid form provided or it may be considered non-responsive:
4. **Stocking Requirements**: Successful Bidder will be required to maintain a 30-day supply on hand at all times during the course of the contract.
5. **Damaged Merchandise**: If the shipment, when received, has been damaged in transit and is no longer usable, Contractor will be required to replace such damaged items or to credit the charges to MATA's account. Any claims that have to be filed with the carrier are the Contractor's responsibility.
6. **Delivery**: All Bid prices must be quoted F.O.B. MATA's Storeroom, 1330 Levee Road, Memphis, TN 38108. After receipt of verbal or written orders, delivery shall be made within ten (10) calendar days between 8:00 a.m. and 3:00 p.m. weekdays, Monday through Friday.
7. **Shipping Time**: All orders will be delivered to MATA no later than ten (10) calendar days after the order is placed – whether verbal or written. Any shipments not in accordance with the above may at MATA's discretion, be refused and returned to the seller freight collect. If the shipment is not received on time, MATA may order elsewhere and invoice the contractor for any additional charges incurred.
8. **Lead Time**: Seller will notify MATA in writing of any changes in lead time of materials affected by backlog, strike or any other reasonable event. This written notice will be issued if normal delivery will be affect + two weeks from established schedule.
9. **Union Contracts**: Seller will notify MATA in writing six (6) months prior to termination of any and all union contracts it, or any major supplier it does business with, may have at that time. This notice is to appraise MATA of the status of settlement and contingency plans, if any.
10. **Separate Contracts**: The Authority reserves the right to award this Contract for items singularly, in multiples, or as a whole or to award separate contracts in any manner which the Authority deems to be in its best interests.
11. **Account Representative**: Seller will designate one person at its main place of business as account representative for this contract. This person will be responsible for keeping current all activity relating to the contract.
12. **Removal From BIDDERS List**: Failure to submit a Bid or a "NO BID" may result in removal from the Bidder's list.
13. **Liability**: Contractor must be responsible for the quality and satisfactory performance of his product. If the Authority finds that any product furnished by the Contractor adversely affects the operations of the Authority's equipment, the Authority reserves the right to cancel, without

penalty, the contract with respect to the product involved by giving the Contractor a ten (10) day notice of such cancellation.

14. **Curtailement of Quantities:** MATA reserves the right to reduce the total quantities of supplies purchased under the contract by such amount as the requirements of MATA may be reduced by reason of retrenchment in the operation of MATA or other good cause.
15. **Timely Performance/Force Majeure:** The timely receipt of MATA's requirements is essential. If the requirements are not received on time in accordance with the contract delivery schedule, MATA may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from contractor any increased costs thereby incurred together with all resulting incidental and consequential damages. MATA may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor's obligations.
16. **Usage Reports:** Annually the Contractor shall furnish to the Contract Administrator usage reports showing a summary of the ordering and/or history for the previous contract year. This report must show a minimum, description and total quantity ordered during the reporting period and total dollars. MATA reserves the right to request additional information, if required when reviewing contract activity.
17. **Grounds for Default:** (1) Repeated lateness or (2) Repeated rejection of goods due to non-conformity will be grounds for holding the seller in default under the mater contract as well as the affected release purchase order(s) or release(s).

SPECIFICATIONS ON LIQUID FLEET SHAMPOO CONCENTRATE

1. **SOLUTION:**

- a. Concentrated – to be diluted with water to a ratio of 60:1.
- b. Must be a Butyl base detergent.
- c. Must not leave any type of coating or residue on surface, which is shampooed.
- d. Detergent must remove all residue, oil, grease, exhaust soot, and all other removable stains or dirt from the external panels of the Authority's buses.

2. **RESTRICTIONS**

- a. Must not harm or discolor polyurethane, acrylic or enamel automotive paint or bus window/glass.
- b. Must not harm or damage heating coils in steam cleaners.
- c. Must not be harmful to human skin or tissue.
- d. Must not leave streaks.

3. **GUARANTEE**

Bidder must agree to absorb the cost of painting the entire bus or replacing windows if detergent harms the finish in any manner. Also, Bidder must guarantee to replace at Bidder's expense any steam cleaner heating coil which is rendered irreparable for use due to using his detergent which shall include delivery charges or labor to install.

4. **PACKAGING**

- a. Detergent is to be furnished in closed-top 55-gallon deposit drums.
- b. Drums must be thoroughly cleaned inside before detergent is put in so as not to contaminate solution.
- c. External packaging must clearly identify product contents and include D.O.T. Hazardous warning label, if applicable.
- d. Based on the manufacturers recommended storage conditions vendor must indicate the "For Best Performance" use by date.
- e. Must be stable in storage from 0F to 140F.

5. **QUANTITY**

- a. Orders will be for approximately fourteen (14) 55-gallon drums per month.
- b. Bidder must maintain a 30-day supply (14-55 gallon drums) on hand at all times during the extent of the contract. MATA agrees to purchase this quantity at the expiration of the contract.
- c. MATA reserves the right to increase or decrease the quantities per month based upon its need.

6. **SELECTION OF LOWEST AND BEST BID**

A one-gallon sample must be submitted with the Bid. Samples will be marked A, B, C, etc. by MATA's Purchasing Department. The persons testing the product will not be told which company submitted the product. Phase I of the testing will be performed for all responsive BIDDERS on a painted bus panel to assure the sampled product does not cause damage to the painted bus panel. **Bidders shall send samples no later than Friday April 30, 2021. Samples should be shipped to 1330 Levee Road, Memphis, TN 38108; Attn: Avery Mull.**

ALL SAMPLES MUST BE CLEAR LIQUID WITH NO DYE OR ODOR ADDED.

7. **MSDS SHEET**

The manufacturer's complete and accurate material safety data sheets (O.S.H.A. Form 174 or equivalent) must be presented to MATA or a statement to the effect that item quoted is not considered hazardous or has been registered with the commissioner of health.

8. **SUPPLIER'S INSURANCE**

The Supplier shall take out and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect him, MATA and the City of Memphis, its agents and employees from any claims of any nature, whether meritorious or otherwise including claims for damages for personal injury including accidental death as well as from claims for property damages which may arise from operations under this contract and the amounts of such insurance shall be as follows:

"Public Liability Insurance for Bodily Injury, Limit of Liability not less than \$100,000.00 each occurrence and subject to an aggregate limit of \$100,000.00".

"Property Damage: Limit of Liability not less than \$100,000.00 each occurrence and subject to an aggregate limit of liability of \$100,000.00".

The Contractor shall provide to MATA a copy of each year's renewal of insurance containing these coverages.

9. **PROOF OF CARRIAGE OF INSURANCE**

Bidder shall furnish along with his Bid CERTIFICATE OF INSURANCE endorsed by the Insurance Company showing the above coverage.

10. **PERFORMANCE BOND**

The successful Bidder shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract sum as security for the faithful performance of this Contract. Form of instrument shall be standard City of Memphis form, a copy of which is attached (Exhibit V). Bond shall be furnished through an agent domiciled and legally authorized to do business in the state of Tennessee and delivered to the Authority no later than the date of execution of the Contract. Surety company shall be one acceptable to MATA with a local office, and the name address and phone number of the local agent must be shown. **RENEWAL OF PERFORMANCE BOND SHALL BE MADE ONE MONTH PRIOR TO EXPIRATION OF CURRENT PERFORMANCE BOND EACH YEAR OF THE CONTRACT.**

NOTE

EACH BIDDER IS REQUIRED TO SUBMIT A CLEAR (WITH NO COLOR OR ODOR) SAMPLE OF THEIR PRODUCT NO LATER THAN FRIDAY, APRIL 30, 2021, IN A ONE-GALLON CLEAR CONTAINER. THE CONTAINER MUST BE FREE OF ANY PERMANENTLY ATTACHED LABELS (WITH ADHESIVE). LABELS MAY BE ATTACHED AS LOOPS THROUGH HANDLES, WITH STAPLES, TAPE OR RUBBER BANDS AND MUST BE EASILY REMOVED PRIOR TO TESTING. FAILURE TO DO SO WILL CAUSE BID TO BE NON-RESPONSIVE.

REMINDER: BIDDERS MUST RETURN THE COMPLETE BID PACKAGE WITH COMPLETED FORMS; OTHERWISE, BID WILL BE DEEMED NON-RESPONSIVE.

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 bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation with authority to sign on its behalf (if the bidder is a corporation);
- (2) That the attached bid or bids have been arrived at by the bidder 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 invitation to bid, designed to limit independent bidding or competition.
- (3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid 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 _____

Bidder'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 \$150,000 or greater)

Certificate of Compliance

The bidder 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 _____

Certificate of Non-Compliance

The bidder 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 bid 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/bidder 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 bid, 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 bid).

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 Bidder, 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 Bidder

_____ **21-08** _____
MATA IFB Number

Address of Prime/General Bidder

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 bid price or contract to be awarded to the prime bidder.

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 Bidder and the DBE subcontractor wherein the above-named DBE subcontractor has promised not to provide subcontracting quotations to other bidders.

Date

Name of Prime or General Bidder

Signature of Authorized Representative

SCHEDULE OF DBE PARTICIPATION

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

P = Prime Contractor
JV = Joint Venture
S = Subcontractor

NO RESPONSE

* PLEASE EITHER PRINT OR TYPE INFORMATION ON THIS FORM *

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on IFB# 21-08 Three-Year Supply of Fleet Shampoo with a Two Year Option 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 bidder's list for this item.
- Please remove our name from the bidder's list for this item.

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

**EXHIBIT V
PERFORMANCE BOND**

STATE OF TENNESSEE)

_____ **COUNTY)**

KNOWN ALL MEN BY THESE PRESENT, THAT:

We, _____ (Herein called the "Contractor") of _____ County, _____, a _____ (Partnership of Corporation) organized and existing under and by virtue of Laws of State _____, as principal, and _____, surety, do hereby acknowledge ourselves indebted and firmly bound and held unto _____ (Hereinafter called the "Owner"), a corporation existing under and by virtue of Tennessee, for the use and benefit of those entitled thereto, in the sum of (\$ _____) (Dollars) for the payment of which well and truly to be made, in lawful money of the United States we do hereby bind ourselves, successors, assigns, heirs and personnel representatives.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Owner, has engaged the said contractor, for the sum of _____ (\$ _____) (Dollars) as more fully appears in a written agreement or contract is by reference hereby made a part hereof, and it is the desire of the said agreement or Owner that the said Contractor shall assume all undertaking under said agreement or contract, and shall assure and protect all laborers and furnishers of material on said work as provided by Chapter 182 of the Acts of General Assembly of Tennessee of 1899, and any and all amendments thereto, including, without being limited to, Chapter 121 of Public Acts 1923, and Chapter 121 of the Public Acts of 1925, all of which were codified, as required by Tennessee Code Annotated Sections 12-417 through 12-424, as amended, and also independently of said statutes.

NOW, THEREFORE, if the said Contractor shall fully faithfully perform all undertakings and obligations under the said agreement or contract hereinbefore referred to and shall fully indemnify and save harmless the said Owner from all costs and damage whatsoever which it may suffer by reason of any failure on the part of said Contractor so to do, and shall fully reimburse and repay the said Owner any and all outlay and expense which it may incur in making good any such default, and shall fully pay for all of the labor, materials and work used by said Contractor any immediate or remote Contractor or Furnisher of material under him in the performance of said Contractor, in lawful money of the United States, as the same shall become due, then his obligation or bond shall be null and void, otherwise to remain in full force and effect.

AND, for value received, it is hereby stipulated and agreed that no change, extension of time, alteration to the terms of this said agreement or contract or to the work to be performed thereunder or the specifications accompany the same shall in anywise affect the obligations under this obligation or bond, and notice is hereby waived of any such change, extension of the time, alteration or addition to the terms of the agreement or contract or to the work or to the specifications.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and said surety has hereunto cause to be affixed its corporate signature and seal, by its duly authorized officers, on this day of _____, 20_____.

Company name

Signature and Title of Authorized Official

ATTEST _____

SURETY _____

BY _____

Attorney in fact

APPROVED:

COUNTERSIGNED:

Tennessee Agent

President/General Manager
Memphis Area Transit Authority

APPROVED:

Legal Counsel
Memphis Area Transit Authority

**BID FORM
THREE-YEAR SUPPLY OF FLEET SHAMPOO
WITH TWO-YEAR OPTION**

BID TO: The Memphis Area Transit Authority. This Bid is made in accordance with all Bid requirements, conditions, specifications and provisions on file in the offices of the Memphis Area Transit Authority, Memphis, Tennessee, which have been carefully examined and which are attached hereto.

YEAR ONE 6/1/2021 – 5/31/2022				YEAR TWO 6/1/2022 – 5/31/2023			
Qty.	Price Per Gal.	Total Price	Firm (Y/N)	Qty.	Price Per Gal.	Total Price	Firm (Y/N)
432) 55 gal Drums Fleet Shampoo	\$	\$		432) 55 gal Drums Fleet Shampoo	\$	\$	

This equals 23,760 gallons of soap per year.

This quantity is based on a combination of the past usage and the forecasted usage of the Contract Term. MATA is not obligated to purchase residual stock remaining in the seller's inventory at the conclusion of the contract term.

Price quoted should be a firm rate for year one of the contract. Price must include all prepaid tax-exempt charges for furnishing and delivering conforming goods. If the price quoted is not firm for the entire contract period Bidder must indicate how prices will be adjusted.

DILUTION RATIO OF PRODUCT YOU WILL PROVIDE MUST BE 60:1

The quantities listed are acknowledged to be only MATA's estimate of projected need for the duration of the contract, which quantities are not binding upon MATA and not part of the contract.

The undersigned understands that any condition stated above, clarification made to the above or information submitted on or with form – other than that requested may render the bid unresponsive.

NAME OF INDIVIDUAL/PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX _____

EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – BID MUST BE SIGNED

**BID FORM
THREE-YEAR SUPPLY OF FLEET SHAMPOO
WITH TWO-YEAR OPTION**

BID TO: The Memphis Area Transit Authority. This Bid is made in accordance with all Bid requirements, conditions, specifications and provisions on file in the offices of the Memphis Area Transit Authority, Memphis, Tennessee, which have been carefully examined and which are attached hereto.

**YEAR THREE
6/1/2023 – 5/31/2024**

<u>Qty.</u>	<u>Price Per Gal.</u>	<u>Total Price</u>	<u>Firm (Y/N)</u>
432) 55 gal Drums Fleet Shampoo	\$ _____	\$ _____	_____

This equals 23,760 gallons of soap per year.

This quantity is based on a combination of the past usage and the forecasted usage of the Contract Term. MATA is not obligated to purchase residual stock remaining in the seller's inventory at the conclusion of the contract term.

Price quoted should be a firm rate for year one of the contract. Price must include all prepaid tax-exempt charges for furnishing and delivering conforming goods. If the price quoted is not firm for the entire contract period Bidder must indicate how prices will be adjusted.

DILUTION RATIO OF PRODUCT YOU WILL PROVIDE MUST BE 60:1

The quantities listed are acknowledged to be only MATA's estimate of projected need for the duration of the contract, which quantities are not binding upon MATA and not part of the contract.

The undersigned understands that any condition stated above, clarification made to the above or information submitted on or with form – other than that requested may render the bid unresponsive.

NAME OF INDIVIDUAL/PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX _____

EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – BID MUST BE SIGNED

**BID FORM
THREE-YEAR SUPPLY OF FLEET SHAMPOO
WITH TWO-YEAR OPTION**

BID TO: The Memphis Area Transit Authority. This Bid is made in accordance with all Bid requirements, conditions, specifications and provisions on file in the offices of the Memphis Area Transit Authority, Memphis, Tennessee, which have been carefully examined and which are attached hereto.

TWO-YEAR OPTION

OPTION YEAR ONE 6/1/2024 – 5/31/2025				OPTON YEAR TWO 6/1/2025– 5/31/2026			
Qty.	Price Per Gal.	Total Price	Firm (Y/N)	Qty.	Price Per Gal.	Total Price	Firm (Y/N)
432) 55 gal Drums Fleet Shampoo	\$	\$		432) 55 gal Drums Fleet Shampoo	\$	\$	

This equals 23,760 gallons of soap per year.

This quantity is based on a combination of the past usage and the forecasted usage of the Contract Term. MATA is not obligated to purchase residual stock remaining in the seller’s inventory at the conclusion of the contract term.

Price quoted should be a firm rate for year one of the contract. Price must include all prepaid tax-exempt charges for furnishing and delivering conforming goods. If the price quoted is not firm for the entire contract period Bidder must indicate how prices will be adjusted.

DILUTION RATIO OF PRODUCT YOU WILL PROVIDE MUST BE 60:1

The quantities listed are acknowledged to be only MATA’s estimate of projected need for the duration of the contract, which quantities are not binding upon MATA and not part of the contract.

The undersigned understands that any condition stated above, clarification made to the above or information submitted on or with form – other than that requested may render the bid unresponsive.

NAME OF INDIVIDUAL/PARTNER/CORPORATION: _____

ADDRESS: _____

PHONE: _____ FAX _____

EMAIL: _____

BY: _____ TITLE: _____

SIGNATURE: _____

IMPORTANT – BID MUST BE SIGNED

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 Bidder 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 Bidder 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 Bidder'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 Bidder 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 Bidder must be included in the envelope or package containing the proposal.

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

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. Bidders 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 Islanacs, Macao, Fiji, Tonga, Kirbati, 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 Bidder in its proposal documents shall not conclusively establish the Bidder'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 Bidder 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 Bidder 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 Bidder 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 Bidder 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 Bidder 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 Bidder 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 Bidder 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. Bidder 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 Bidder must make good faith efforts to meet the DBE participation goal set forth in the contract. The Bidder must document the good faith efforts it made in that regard. Thus, the Bid submitted to MATA must be accompanied by written documentation prepared by the Bidder 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 Bidder consider all qualified DBEs, who express an interest in performing work under the contract. This means that the Bidder cannot reject a DBE as unqualified unless the Bidder 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 Bidder 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 Bidder contacted but rejected as unqualified, the reason for the Bidder's conclusion. This may include documentation of price comparisons. Receipt of a lower quotation from a non-DBE will not in itself excuse a Bidder'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 Bidder 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 Bidder 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 Bidder 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 Bidder who does not meet the contract DBE participation goal or show good faith efforts to meet the goal. Thus, it is essential that all Bidders 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 Bidder Compliance

The Bidder 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 Bidder'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 Bidder proposes to include in its proposal a DBE, which is a joint venturer, the Bidder 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 Bidder 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 Bidder and its subcontractors must contain a prompt payment clause as set forth in Section 8 herein.

b. During the term of the contract, the Bidder 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 Bidder'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 Bidders 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 Bidder acknowledges and agrees that if MATA determines that the Bidder, a DBE or any other firm retained by the Bidder 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 Bidder 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 Bidder irrevocably agrees to such an assessment of damages for DBE Program purposes, and authorizes MATA to make such an assessment of damages against the Bidder and to collect that assessment from any sums due the Bidder under the contract, or any other contract, or by other legal process. The Bidder 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 Bidder mails or otherwise furnishes to the Contracting Officer an appeal, in writing, addressed to the President/General Manager of MATA. The President/General Manager shall review the dispute, related documents and the Contracting Officer's decision. The President/General Manager may consult with MATA's project manager, the Contracting Officer or any other person deemed necessary by the President/General Manager. The decision of the President/General Manager shall be final and conclusive unless, within 10 days from the date of the receipt of such decision, in writing, the Bidder 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 Bidder 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 Bidder shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

ATTACHMENT 1

GENERAL CONTRACT PROVISION

MEMPHIS AREA TRANSIT AUTHORITY (MATA)

GENERAL CONTRACT PROVISIONS

1. Non-Collusion - The Bidder guarantees that the Bid submitted is not a product of collusion with any other Bidder and no effort has been made to fix the Bid price of any Bidder or to fix any overhead, profit, or cost element of any Bid price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Bid. (Exhibit I)
2. Bid Acceptance - Each Bid 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 Bidder and the purchaser, which shall bind the Bidder on his part to furnish and deliver at his Bid price and in accordance with said accepted Bid and specifications.
3. Pricing - The price to be bid in any Bid 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 Bid 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. Bidder should note discounts, if any. Freight charges must be included in Bid 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 Bid may be cause for its rejection.
 - c. If a potential Bidder 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 WEDNESDAY APRIL 21, 2021 AT 11:00 A.M. LOCAL TIME, TO ALLOW ANALYSIS OF THE BID.** 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 or 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 Bid opening.

- f. A notice of approved equals shall be furnished to all parties receiving specifications so that all Bidders may prepare their Bid 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 Bidders 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 Bidders; 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 Bid documents have been furnished.
7. Bid Withdrawal -
- a. Each and every Bidder who submits his Bid specifically waives any right to withdraw it except as hereinafter provided. Bidders will be given permission to withdraw any Bid after it has been deposited with MATA, provided any Bidder makes its request by telephone, telegraph, or in writing, twenty-four (24) hours before the time Bids are due. Requests pertaining to withdrawals by telephone or telegraph must be confirmed in writing by the Bidder and must reach the Office of the Contracting Officer of MATA not later than one (1) hour prior to the time fixed for submission of Bids.
 - b. No Bidder may withdraw his Bid within ninety (90) days after the date Bids are due.
8. Bid Rejection - MATA reserves the right to waive any minor Bid informalities or irregularities received which do not go to the heart of the Bid or prejudice other Bidders, or to reject, for good and compelling reasons, any and all Bids submitted. Conditional Bids, 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 Bid prices. MATA will provide necessary tax exemption certificate to manufacturer, if requested.
10. Bid Evaluation -
- a. Consideration will be given to Bidder's previous experience, price, financial responsibility

of Bidder, responsiveness to these specifications, including level of participation of DBEs.

- b. Bidders 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 Bids singularly or collectively on any of the Bid items.
 - d. The Contract shall be awarded according to Section 5.0 of Section A.
11. Bid Price Form - If MATA includes a Bid Price Form in the IFB, Bids must be submitted on the form provided. Each item should be listed separately on the form. Bids submitted in any other form may be considered non-responsive and may be rejected. Bids may be submitted on any or all items in this Bid request.
12. Protest Procedures - Protests may be made by prospective Bidders 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. Bid protests alleging restrictive specifications or improprieties which are apparent prior to Bid closing time or receipt of Bids must be submitted in writing to the Contracting Officer and must be received seven (7) days prior to Bid closing time or receipt of Bids. If the written protest is not received by the time specified, Bids may be received, and an 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 Bidders, 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 Bidders; 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 subject to formal rules or evidence or procedures. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

- b. Bid 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 Bidders. 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 Bidders whose Bids might become eligible for award shall be requested before expiration of the time for acceptance, to extend or withdraw the Bid.

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 Contracting Officer and received within seven (7) days after the date of the written determination by the Contracting Officer. The Contracting Officer may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing

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

- 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 Contracting 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 Bidder is required to show on all correspondence with MATA and FTA, the following: **IFB No. 21-08**. 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.
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 Bid submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Bid, the provisions of this Contract shall control.
 - b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.
 - c. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the CONTRACTOR as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.

17. Compliance with Applicable Law -

- a. In the performance of its obligations pursuant to this Contract, the CONTRACTOR shall comply with all applicable provisions of Federal, State, and local law in any manner affecting the conduct of the work and all prohibitive orders and instructions issued by the State and Federal Government regarding fortifications, military, and naval establishments and other areas.
- b. To accommodate changing Federal requirements, the CONTRACTOR agrees that Federal requirements may change, and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise. All standards or limits within FTA's Master Agreement are minimum requirements, unless modified by FTA.
- c. The CONTRACTOR agrees to comply with FTA Circular 4220.1F, "Third Party Contracting Requirements", any revisions or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated.

18. Audit and Inspection -

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

19. Equal Employment Opportunity - In the performance of its duties hereunder, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of disability, race, color, age, creed, sex, religion or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their disability, race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall insert the foregoing

provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

20. Interests of Federal and State Governmental Officials -

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

21. Environmental Requirements -

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

and any revisions thereto.

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

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

- j. Historic Preservation. The CONTRACTOR agrees as follows:
1. The CONTRACTOR agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.
 2. The CONTRACTOR agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c as follows:
 - (a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.
 - (b) The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.
- k. Indian Sacred Sites. The CONTRACTOR agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, in accordance with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.
- l. Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, the CONTRACTOR agrees to take all reasonable steps to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771, 23 C.F.R. Part 774, and 49 C.F.R. Part 622. The CONTRACTOR agrees to implement all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and other documents required by 49 U.S.C. § 303). The CONTRACTOR also agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or a record of decision. The CONTRACTOR agrees that those mitigation measures are incorporated by reference and made part of the Contract. The CONTRACTOR agrees that any deferred mitigation measures will be incorporated by reference and made part of the Contract as soon as agreement with the Federal Government is reached. The CONTRACTOR agrees that any mitigation measures agreed on may not be modified or withdrawn without the express written approval of the Federal Government.
22. Energy Conservation - The CONTRACTOR agrees to comply with applicable mandatory energy efficiency standards and policies under the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. As applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, in compliance with FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.
23. Patent Rights – (Applicable to Contracts For Planning, Research, Development and/or

Demonstration Projects Only)

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

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

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

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

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

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

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

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

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

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

- (1) Any subject data developed under the Contract for the Project, or under a subcontract, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Contract for the Project, whether or not a copyright has been obtained; and
- (2) Any rights of copyright to which a CONTRACTOR, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

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

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

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

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

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

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

25. Vendor Responsibility - It is the intent of these specifications to provide for goods of first quality and the workmanship must be the best obtainable in the various trades. The design of the goods, which the manufacturer proposes to furnish, must be of substantial and durable construction in all respects. No advantage shall be taken by the Bidder 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 Bid item whether the vendor manufactures the same or purchased ready-made from a source outside the vendor's company.

26. References - Bidder shall provide with his Bid at least five references for projects similar to that described in this Invitation for Bid. 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 Bid due date.

27. Delivery - Bids 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 Bid or the Bid 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 may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single Bid 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 Bid 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 Bid will be treated as a negotiated procurement and MATA

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

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.
40. 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 Contracting Officer of MATA. The Contracting Officer shall review the dispute, related documents and the Contracting Officer's Final Decision. The Contracting Officer may consult with the Construction Manager and the Contracting Officer. The decision of the Contracting 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.