



PROCUREMENT MANUAL (POLICY)

Effective: April 2, 2026

**Memphis Area Transit Authority
1370 Levee Road
Memphis, TN 38108**

This is Living document under constant update and revision to include but not limited to Required FTA Clauses, FTA Circulars, TDOT Clause, Procedures, Forms, etc.

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I. PURPOSE & INTRODUCTION

1.0 Objectives

As a recipient of federal funds, the Memphis Area Transit Authority (MATA) is responsible for using prudent procurement practices in its purchasing activities. The purpose of this procurement manual is to define the basic policies and procedures that govern the procurement, accounting, and disposal of MATA facilities, rolling stock, materials, and equipment. It also governs the procurement and accounting of professional services that MATA may require. This manual sets forth the guidelines and policies to be followed by all MATA personnel involved in the procurement process, including members of the MATA Board of Commissioners (the MATA Board) and/or Trustee(s).

2.0 General Procurement Policy

MATA requires all goods and services to be purchased through its Purchasing Office. The Department's mission is to support MATA management, staff, and employees in performing their mission by facilitating the procurement of quality, cost-effective equipment, products, and services in an efficient and responsive manner. Any person making procurements outside of this policy will be responsible for justifying and documenting the procurement (i.e. emergency purchase approval), including obtaining necessary approvals, before submitting the documents to the Purchasing Office. A purchase by an employee that does not follow policy will be considered as an out-of-compliance purchase by that employee. The employee and the department head will receive an out-of-compliance letter. Failure to comply may result in disciplinary action in accordance with HR policies and applicable law. Unauthorized purchases may be deemed non-reimbursable to the extent permitted by law. All employees are responsible for reviewing all applicable policies before approval of executing a MATA transaction.

The MATA Board and/or Trustee(s) has adopted a separate Disadvantaged Business Enterprise (DBE) Program and established effective implementation and vigorous enforcement of the DBE Program as a high priority. All MATA departments, regardless of the size of the procurement, are encouraged and expected to ensure that DBEs receive the maximum opportunity to compete for all goods and services procured by MATA.

This Procurement Manual contains information about the DBE program to ensure that the Procurement Department is aware of DBE requirements at each level of the procurement process. The procurement staff can obtain additional information from the DBE Officer when needed. The DBE Officer reports directly to the Chief Executive Officer (CEO) and/or Trustee(s) and maintains an open-door policy.

MATA will abide by applicable federal, state, and local guidelines which govern procurements. For procurements in which federal funds are used, federal regulations will take precedence, in many instances, over state and local guidelines. The Grants Administrator will notify the Purchasing Staff if a procurement is funded with something other than Federal and State funds. Procurements not being supported with Federal funds will follow the State procurement regulations (if State funding is involved in the procurement) and/or City of Memphis procurement regulations. The Federal Transit Administration (FTA) provides guidance on procurement matters in the current FTA Circular 4220.1, FTA Circular 5010, FTA Circular 4716, and 49 CFR Part 18, and each of these Federal Circulars and regulations guide transit agencies'

procurement function. Also, MATA ensures its procurement actions adhere to state and city requirements when necessary, without contradicting FTA regulations and procurement laws.

3.0 Change, Review, and Update –

This manual, or parts thereof, can only be changed with the approval of the MATA Board and/or Trustee(s). Any Board member may request a revision. After the CEO and/or Trustee(s) approves, staff recommendations for revisions. In all instances, only the MATA Board and or Trustee(s) shall approve any changes to the Procurement Manual.

The Legal/Compliance Officer or designee will review this manual as changes in regulations and circumstances require, with assistance from the Procurement and Inventory Controls Sr. Manager, the Grants Administrator, the DBE Officer, and the Contract Administrator. Any changes deemed necessary or appropriate by the Procurement and Inventory Controls Sr. Manager or Legal/Compliance Officer /designee will be submitted to the CEO and/or Trustee(s) for review in consultation with the Chief Operating Officer. The CEO and/or Trustee(s)' recommendations for changes shall be approved by MATA's current authorized process.

The entire solicitation, bid, and award process shall always comply with FTA's Third-Party Legal/Compliance Guidelines and the FTA Procurement Alerts, which are periodically issued, amended, and rescinded. Therefore, this manual is deemed automatically amended in accordance with the ongoing issuance, amendment, and rescission of the FTA Circulars and Alerts.

4.0 Ethics

4.1 Relationships

In all procurement matters pertaining to MATA, no MTM employee, MATA employee, Management Service Contractor employee, MATA Legal Counsel, any member of an evaluation committee for a MATA-funded project, and member or employee of the MATA Board, any City of Memphis employee, any Federal Transit Administration (FTA) employee, and Tennessee Department of Transportation (TDOT) employee or an immediate family member of any of the above shall have any simultaneous relationship or engage in any activity while serving in such position or capacity which might:

- a. Involve or lead to personal or financial obligation that could impair the objectivity of such person's judgment; or
- b. Give the appearance that favoritism or obligations exist between the Board, its members, employees, and any other party. (MATA Board members are also subject to Section 2-42 of the Memphis City Code, which contains conflict of interest provisions relating to officers and employees of the City of Memphis, including members of Boards and Commissions.)

Employees engaged in procurement must comply with 2 CFR §200.318(c).

No MATA employee, MTM employee, Management Service Contractor employee, MATA Legal Counsel, MATA Board member, officer or agent of MATA, any City of Memphis employee, any FTA employee, any TDOT employee, or any member of an

evaluation committee for a MATA funded project, or an immediate family member of any of the above may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a. The MATA employee, MTM employee, Management Service Contractor employee, MATA Legal Counsel, MATA Board Member, or officer or agent of MATA, City of Memphis employee, FTA employee, TDOT employee, or any member of an evaluation committee for a MATA-funded project;
- b. Any member of their immediate family;
- c. Their partner or
- d. An organization that employs, or is about to use, any of the above.

4.2 Gifts

No employee of MTM, MATA, Management Service Contractor employee or member of the Board of Commissioners, the City of Memphis, FTA, TDOT, or an immediate family member of any of the above shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing over \$75.00 in value from any person or organization known to have or known to be seeking to establish a business relationship with MATA. All gifts or other gratuities from any party seeking to develop a business relationship with MATA are discouraged and contrary to this declared policy. This policy does not intend to prohibit ordinary and accepted business courtesies, such as promotional desk calendars, diaries, cigarette lighters, pencils, and occasional meals. Still, it is intended to prohibit the receipt of valuable gifts and extended or expensive hospitality. Proper personal conduct requires that:

- a. Gifts or other gratuities that might adversely affect the exercise of a Board member's or employee's judgment in matters pertaining to MATA or tend to impair public confidence in MATA must never be accepted.
- b. Entertainment in any form must not be accepted if either party feels an obligation or a third party might infer that an obligation exists.
- c. If luncheon or dinner meetings are occasionally desirable for business conduct, MATA should pay the appropriate share of expenses of such meetings.
- d. Board members, MTM, MATA, or Management Service Contractor employees, or an immediate family of any of the above shall neither solicit nor accept gratuities, discounts, favors, or anything of monetary value from contractors or potential contractors.

4.3 Influence

Because situations involving conflict of personal interest can also impair judgment:

- a. No Board member, agent, employee of MTM, MATA, the City of Memphis, FTA, TDOT or Management Service Contractor, or an

immediate family member of any of the above shall have a financial interest in any other organization which might profit either from the decisions he makes in carrying out his MATA responsibilities, or from his knowledge of MATA actions or plans. If an individual serves as a Board member or employee of MTM, MATA, the City of Memphis, FTA, TDOT, or a management service contractor under contract with MATA, any ownership interest as an owner, partner, joint venture, or stockholder of 1% or less in any of these organizations shall not be considered a "financial interest" as prohibited. However, holding a position as Director, Officer, Consultant, or Employee of any of these organizations shall be considered a "financial interest."

- b. No Board member, agent, employee of MTM, MATA, the City of Memphis, FTA, TDOT or Management Service Contractor, or an immediate family member of any of the above shall make investments or act for personal gain based upon confidential knowledge he or she obtained -- whether directly or inadvertently -- as a result of his or her position as a Board member or employee of MTM, MATA or a management service contractor under contract with MATA.

4.4 Guidelines for Management Service Contractors

To avoid actual or apparent conflict, the following shall apply to employees of any management services contractor:

- a. No Contract Management personnel or support staff shall make recommendations or prepare specifications for any contracts the Management Service Contractor may bid on or propose.
- b. No Contract Management personnel or support staff shall be involved in evaluating technical or price proposals, selection, negotiations, engaging in discussions, award of a contract, or summarizing an award for which that Management Service Contractor may bid or any protests associated with said procurement.
- c. No Contract Management personnel or support staff shall be involved in any aspect of contract administration of a contract or subcontract that has been awarded to the Management Service Contractor. No Contract Management personnel shall be engaged in any aspect of any change order of a contract or subcontract that has been awarded to the Management Service Contractor.
- d. The Management Service Contractor shall be precluded from participating in procurements of petroleum products and materials and supplies but may participate in service contracts.
- e. If the Management Service Contractor states in writing that it will not bid/propose on a specific procurement, the provisions of this Section 4.4 shall not apply.

4.5 Violations

Any violation of these procurement procedures by any MTM officer, MTM employee, Contract Management personnel, or agent shall subject the individual to disciplinary

actions by the CEO or Trustee(s) of MATA. Any violation by the CEO or Trustee(s) shall subject him/her to disciplinary action by the Board. Violation of or any attempt to circumvent these procurement procedures by contractors and bidders/proposers, potential contractors and bidders/proposers, or their agents shall be considered a breach of MATA's contract. It shall be regarded as a willful breach if such violation is deemed to be in knowing or careless disregard of these procurement procedures. It shall subject the contractors or their agents to disciplinary action up to and including suspension or debarment from contracting with MATA.

It shall be the responsibility of every officer, MTM or MATA employee, Contract Management personnel or agent, and contractor of MATA to familiarize himself or herself with the provisions of these procurement procedures. All inquiries concerning the same should be directed to the CEO or Trustee(s). The CEO or Trustee(s) and/or Chief Operating Officer must immediately be notified of any violation or questionable action.

MATA Board members are also subject to Memphis City Code § 2-42, which provides that violation constitutes a misdemeanor. Penalties include discharge or removal.

5.0 Vendor Relations

MATA maintains an "open door" policy and strives to maintain a good business relationship with all bidders and potential bidders with whom it does business. The Purchasing Office assumes responsibility to:

- a. establish and maintain ethical purchasing policies and principles.
- b. maintain open and fair competition.
- c. maintain fair and objective purchase and bid specifications.
- d. observe and maintain honesty and sincerity in all transactions with suppliers.
- e. respect the confidence of suppliers in the handling of information.
- f. remain free from any obligation to suppliers.
- g. answer all inquiries promptly.
- h. decline to take advantage of vendor errors.
- i. see that all sales representatives receive a full, fair, and courteous hearing.
- j. furnish complete and accurate information.
- k. expedite delivery of materials and promotes prompt payment of invoices.
- l. keep an open mind to new methods and procedures.
- m. encourage testing or demonstration of materials and products that may be of value to MATA; and
- n. visit sources of supply and keep informed as to their methods and stability.

The Purchasing Office maintains an "open door" policy for all companies and citizens to discuss products or services. At various times, MATA may request vendor assistance, requiring time and effort on the vendor's part. This in no way commits MATA to purchase from a vendor

serving in this way, nor does it obligate MATA to reimburse any expense incurred by the vendor in assisting MATA so long as MATA informs the vendor that such request shall create no obligation, reimbursement commitment, or otherwise. Furthermore, MATA never pays any expense to any bidder/proposer in preparing and submitting any bid/proposal.

While it is true that the Purchasing Office maintains an open-door policy for all companies and citizens in the discussion of products or services, the policy closes somewhat during active procurement. Discussion with vendors remains open only as to technical guidance and assistance. Information regarding any technical guidance during a pending procurement is provided to all vendors participating in the procurement. In reference to this subsection, the MATA staff should refer to the current FTA Circular 4220.1.

The Purchasing Office always operates with integrity and fairness to its suppliers. Through these principles, MATA intends to create an atmosphere in which MATA, vendors, and citizens can work together to provide goods and services to MATA at a fair and reasonable price.

II. POLICIES

1.0 General Policies

The authority and responsibility for purchasing and selling all personal property and services rests with the Purchasing Office, which is subject to approval in some instances by the MATA Board. This authority may be occasionally delegated to other departments, but only for a limited period and purpose, and always subject to the Purchasing Office's review and consent.

- a. Except as noted, all purchases for goods or services are initiated by a purchase requisition.
- b. User Departments may consult with vendors concerning details of their products; however, if a visit to MATA's property is required, departments should request such visits through the Purchasing Office. Only Purchasing Office personnel should discuss prices and quantities with supplier representatives, except as noted in Section IV, paragraph 4.5.
- c. All correspondence with suppliers of a contractual nature or that modify the scope of work is to be done through the Contract Administrator and/or the Project Manager. Any change orders to a contract shall require the signature of the Legal/Compliance Officer or designee.
- d. As to all purchases of supplies, services, and /or construction, the Legal/Compliance Officer or his/her designee will conduct all negotiations with assistance from the Project Manager, Construction Manager, Legal/Compliance Officer's Technical Representative, Contract Administrator, Sr. Procurement and Inventory Controls Manager and the User Department, as necessary. See Article VII - "Negotiations", Section 1.0(a).
- e. All contracts that must be approved by the MATA Board and/or Trustee(s) shall be reviewed to legal form by the Legal Counsel, as required, before executing the contracts. Contracts prepared by MATA shall be utilized. MATA shall not enter into any contract with a performance period exceeding five years, including options for rolling stock or replacement parts.
- f. The Purchasing Office has full authority to question the quality, quantity, and kind of material and services requested to serve MATA's best interests.
- g. The Memphis City Charter provides for emergency purchases when there is insufficient time for newspaper advertising. Emergency procurements shall be limited to situations posing immediate threat to health, safety, property, or essential operations and must include written justification, fair and reasonable price determination, and documentation of competition where practicable. Complete documentation of the circumstances for the emergency procurement and the quotes shall be forwarded to the Procurement and Inventory Controls Sr. Manager. The Procurement and Inventory Controls Sr. Manager shall forward the documentation to the Legal/Compliance Officer or designee for public announcement at the next Board meeting for procurements of \$100,000 or more. The DBE requirements of this Procurement Manual apply to all emergency purchases.

- h. All bidding/proposing shall follow policies and procedures as called for herein, as well as special policies and procedures required by funding agencies, i.e., FTA, State of Tennessee, City of Memphis, etc.
- i. MATA is tax-exempt except for items that are purchased for resale.
- j. MATA's cost principles for evaluating proposed costs will be consistent with Federal cost principles per Federal Acquisition Regulations, Section 31.2.
- k. MATA will avoid any arbitrary action in procurements that would negatively or unfairly affect prospective bidders/proposers or contractors during the procurement or contract administration process.
- l. All revenue-generating contracts will be competitively solicited and will not exceed five years unless the FTA permits a longer term.

2.0 Approval Level for Purchases

The following represents the approval levels for non-stock purchase requisitions, which must be obtained before committing MATA funds.

AMOUNT (Level)	REQUIRED APPROVAL
\$0 - \$4,999.99	Manager / Director
\$5,000 - \$24,999.99	Director, User Dept. Chief, CFO
\$25,000 – \$49,999.99	Director, User Dept. Chief, CFO, CEO
\$50,000 - \$99,999.99	Director, User Dept. Chief, CFO, CEO
\$100,000 +	Director, User Dept. Chief, CFO, CEO, Board and/or Trustee(s)

\$100,000.00 and over: Manager/Director, User Department Chief, CFO, CEO, and Board and/or Trustee(s)

The Director of Maintenance / Storeroom must approve the purchase of items for inventory, per the approval level for purchases. The applicable DBE provisions of this Procurement Manual apply to all purchases regardless of value. Abusing the "Approval Level for Purchases" to circumvent these procedures and achieve a higher procurement level not otherwise authorized for an individual will be grounds for disciplinary action up to dismissal.

3.0 Inventory

An inventory of materials and supplies used on a recurring basis will be maintained, provided that the cost of stocking the item is offset by purchase discounts and/or other operational advantages.

The Maintenance Department /Storeroom will maintain and control the inventory.

4.0 Disadvantaged Business Enterprise (DBE) Program

MATA's procurement process is structured to ensure DBE firms can compete for contracts. The MATA procurement process is key to implementing MATA's DBE policy. MATA identifies a significant number of DBEs capable of providing services and supplies. Annually, MATA projects the number and types of contracts to be awarded and the number and types of DBEs

likely to be available to compete for contracts. DBE contractors should be encouraged by MATA to compete as prime contractors. MATA is committed to undertaking special efforts to seek socially and economically disadvantaged firms to attain this goal. DBE goals are established annually for MATA's annual procurements with contracting opportunities and on a project-to-project basis. As of October 3, 2025, FTA revised 49 CFR Part 26. With this revision, the TNUCP has temporarily suspended its DBE list until all DBE participants have been reevaluated under the newly revised regulation. MATA shall continue DBE compliance, promote participation, utilize best available data, and document good faith efforts during transition.

The MATA Board and/or Trustee(s) has assigned high priority to the DBE program. Consideration of DBE participation and providing DBEs the maximum opportunity to compete is a part of every MATA procurement, from the smallest routine requisition to the largest contract. The MATA Board and/or Trustee(s) expects all MATA, MTM, and management service contractor staff in all MATA departments to solicit and encourage DBE participation.

A DBE Officer is appointed by the CEO or designee(s) and reports directly to the CEO or designee(s) on all matters concerning the DBE program. The DBE Officer maintains an "open door" policy and is responsible for enforcing the DBE Program. The Purchasing Office is integrally involved in the day-to-day operations of the DBE Program. The DBE Officer will review all formal procurements with the Purchasing Office and will review any purchase involving federal funds.

MATA develops its annual goals and estimates general procurements, including construction, professional services, materials, supplies, equipment, and other items. To facilitate DBEs' maximum participation in the procurement process, MATA offers technical assistance to DBEs. The DBE program includes written procedures to resolve complaints fairly and expeditiously.

5.0 Competition

5.1 Full and Open Competition –

All procurement transactions will be conducted to provide complete and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Excessive Qualifications - Unreasonable requirements placed on firms for them to qualify to do business,
- b. Unnecessary Experience - Unnecessary experience and excessive bonding requirements,
- c. Improper Prequalification – Use of prequalification procedures that do not meet FTA procurement standards,
- d. Restraint of Trade - Noncompetitive pricing practices between firms or between affiliated companies,
- e. Retainers – Making noncompetitive awards without further justification to any person or firm on retainer contracts,
- f. Organizational Conflicts of Interest -

1. Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:
 - a. Lack of Impartiality. When the Contractor is unable, or potentially unable, to render impartial assistance or advice to MATA due to other activities, relationships, contracts, or other circumstances.
 - b. Impaired Objectivity. When the Contractor's objectivity in performing the contract work is or might be otherwise impaired due to other activities, relationships, contracts, or other circumstances.
 - c. Unfair Competitive Advantage. The Contractor has an unfair competitive advantage.
2. Remedy. Separation of Functions is one means to remedy organizational conflicts of interest. For example, a contractor that develops or drafts specifications, plans, requirements, statements of work, invitations for bids, and/or requests for proposals should be excluded from competing for contract awards of the execution of the work, except if the contractor is participating in consortia, joint venture, or other innovative contractual arrangement in which the recipient contemplates award of both development and execution functions to the same entity.
- g. Brand Name Only - Specifying only a "brand name" product without listing its salient characteristics and not allowing an "or equal" product to be offered,
- h. In-State or Local Geographic Restrictions - Specifying statutorily or administratively imposed in-state or local geographical preferences or evaluating bids and proposals considering such in-state or local geographic preferences. Specifically, an FTA recipient is prohibited by 49 U.S.C. Section 5325(i) from limiting their bus purchased to in-state dealers. Exceptions expressly mandated or encouraged by Federal law include the following:
 1. Architecture and Engineering Services – Geographic location may be a selection criterion, provided an appropriate number of qualified firms are eligible to compete for the contract, given the nature and size of the project.
 2. Licensing – State licensing laws may be enforced.
 3. Disaster Projects – With respect to Stafford Act funding, 42 U.S.C. Section 5150 provides a preference to firms and individuals located in the area affected by a major disaster or emergency for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities.
- i. Arbitrary Action – Taking any arbitrary action in the procurement process.

6.0 Audits

6.1 Fixed Assets

At least once every two years, MATA will inventory and account for all its fixed assets with a purchase price of \$5,000 or more in accordance with current FTA Circular 5010. The inventory record will consist of the following information:

- a. Description
- b. I.D. Number
- c. Grant Number
- d. Vested Title
- e. Purchase Date
- f. Purchase Cost
- g. Federal Percent
- h. Location
- i. Disposition Data

In addition to the inventory, all FTA-funded items will be certified for their continuing need. All identified items will be documented, tagged, and noted by the department head to whom the item is charged. At least once every two years, each Department Head will account for all fixed assets within his/her department in accordance with current FTA Circular 5010. If an item is missing, the Department Head will identify the items and the probable cause and request adjustment to the fixed asset records. For those items or real property identified as surplus, a disposal plan will be developed by the Manager of Purchasing for review by the CEO or Trustee(s) and approved by the Board.

The Manager of Purchasing will consolidate the departmental audit findings and certify the audit in a written statement to be presented to the CEO or Trustee(s) and then to the MATA Board for review. The Finance Department will keep the latest biennial inventory. The report will be submitted to the CEO or Trustee(s), the Chief Operating Officer, the Grants Administrator, and the Manager of Purchasing.

6.2 Parts Inventory

MATA will conduct an annual physical inventory of parts and reconcile the parts in stock versus those on hand. The Procurement and Inventory Controls Sr. Manager will prepare a variance report to identify discrepancies in the count of line items and their value. A copy of the inventory report shall be given to the Auditor.

7.0 Scrap and Surplus

7.1 Identification of Surplus/Obsolete Materials, Supplies, Equipment, and Scrap

The identification of surplus and scrap shall be the responsibility of the department heads. Equipment shall be surplus when it becomes obsolete to MATA either because it

has been replaced by more cost-efficient equipment or because the equipment no longer supports the mission of MATA. Equipment shall be scrapped when non-functional, non-repairable, or obsolete to MATA. Such equipment may not be cannibalized when deemed obsolete or surplus unless purchased by MATA with local funds.

Parts are surplus when stock-on-hand exceeds the maximum as established due to the history of demand. Stock levels and order levels will be reviewed for all stock items at least once annually.

7.2 Disposition of Surplus Stock and/or Equipment

It is the policy of MATA to dispose of surplus stock and equipment in the most effective manner available and in conformity with current FTA Circular 5010, current FTA Circular 9030, and current FTA Circular 4220.1 and City of Memphis Code 2-301, et. seq. All surplus stock and/or equipment shall be appraised by MATA staff to determine fair market value and advertised for disposal by sealed or electronic bid or auction or traded in for new equipment.

Surplus stock/equipment that cannot be returned or sold shall not be sold as scrap while it is still applicable to vehicles in the MATA fleet. The disposition of all surplus materials, supplies, and equipment must be authorized by the Board and approved as to price by the CEO or Trustee(s) before disposition. All sales shall be made by a certified cashier's check, a transit system's check, or cash. The accountant responsible for fixed assets shall be notified in writing of all surplus stock and/or equipment dispositions.

7.3 Disposition of Scrap

Parts or equipment identified as scrap shall be sold to the highest bidder of three scrap dealers willing to bid. The Manager of Purchasing or his/her designee is authorized to dispose of scrap.

7.4 Disposition of Rolling Stock

All rolling stock with a per unit value of \$1,000 or more based upon the appraisal of MATA Staff to determine fair market value (Section 7.2) may be assigned to the Reserve Fleet or the Emergency Contingency Fleet. Vehicles with per unit value of \$1,000 or more that are not assigned to the Reserve Fleet, or the Emergency Contingency Fleet shall be advertised for disposal by sealed or electronic bid, sold at auction, traded in for new equipment (like-kind exchange), or used as scrap. Vehicles purchased in part using funds provided by a private company, such as the accessible taxicabs acquired under the Section 5317 New Freedom program, can be disposed of at the end of their useful life. Once MATA has determined the fair market value, the private company that provided the local share will have the first opportunity to purchase the vehicles at the fair market value minus the percentage they originally funded. If the private company is unwilling to pay the remaining percentage of the fair market value. In that case, MATA will dispose of the vehicles by sealed or electronic bid, sold at auction, trade them in for new equipment (like-kind exchange), or use them as scrap. Disposition shall be authorized by the Board and approved by the CEO or Trustee(s) regarding price and method before disposition.

Rolling stock with a per-unit appraised value of \$1,000 or less may be disposed of by one of the preceding methods. In addition, when Staff determines that surplus or obsolete rolling stock is of insufficient per-unit value to justify the expense of advertising, the surplus rolling stock may be disposed of as follows. First, the vehicle may be transferred to local governmental entities and local government agencies that provide financial and other assistance to MATA. Second, the vehicle may be transferred to a not-for-profit agency or not-for-profit entity. Transfers shall be on a first-come, first-served basis. Transfers to a not-for-profit agency or not-for-profit entity shall be limited to one vehicle per agency or entity per transfer if other not-for-profits are on the waiting list, which the Purchasing Office shall maintain. After a not-for-profit receives one vehicle, its name shall go to the bottom of the waiting list, and the next name on the wait list shall become first. The Board shall authorize transfers on an "as is" basis.

All vehicles sold or transferred shall not be returned to MATA for maintenance or disposal unless there is an agreement for such maintenance and/or disposal signed by the CEO or Trustee(s).

8.0 Life Cycle Costing

Life cycle costing measures the total cost of a product over its service life, including maintenance, incidental cost for tools or installation, and expected useful life span. As a general principle, MATA will consider life cycle costing in all purchases.

MATA reserves the right to apply life cycle costing to purchases in the formal bidding/proposing process, and bidders/proposers may be required to provide information necessary to perform such analyses. If MATA elects to use life cycle costing, it shall be stated in the IFB/RFP.

9.0 Prohibition of Geographic Preferences

MATA shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws; however, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

10.0 Payment Provisions

10.1 Payment Discounts

Payment for specified items shall be net 30 days after acceptance of invoice(s) and required documentation or material/service unless otherwise accepted by MATA during the negotiation process.

10.2 Prompt Payments

MATA will make every effort to process payments promptly. However, all payments \$100,000 and over must be signed by a Board member, which may require additional time.

10.3 Capital and Planning Purchase Payments

Payments for capital and planning purchases/services over \$50,000.00 require the drawdown of Federal funds before payment. The extra time required for this process will be minimized.

10.4 Advanced Payments

Advance payments are not authorized, and MATA will not participate in funding payments to a contractor prior to the contractor incurring costs unless prior written concurrence is obtained from FTA.

10.5 Progress Payments

Progress payments are payments for contract work that has not been completed. MATA may use FTA assistance to support progress payments, provided it obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

- a. Adequate Security for Progress Payments - Adequate security for progress payments may include taking title, obtaining a letter of credit, or taking equivalent measures to protect MATA's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges that taking title to work in progress may not be desirable in some circumstances. MATA should always consider the costs associated with providing security (for example, MATA may need to acquire bonds or letters of credit in the commercial marketplace), the impact of those costs on the contract price, and the consequences of incomplete performance.
- b. Adequate Documentation—Sufficient documentation is required to demonstrate the completion of the amount of work for which progress payments are made.
- c. Percentage of Completion Method – The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of the completion method described therein. MATA, however, may not make progress payments for other than construction contracts based on this percentage method.

11.0 Liquidated Damages

Liquidated damages are an amount assessed to a Contractor when it fails to complete the delivery, installation, services, or the work specified in a Contract within the Contract period of performance or schedule, which causes increased costs to MATA, the extent of which actual damages would be difficult or impossible to assess. Liquidated damages are most often utilized in construction contracts.

If MATA determines that a liquidated damages clause is necessary in a contract, the User Department shall document the derivation of the assessment rate before the solicitation. The Legal/Compliance Officer or designee shall review this documentation to ensure it is reasonable, proper, and not arbitrary. If liquidated damages are assessed during the project, the reason for the assessment shall be documented before the assessment and become a part of the contract file. The Contractor shall promptly be notified in writing once MATA becomes

aware of the delay or the deficiency. The amount shall be deducted from the next invoice for the project in which the delay or deficiency occurred. Before assessing the liquidated damages, the Legal/Compliance Officer or designee, the Project Manager, the Grants Administrator, and the Contract Administrator shall be notified of the delay or deficiency. All documentation shall become a part of the contract file.

Appeals from contractors of assessment of liquidated damages must be submitted following the procedures outlined in Section VIII (55) Appeals.

III. RESPONSIBILITIES

The authority to award all contracts of \$50,000 or greater relating to MATA rests with the MATA Board and/or Trustee(s). The MATA Board and/or Trustee(s) holds the sole contracting authority for MATA. This award authority cannot be delegated to the MTM or MATA staff members under any circumstances. Furthermore, all procurement matters and acts associated with procurement should be subject to and in compliance with the policies, procedures, and resolutions of the MATA Board and/or Trustee(s).

The general MATA procurement function is the responsibility of the Procurement and Inventory Controls Sr. Manager that reporting to the Chief Financial Officer. Supporting the Sr. Manager is the Legal/Compliance Officer. By centralizing responsibility, MATA can ensure close control and scrutiny of the procurement process and consistent application of its procurement policies and procedures. The responsibilities of MATA personnel in the procurement process are summarized as follows:

1.0 MATA Board of Commissioners and/or Trustee(s)

- a. Sole Legal/Compliance Officer authority. Legal review of contracts should be performed for all contracts awarded by the MATA Board and/or Trustee(s).
- b. Approve all purchases of \$100,000.00 or greater by awarding contracts and contract amendments based on the CEO and/or Trustee(s) recommendation.
- c. Disapprove purchases if for a valid business reason. (The Board and/or Trustee(s) shall not modify or change a recommendation to one inconsistent with the solicitation document's evaluation criteria and requirements.)
- d. Authorize certain MATA Board members and/or Trustee(s) and MATA Staff members to co-sign any check.
- e. Authorize disposition of surplus materials, supplies, and equipment.
- f. Review and approve annual DBE goals based upon recommendations by the DBELO, which develops DBE goals by undertaking a narrowly tailored process approved by the FTA.
- g. Review disputes received on appeal, conduct hearings if needed, and respond promptly.

2.0 Chief Executive Officer

- a. Approve in writing all routine purchases for \$50,000.00 or greater and, at his/her discretion, any purchases below \$50,000.
- b. Sign any check, when necessary, subject to MATA Board guidelines and procedures.
- c. Execute contracts, options, and other official documents as authorized by the Board and/or Trustee(s), and if required, after review by Legal Counsel.
- d. Approve the disposition of materials, supplies, and equipment.
- e. Review all IFBs/RFPs/RFQs, \$50,000 and over.
- f. Appoint the Chief Legal and Compliance Officer, any Alternate Legal/Compliance Officer, and a DBE Officer.

- g. Determine and approve emergency procurements.
- h. Review protests and disputes received on appeal; conduct hearings if needed; and respond promptly.

3.0 Chief of Staff/Chief Operating Officer

- a. In the absence of the CEO and/or Trustee(s), fulfill his/her responsibilities as directed and authorized by the MATA Board and/or Trustee(s).
- b. Sign any check as authorized.
- c. Determine and approve emergency procurements in the absence of the CEO or Trustee(s).
- d. Designate Project Manager for capital or planning procurements above \$25,000.

4.0 Chief Legal and Compliance Officer or Designee

- a. Establish methods and written procedures to be utilized in the performance contract.
- b. Prepare, maintain, and update, as required, boilerplate of federal, state, and local certifications for all IFBs, RFPs, RFQs, and contracts. Contract clauses should not be changed without prior consultation with the Legal Counsel unless changes are made due to changes in federal, state, or local laws or regulations.
- c. Review all IFBs/RFPs/RFQs for compliance with contract requirements (federal, state, and local, as needed).
- e. Submit recommendations as to insurance requirements, when applicable.
- j. Designate the Legal/Compliance Officer's Technical Representative when necessary.
- l. Submit within 30 days of making an award for any transit vehicles the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted using the online Transit Vehicle Award Reporting Form on FTA's Civil Rights DBE webpage <https://www.surveymonkey.com/r/vehicleawardreportsurvey>
- o. Attend, as required, project progress meetings between Contractors and other MATA staff.
- t. In coordination with the Purchasing Office, review protests and disputes received; conduct hearings if needed; and respond promptly.

5.0 Purchasing Office – (Staff Positions: 1-Procurement & Inventory Controls Sr. Manager, 1-Purchasing Manager, 3-Contract Administrator & Buyer)

- a. Receive the Purchase Requisitions. Check for proper approvals. Review and determine the method of purchase.
- b. Forward purchase requisition to the appropriate Procurement personnel.

- c. Review bids or quotes. Notify the User Department if prices vary by more than 25% or \$1,000 from the Cost Estimate, whichever is greater.
- d. Approve the placement of the order.
- e. Create purchase orders.
- f. Forward all information requiring Board and/or Trustee(s) approval to the Secretary of the Board or designee.
- g. In cooperation with department heads, prepare an annual list of excess property recommended for disposal, including parts, rolling stock, equipment, scrap, and real property for submittal to the CEO and/or Trustee(s).
- h. Conduct Cost/Price Analyses as required.
- i. If needed, consult with the Grants Director/Administrator for approval of availability of funds
- j. Review all IFBs/RFPs/RFQs.
- k. Approve adding or deleting a bid/performance bond as outlined in the City Purchasing Procedures Section 310.3.
- l. Interview salesmen and vendors and review techniques to guide future needs.
- m. Maintain tax exemption certificate file.
- n. Appoint Evaluation Committee for procurements of \$50,000 or greater, as needed, after consultation with the CEO and/or Trustee(s).
- o. Open mail and distribute it to the Purchasing Office.
- p. Enter inventory and purchasing data as required.
- r. Maintain and update the Bidder/Proposer list.
- s. Facilitate IFB, RFP, and RFQ procurement methods.
- t. If required, maintain an inventory of materials and supplies used on a recurring basis. Prepare monthly and annual inventory reports.
- u. Solicit quotes for materials, supplies, and services as necessary.
- v. Place purchase orders for assigned items and complete documentation as required.
- w. Enter inventory and purchasing data as required.
- x. Sr. Manager ensures the inventory compliance team matches packing slips (receiving tickets, work orders, or receipts) with open purchase orders.
- y. Verify issues with invoices and receipts for accuracy.
- z. Interview salesmen and vendors and review techniques to guide future needs.
- aa. Oversee contract administration for formal procurements from the beginning of the project until the project is completed. Prepare and update a checklist for each formal procurement.
- bb. Assist the User Department in developing specifications and scope of services, as required.

- cc. Prepare solicitation documents for procurement with assistance from the User Department, Legal/Compliance Officer or designee, and the DBE Officer.
- dd. Obtain comments and signatures from the Procurement Review Committee.
- ee. Transmit solicitation documents to TDOT for review, if required.
- ff. Edit solicitation documents to include comments and changes
- gg. Distribute final documents (and plans, if applicable) to vendors, members of the Evaluation Committee (if one is required for the solicitation), the Project Manager, and the User Department.
- hh. Send solicitation document legal notices to necessary publications.
- ii. Record pre-bid/pre-proposal conferences, including site visits, oral presentations, evaluation committee meetings, and any meetings for claims/disputes, and prepare minutes for them. Provide copies of the minutes to the appropriate parties.
- jj. Oversee bid openings, including documentation of those present, and prepare bid analyses.
- kk. Maintain a log of bids/proposals received. When only one bid/proposal is received, contact the potential vendor(s) who chose not to submit a bid/proposal to determine why they did not participate.
- ll. Conduct cost/price analysis as required.
- mm. Determine questions to ask of Bidders'/Proposers' references. Consult the User Department and others as needed. Develop a form containing these questions, which will be sent to the references once proposals are received.
- nn. Distribute proposals and statements of qualifications received and evaluation sheets to members of the Evaluation Committee and the DBE Officer within one business day of receiving the proposals.
- oo. Submit questions to references and provide copies of the results to the Evaluation Committee and the User Department.
- pp. Notify the proposal finalists, Evaluation Committee members, other necessary MATA staff, and/or other persons of oral presentation arrangements in writing.
- qq. Reserve location for oral presentation arrangements.
- rr. Assist the Legal/Compliance Officer or designee in preparing negotiation positions for RFPs, RFQs, single bids, sole/single source procurements, and/or change orders.
- ss. Request Buy America waivers from FTA when necessary.
- tt. Oversee procurement process for some informal procurements as assigned.
- uu. Obtain the technical review from the User Department to ensure proper scope, level of effort, and subcontract price; and prepare and transmit the appropriate response to the Purchasing Office either granting approval or requiring appropriate changes.
- vv. Assure adequate project management controls are incorporated in the Contract.

- ww. Add option clauses to IFB/RFPs/RFQs or contracts after obtaining approval from either the CEO and/or Trustee(s) or the Chief Operating Officer.
- xx. Mobilize and direct the Project Evaluation Committee for each procurement requiring an Evaluation Committee.
- yy. Ensure bids or proposals are evaluated based on the selection criteria noted in the solicitation package.
- zz. Conduct cost and price analysis as required.
- aaa. Recommend contract award and changes to the CEO and/or Trustee(s) and MATA Board and/or Trustee(s), as required.
- bbb. Ensure pre-award and post-delivery audits are conducted for rolling stock procurements.
- ccc. Establish the initial meeting with the Contractor, if required.
- ddd. Negotiate all changes to routine contracts and all contracts he/she is specifically authorized by the CEO and/or Trustee(s) to administer.
- eee. Review invoices for all negotiated contracts regarding format, accuracy, and allowability of cost; forward them to the applicable project manager for further evaluation; and advise as to any adjustments that must be made.
- fff. Determine the need for final contract audit on all routine contracts for supplies, materials, and non-professional services; submit recommendations to the CEO and/or Trustee(s) or the Chief Operating Officer of Administration as to the need for final contract audit as to all other contracts; and implement decisions of the CEO and/or Trustee(s) or the Chief Operating Officer of Administration.
- ggg. Perform contract close-out following established procedures.
- hhh. In coordination with the Purchasing Office, review protests and disputes received; conduct hearings if needed; and respond promptly.

5.1 Contract Award Process

- a. Prepare an Intent to Award letter to all successful and unsuccessful bidders after price analysis and evaluations have been completed.
- b. Prepare board resolution for the procurement along with memorandum and procurement summary recommending selected bidder/proposer to the MATA Board and/or Trustee(s) from the CEO and/or Trustee(s).
- c. Prepare and distribute Board and/or Trustee(s) approval letters within 3 business day of Board and/or Trustee(s) approval to the Contractor(s), the unsuccessful bidders/proposers, the Legal/Compliance Officer or designee, the Project Manager, and any other necessary persons.
- d. Return bid bonds to unsuccessful bidders/proposers.
- e. Prepare contracts for furnishing supplies and services awarded by the MATA Board and/or Trustee(s).
- f. Obtain signatures of the Contractor, CEO, Board Chairman or Vice-Chairman, or designated Trustee(s), and Legal Counsel as required on contracts, performance bonds, and payment bonds.

- g. Confirm that the Legal/Compliance Officer or designee has submitted within 30 days of making an award for any transit vehicles the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted by using the online Transit Vehicle Award Reporting Form located on FTA's Civil Rights DBE webpage: <https://www.surveymonkey.com/r/vehicleawardreportsurvey>
- h. Ensure that successful bidders/proposers submit bonds and insurance documents as required and that they are maintained during the contract's life.
- i. Issue purchase orders for procurements awarded by the MATA Board. Submit a copy to the Grants Administrator for contracts funded by capital or planning grants.

5.2 Contract Administration Process – For User Department

- a. Maintain and secure contract files and ensure all contracts are in order.
- b. Control proprietary information.
- c. Ensure that contractors and their subcontractors perform in accordance with the terms, conditions, and specifications of their contract.
- d. Monitor contract performance through deliverables, submittals, reports, meetings, and personal observation.
- e. Receive and transmit all correspondence with the Contractor regarding contractual matters.
- f. Assist the Legal/Compliance Officer or designee in directing the Contractor on contractual matters.
- g. Review invoices from the Contractor regarding timeliness, format, accuracy, and allowability of costs. Ensure the DBE Payment Status Form and, for construction contracts, Partial Release of Liens are enclosed and forward them to the Project Manager for further evaluation. Advise as to any adjustments that must be made. Once the Project Manager has approved the invoice, forward the original with a copy of the purchase order to Accounts Payable with copies of the invoice to the Project Manager and, if funded by a grant, the Grants Administrator.
- h. Monitor the progress of invoices to ensure timely payment to the Contractor.
- i. Review and audit payroll records submitted by Contractors in accordance with the Davis-Bacon Act, if required by contract, and follow up with the Contractor on any corrective actions needed.
- j. Coordinate proposed change to the contract with the Contractor, obtain cost quotes and cost analyses, assess impact, obtain necessary approvals for pending change orders, and initiate contract changes.
- k. Prepare change orders as needed, obtain appropriate signatures, and distribute copies to the Contractor, the Legal/Compliance Officer or designee, and the Project Manager.
- l. If no Legal/Compliance Officer's or designee's Technical Representative exists for a contract, review claims/disputes received from the Contractor and recommend the settlement of any claim/dispute to the Legal/Compliance Officer or designee. Assist in documentation through the resolution of the claim/dispute.

- m. Assist the Legal/Compliance Officer in the preparation and submission of any cure notices or termination notices.
- n. Upon completion of the project, obtain all closeout documents from the Contractor, including, but not limited to, Final Release of Liens, Consent of Surety to Final Payment, final DBE Payment Status Report, warranty documents, and as-built drawings.

6.0 Storeroom Personnel

- a. Consult with the Manager of Purchasing for a semi-annual review of inventory minima and maxima or as required.
- b. Trace open purchase orders that are beyond the required delivery date.
- c. Review inventory and identify items for stock replenishment.
- d. Review inventory and identify excess and slow-moving items for disposal.
- e. Maintain inventory of all underground storage tanks and update the Manager of Purchasing on regulations affecting USTs.
- f. Requisition and purchase petroleum products and fuel as needed to maintain adequate supply.
- g. Obtain bids on scrap material and submit them to the Purchasing Office.
- h. Interview salesmen and vendors and review techniques to guide future needs.
- j. Submit a requisition for a purchase order for assigned items and complete documentation as required.
- k. Should have a copy of the purchase order before receiving the packaging slip.
- l. Inventory compliance team matches packing slips (receiving tickets, work orders, or receipts) with open purchase orders.

7.0 Chief Financial Officer

- a. Sign any check, as authorized, subject to the guidelines, policies, and appropriate approval of the MATA Board and/or Trustee(s).
- c. Review and approve manual Check Requests for payment.
- d. Conduct cost and price analysis as required.

8.0 Director of Finance or Comptroller

- a. Certify the availability of operating funds and review and approve manual Check Requests for payment.

9.0 Senior Staff Accountant

- a. Co-sign checks for up to \$49,999.99, as authorized.
- b. Conduct cost and price analysis as required.

10.0 Staff Accountant

- a. Ensure there are no petty cash funds for reimbursements.
- b. Receive and process approved invoices for payment (tapes are run, invoice listings are prepared, and checks are printed).
- c. Process manual Check Requests for payment after necessary approvals have been received.
- d. Check with the Grants Administrator for approval to release capital/planning checks exceeding \$50,000.00.
- e. Mail signed checks to vendors.
- f. Maintain Finance Department copy of checks.
- g. Approve invoices for payment in writing, notifying the Grants Administrator and/or the Purchasing Office of payments above \$50,000.
- h. Whenever the Staff Accountant receives an invoice for which no purchase order can be found, the Staff Accountant should check with the Purchasing Officer to find out where the purchase order is.
- i. Check the invoice against the purchase order after attaching the packing slip and a copy of the purchase order. If the invoice price differs from the purchase order price, refer to the Purchasing Office for resolution.
- j. Receive and audit invoices.
- k. Record invoices (verify account numbers, match invoices with packing slips and purchase orders for approval for payment).

11.0 Grants Administrator

- a. Approve all capital and planning requisitions to certify the availability of funds and determine the proper account to be charged.
- b. Notify user departments when grant funds become available to purchase capital and plan items/services.
- c. Obtain necessary approvals from federal, state, and local governments for purchases requiring such approvals.
- d. Requisition funds for capital and planning purchases and notify the Purchasing Office when items can be paid.
- e. Assist the Purchasing Office in planning/scheduling for capital and planning items/services.
- f. Authorized to sign all Contract Change Orders, subject to approval by Legal Counsel, with supporting backup and technical assistance from the Project Manager, the Construction Manager, the Legal/Compliance Officer's Technical Representative, and the Contract Administrator. All contract-change orders of \$50,000.00 or above or 10% of the contract amount, whichever is greater, require the approval of the Board of Commissioners. All contract-change orders of \$50,000.00 or above or 10% of the contract amount, whichever is greater, shall be signed by the CEO and/or Trustee(s) or the Legal/Compliance Officer.

12.0 DBE Officer

- a. Assure that MATA complies with the provisions of current FTA Circular 4716.
- b. Review all formal procurements and determine the DBE goal for each formal procurement in consultation with the Purchasing Office and the User Departments.
- c. Encourage and look for ways to achieve the addition of qualified DBEs to MATA's vendor participants.
- d. Review and audit the procurement process to determine if MATA follows its DBE policy.
- e. Review MATA's purchasing needs and identify potential DBE bidders/proposers for items/services. Periodically review informal procurements.
- f. Attend pre-bid and pre-proposal conferences to assist potential bidders/proposers identify DBEs and understand MATA's DBE program.
- g. Offer technical assistance to DBEs in the procurement process as requested by the Purchasing Office.
- h. Track actual DBE invoices and payments by contract.
- i. Prepare and submit monthly and quarterly DBE reports and recommend annual DBE goals for the MATA Board's review and approval.
- j. For formal procurements where no bidder/proposer meets or exceeds the set DBE goal, determine the bidder/proposer with the most acceptable DBE participation rate and notify the Purchasing Office of the acceptance in writing.

13.0 Project Manager

- a. Assist the Legal/Compliance Officer in ensuring adequate project management controls are incorporated into the contract.
- b. Review the technical performance of the contractor, including quality of work, adherence to the project budget, project milestones, and timely submittal of project progress reports.
- c. Inform the Legal/Compliance Officer of any contract compliance issues.
- d. Provide appropriate project status reports to the Legal/Compliance Officer or designee.
- e. Assist the Legal/Compliance Officer or designee in preparing MATA's negotiated position for RFPs or change orders.
- f. Review and approve invoices from the Contractor.
- g. Review claims or disputes received from the Contractor and advise the Legal/Compliance Officer or designee.

14.0 Alternate Chief Legal and Compliance Officer

The position is appointed by the CEO or Trustee(s) to perform the duties of the Chief Legal and Compliance Officer when the Chief Legal and Compliance Officer is absent or not available.

15.0 Legal/Compliance Officer (or Designee) Technical Representative

MATA's Legal/Compliance Officer or designee designates this position for specific projects. The duties include:

- a. Inspection of the work for compliance with the Contract.
- b. Preparation of MATA's estimate for Proposed Contract Modifications.
- c. Preparation and approval of the payment estimates. In those cases of releasing retained percentages or remitting liquidated damages, the Technical Representative will make his/her recommendation to the Legal/Compliance Officer in writing.
- d. Approval in writing of the Contractor's shop drawings, working drawings, materials, equipment, manufacturing plans, quality assurance programs, and storage areas.
- e. Approval in writing of the Contractor's progress schedule when required.
- f. Designate the time and location of delivery within the contract schedule.
- g. Review claims received from the Contractor and recommend the settlement of any claim to the Legal/Compliance Officer or designee.
- h. Maintain records and correspondence related to the project and assist in closing the contract upon completion.
- i. Assist the Legal/Compliance Officer or designee in preparing MATA's negotiated position for IFBs/RFPs or change orders.

16.0 User Department

- a. Submit a requisition for items/services required promptly, including the following:
 - (1) Technical requirements and Statement of Work, including progress reporting requirements.
 - (2) Desired delivery schedule.
 - (3) Special terms and conditions for the contract.
 - (4) A list of potential vendors.
 - (5) A cost estimate and estimate of work involved for the required services.
- b. Assist the Purchasing Office or the Contract Administrator in providing technical evaluation criteria and weights in order of merit and reviewing the Bidders/Proposers list.
- c. Document the derivation of the assessment rate for liquidated damages before the solicitation document is advertised.
- d. Document emergency procurements and forward documentation to the Purchasing Office for processing.
- e. Prepare and Issue Check Request for Direct Pay Items.

- f. Ask the Grants Administrator if capital and planning funds exist before proceeding with procurement using operating funds.

17.0 Legal Counsel

- a. Review all RFPs above \$50,000 for professional services as required.
- b. Review all IFBs/RFPs above \$100,000 for other services, materials, construction, and supplies as required.
- c. Review and approve legal-form contracts and options before execution by the vendor, CEO or Trustee(s), the MATA Board Chairman, or the Vice-Chairman, as required.
- d. Review and approve all additions and revisions to the Procurement Manual, as required.

IV. ACQUISITION PLANNING

1.0 Initiation of Procurement

Department heads that initiate a project are responsible for providing the purchase requisition, the in-house independent cost estimate, the technical specifications, and drawings for equipment, materials, and service contracts. Preparation of technical requirements/statements of work for contracts shall be the responsibility of the User Department.

Purchase requisitions, technical specifications, or statements of work shall set forth the minimum essential characteristics or standards and shall not include any features that may unduly restrict competition. Brand name descriptions are only to be used when providing a clear and accurate product description is impractical or uneconomical. When brand names are used in specifications, the term "or approved equal" must follow the brand name. Brand name or approved equal specifications must include a description stating the salient characteristics of the brand name item.

Purchase requisitions shall include a complete, clear, accurate, and unambiguous description of the product or service required. Statements of work must be detailed enough to properly enforce standards of service. Specifications must be clearly written and reviewed by the Project Manager to ensure completeness and to insist that all orders and contracts contain clear specifications or statements of work. Initiators are responsible for providing the following information together with the purchase requisition to the Purchasing Office for them to establish the procurement strategy to be used:

- a. Product/service description.
- b. Desired delivery schedule.
- c. Progress reporting requirements.
- d. Technical evaluation criteria in order of merit and weight recommendation.
- e. Special terms and conditions for the contract; and
- f. Contact person of potential vendors.

For purchases of parts, tools, or equipment for MATA's bus fleet, rail fleet, service vehicle fleet, or facilities requested by the Maintenance Department, a work order shall be prepared which lists the work required. The work order shall be prepared by either a Maintenance Foreman, a Maintenance General Foreman, the Assistant Director of Maintenance, or the Director of Maintenance. The work order shall contain the date assigned, the vehicle number and mileage, or, if the work is unrelated to a vehicle, a description of the item, the estimated number of hours required, and the major components and subcomponents required to complete the work. The work order shall also contain the name of the Foreman, General Foreman, etc., and his comments on the work required, including the type of work, i.e., scheduled maintenance, road call, bodywork, etc. The clock number of the Maintenance Department employee responsible for completing the work shall also be listed in the work order.

Each purchase requisition shall include the work order number, description of work required, vehicle number, if applicable, clock number(s) of the mechanics, and Foreman's signature. The purchase requisition shall also include the part number, if available, a full description, the quantity required, and the account number. The Purchasing Office shall reject purchase requisitions that do not contain all the required documentation stated above.

When a component or subcomponent will be rebuilt in MATA's Maintenance Department, the Director of Maintenance or his designee shall requisition the necessary rebuilt component from the Purchasing Office. The requisition shall include a part number, if available, a complete description, the quantity required, the account number, and the vehicle number on which the rebuilt part will be installed.

2.0 Independent Cost Estimate

All small (\$2500 – \$50,000 and above) and major procurements (IFB/RFP) require an Independent Cost Estimate (ICE) before the procurement is released. An independent cost estimate is also required for all change orders that will require additional work to increase the contract price. The ICE is a tool to assist in determining the reasonableness of the bid, quote, or proposal being evaluated; that is, to assist in performing the cost or price analysis. The ICE will determine how the product or service will be procured and must be submitted before solicitation release or receipt of any quotes. The Independent Cost Estimate should be set up the same way vendors are expected to submit their pricing and may be used to set up the bid/quote/proposal pricing form. A copy of the form is shown in Appendix 5

The ICE should include but is not limited to the following items:

- a. Clearly defined scope of work or specifications.
- b. Potential cost associated with the project (direct cost, indirect cost, materials, labor, etc.)
- c. Method in which estimate costs were obtained.

Independent Cost Estimates are required for all small and major procurements but are especially critical when:

- a. There is no price competition
- b. Suppliers submit price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services).
- c. In competitive procurements, to alert the recipient when all competitors are submitting unexpectedly high or low-cost proposals.
- d. For all change orders with additional work and contract price increases.

3.0 Right to Reject Bids/Proposals

MATA reserves the right to reject all bids or proposals and re-solicit or cancel the procurement if MATA deems it in its best interest.

4.0 Release of Procurement Request

All procurement requests, including IFBs and RFPs, shall not be provided to any bidder/proposer or potential bidder/proposer before making a public advertisement as specified in Section V, 3.0, Advertising. As to procurements not subject to advertising, no potential vendor or supplier will be given the procurement request before the formal commencement of the procurement process.

5.0 Methods of Procurement

The following procurement methods may be used as appropriate. The Purchasing Office will work with other department heads to determine the most appropriate method of procurement, including:

- a. Purchase Requisition
- b. Emergency Purchase
- c. Purchase Order and Contract
- d. Check Request
- e. Invitation For Bids (IFB)
- f. Requests For Proposals (RFP)
- g. Request For Qualifications (RFQ)
- h. Request For Quotations (RFQ)
- i. Non-Competitive Procurements
- j. Joint Procurements
- k. State or Local Government Purchasing Schedules or Purchasing Contracts
- l. Unsolicited Proposals

MATA shall maintain written records detailing the history of a procurement. At a minimum, these records shall include:

- a. The rationale for the method of procurement
- b. Selection of contract type
- c. Reasons for contractor selection or rejection
- d. Negotiation documentation, if applicable
- e. The basis for the contract price
- f. Documentation that the price is fair and reasonable.

5.1 Purchase Requisition

The requisition shall, in most instances, be completed and approved before the commitment of any MATA funds. The exceptions include:

- a. Emergencies coordinated through the Purchasing Office and approved by the CEO or Trustee(s). see 5.2.
- b. Telephone Services, utilities, service utilities, litigation-related Services, legal settlements, transit claims settlements, expense reimbursements to individuals, traveling (incl. registration and hotel), organization dues, surety bonds, unemployment and insurance claims / fees.

5.2 Emergency Purchase

In the event of an emergency, as determined by the CEO or Trustee(s), where there is an imminent threat to life, health, or property, there would be a detrimental effect on MATA's operation; and there is insufficient time for advertising in newspapers as

required, any item to be purchased or service or work to be performed may be authorized. In the absence of the Chief Executive Officer or Trustee(s), the following people are authorized to determine a purchase as an emergency: the Director of Bus Maintenance for buses, service vehicles, buildings, radio tower and/or property; the Director of Rail Maintenance for rail vehicles, buildings, rail infrastructure, catenary system and/or property; and the Manager of MIS/Radio Computer for all Information Technology equipment. Emergency procurements shall be limited to situations posing immediate threat to health, safety, property, or essential operations and must include written justification, fair and reasonable price determination, and documentation of competition where practicable. This means a real and present threat exists to the life and welfare of the public or an MTM, MATA, or Management Service Contractor employee to MATA property or the provision of transit service that can reasonably be expected to be alleviated by the purchase in question. There must also be insufficient time to advertise for bids/proposals. User Departments shall document the procurement and forward all documentation to the Purchasing Office for processing as soon as possible after the occurrence. Emergency procedures will not be used to circumvent established policies or procedures. The Board and/ or Trustee(s) will approve all emergency procurements of equipment or services totaling \$100,000.00 or greater. The Legal and Compliance Officer or designee, must make a written finding for each emergency purchase totaling \$100,000.00 or greater, which must be publicly announced at the next Board meeting at which contracts are awarded. The Purchasing Office shall forward the complete purchase documentation to the Legal/Compliance Officer or designee for action at the next Board meeting.

5.3 Purchase Orders and Contracts

It shall be the responsibility of the Purchasing Office to coordinate with the User Department to determine the best procurement method. The obligation of MATA on all contracts include those who envision funding through current and successive fiscal years and shall be contingent upon actual MATA appropriations for the fiscal year(s) involved.

Competition will be encouraged by the following guidelines:

Small Purchases:

- a. Purchases less than \$2,500.00 (Micro-Purchase): Obtain a quote from one or more reputable sources. Procurements under this category are exempt from documentation requirements for sole source procurements. Documentation stating that the price is fair and reasonable and how the determination was derived must be provided. Procurements shall not be split to fall below \$2,500.00. Equitable distribution among qualified suppliers must occur when competition is not obtained.
- b. Purchases \$2,500.00 but less than \$50,000.00 (Small Purchase): Three or more quotations must be obtained from a price book, by written quote, by Internet, e-mail, or by fax, except for fuel or oil products. If three or more quotes cannot be obtained, documentation must be included with the requisition to describe the methods used to obtain quotes and why three or more could not be obtained.

A blanket purchase order is an acquisition method used to fill anticipated repetitive needs for supplies or services by establishing a "blanket purchase order" with qualified

vendors. A procurement method is still required to create a blanket purchase order based on the requirements for each dollar threshold.

Formal Purchases:

- a. For purchases \$50,000.00 or more, a formal request for bids or proposals must be issued.

5.4 Check Requests or Direct Pay Items

Certain expenses are routinely incurred without the issuance of purchasing documentation. The expenses typically include the following types of items:

- a. Periodic vendor payments are under established leases.
- b. Licenses and permits.
- c. Conference and registration fees.
- d. Organizational and professional membership dues.
- e. Refunds (returns of bid deposits, overpayments of bus passes, etc.)
- f. Reimbursement of funds transfer.
- g. Utility and phone bills.
- h. Travel advances and employee reimbursement.
- i. Investigative expenses.
- j. Settlement of claims and litigation.
- k. Postage.
- l. Subscriptions to magazines, newspapers, periodicals, or trade journals.

For some of these items, MATA will receive a bill or invoice; for others, MATA bears responsibility for meeting a scheduled payment without an invoice or reminder from the payee. Since the usual purchasing paperwork (i.e., Purchase Requisition, Purchase Order) is not present for approval documentation for the item types listed above, a Check Request is usually issued to authorize and order payment by the User Department. All such check requests must be submitted to the Purchasing Office, with the appropriate signatures, for payment.

5.5 Invitation for Bids (IFB over \$49,999.99)

Bids are formally advertised, and a firm-fixed-price contract (lump sum or unit price) is awarded to the lowest and best bidder. Lowest and best will mean the lowest responsive and responsible bidder.

- a. Responsive Bidder: The responsiveness of the bid itself is determined by its conformance to the technical and legal requirements of the bid documents.
- b. Responsible Bidder: The term responsible refers to a bidder's financial resources, judgment, skill, integrity, and ability to successfully fulfill the contract's requirements.

Requirements for receipt of federal certifications from bidders are described in Appendix 3.

5.5.1 An IFB will be used when:

- a. A complete, adequate, and realistic specification or description is available.
- b. Two or more responsible bidders are willing and able to compete effectively for the business.
- c. The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally based on price and
- d. No discussion with bidders is needed, except for fuel procurements, which require prices over a specific period of time.

5.5.2 If this procurement method is used, the following requirements apply:

- a. The IFB will be publicly advertised, and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids before the date set for opening the bids.
- b. The IFB, which will include any specifications and pertinent attachments, shall define the items or services sought for the bidder to respond properly.
- c. If a Pre-Bid Conference is held, the Purchase Office facilitator will attend the meeting, as well as the Project Manager and all potential vendors.
- d. All bids will be publicly opened at the time and place described in the IFB.
- e. A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation, and life cycle costs shall be considered to determine which bid is lowest. Procurements for fuel will be conducted in the following manner:
 - (1) The fuel vendors will submit the required documents indicating their interest in participating by the deadline. If deemed a responsible bidder, MATA will include their company on the Board or Trustee(s) resolution as a qualified bidder to potentially receive a contract for a fixed quantity and/or for purchasing fuel off the spot market.
 - (2) MATA's Scope of Services will state the fixed quantity of fuel to be purchased as well as the terms of the contract. The Scope of Services will also define a period of time for MATA to lock in the price. MATA staff will check the fuel prices during the period and decide when to lock in the price in MATA's best interest. The vendor who provides MATA with the lowest price on the date and times selected will be deemed the lowest and best bidder.
 - (3) If the quantity of fuel in the fixed quantity contract is lower than the amount required annually by MATA, MATA's Staff will be permitted to check the fuel prices on the spot market and award a purchase order to qualified bidders for fuel as needed.
- f. Any or all bids may be rejected if there is a sound, documented business reason.

5.5.3 The sealed bid method is preferred for procuring construction if the conditions in paragraph 5.6.1 above apply.

5.6 Competitive Technical Proposals

5.6.1 Request for Proposals (RFP - Over \$49,999.99). Proposals are formally advertised and a fixed fee or cost-reimbursement type contract is awarded to the responsible proposer whose proposal is most advantageous to MATA with price and other factors considered. RFPs will be publicly advertised.

If a Pre-Bid Conference is held, the Purchasing Office facilitator will attend the meeting, as well as the Project Manager and all potential vendors.

An RFP will include:

- a. All evaluation factors listed in order of their relative importance in determining the most responsive proposer.
- b. Proposals will be solicited from an adequate number of qualified sources.
- c. A written procedure for conducting the technical evaluation of proposals. If so, stated in the RFP, the selection may be based on proposals, or presentations (if required) and any requested Best and Final Offer (BAFO). If negotiation is used, MATA must negotiate with all proposers that it determines to have a reasonable chance of being selected (i.e., proposers within the competitive range).
- d. Awards will be made to the responsible firm whose proposal is most advantageous to MATA with price and other factors considered, except for procuring architectural/engineering-related services as outlined below.

5.6.2 Request for Qualifications (RFQ - over \$49,999.99). Architectural/Engineering (A&E) services and A&E-related services such as program management, construction management, feasibility studies, preliminary engineering, value engineering, design, surveying, mapping, or related services shall be procured using the "Brooks Method" as defined in 40 U.S.C. §§ 1101 through 1104. Following this method, proposers' qualifications are evaluated, and the most qualified proposer is selected subject to fair and reasonable compensation negotiation. Under this method, MATA may not consider price as an evaluation factor in determining the most qualified proposer. Negotiation is conducted with only the most qualified proposer. If MATA is unable to arrive at an agreed price with the proposer, negotiations are terminated with that proposer, and the negotiation process begins with the next most qualified proposer. This procurement method cannot be used to obtain other types of services even though a firm that provides the above types of services is also a potential source to perform other services.

5.6.3 Negotiated Contracts - This section outlines MATA's procedures for competitively negotiated procurements. It applies to all Professional Services procurements of MATA and any other procurements when it is not possible to fully detail the scope or quantity of the services or goods to be obtained so that a sealed bid can be received. MATA reserves the

right to utilize state and local law for professional service contracts, as appropriate, when federal funds are not used to fund the contract, in whole or in part.

Proposals or qualifications leading to a negotiated procurement shall be solicited from an adequate number (normally a minimum of three) of potentially qualified proposers to maximize free and open competition. MATA also reserves the right to enter into a contract with any proposer based upon the initial proposal or based on a best and final offer without conducting written or oral discussions, provided the solicitation specifically stipulates this reservation of MATA's rights. Executing any contract under this procedure requires approval by the MATA Board and/or Trustee(s) of Commissioners and upon negotiating mutually acceptable contract terms with the successful proposer if required.

5.7 Request for Quotations (RFQ) (\$2,500 but less than 50,000)

An RFQ is used to solicit quotes from generally three or more vendors for procurements with a dollar value of \$2,500 but less than \$50,000 with the exception of construction projects with an estimate of \$25,000 or more. The vendors solicited for a quote shall be notified that they will be expected to comply with all applicable Federal, State and Local regulations including, but not limited to, the Davis-Bacon Act (for construction projects exceeding \$2,000), Debarment, etc. For construction projects with an estimate of \$25,000 or more, State law requires that the prime contractor's license number, its expiration date, and the name of the project be shown on the outside of the bid along with the same information for their subcontractors for electrical, plumbing or heating, venting, and cooling work, if applicable to the project.

5.8 Non-Competitive Procurements - (Sole Source, Single Bid, Options or Change Orders).

All procurements of \$100,000 or greater will be advertised at least every three years, or sooner, if such a need is determined by the MATA Board and/or Trustee(s), to determine whether or not competition exists. The response of a single bidder or sole source supplier may be used as documentation in support of a sole source purchase for two years immediately following such an advertisement. On a six-month basis, the Purchasing Office will publish an Advance Notice of Upcoming Purchases, which lists procurements MATA anticipates making during the period covered by the Advance Notice. The Advance Notice will include items \$100,000 or above and may include items under \$100,000. The Advance Notice will state that MATA has a DBE program, that additional information as to the DBE program can be obtained from the DBE Officer, and that the additional information as to any item contained in the Advance Notice of Upcoming Purchases, including a request to be added to the mailing list or list for telephone quotes, can be obtained from the Purchasing Office. The Advance Notices shall be published in local minority newspapers and distributed to other publications.

5.8.1 Sole Source - Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of several sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a non-competitive negotiation that must comply with this subparagraph.

- a. Procurement by non-competitive negotiation may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposal and at least one of the following circumstances applies:
 - 1) The item is available from only a single source.
 - 2) The need for the requirement will not permit a delay resulting from competitive solicitation.
 - 3) FTA authorizes non-competitive negotiations.
 - 4) After solicitation of several sources, competition is determined inadequate.
 - 5) The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. MATA will certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers; or
 - 6) Maintenance or upgrades for software used by MATA.
- b. A cost analysis is required, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit.
- c. City law permits sole source procurements only for copyrighted publications and films or novelty items such as candy, t-shirts, and souvenirs. This is one of the few areas where City law imposes greater restrictions than federal law. Such procurements shall not be exempt from DBE requirements.
- d. Even if a procurement meets all other criteria for a sole source procurement in 5.9.1 (a) unless it also fits within one of the above-listed categories under City law, the procurement must be formally advertised if it is \$50,000 or over.

The Purchase Office shall maintain a written justification for any sole source or single bid procurement in the contract file. Such justification shall include a market survey and the basis for determining a fair and reasonable price. Sole source procurements or procurements for brand name products must be properly justified in writing by the User Department.

5.8.2 Single Bid/Proposal - When MATA receives a single bid/proposal, a determination should be made if the competition is adequate. This should include a review of the specifications for undue restrictiveness and surveying potential sources that chose not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source. MATA will consider re-soliciting; however, if there are no reasonable alternate sources, MATA will include justification for proceeding with the procurement, describing the reasons for that determination. If MATA determines that competition was inadequate due

to conditions within MATA's control, the single bid will be rejected, and the procurement will be re-solicited.

MATA may award a contract to a single bidder provided that an analysis can be completed that documents that the price is fair and reasonable. If MATA receives a single bid, the bid becomes a sole-source procurement subject to negotiations. MATA conducts negotiations until either a fair and reasonable price is reached, or the bid is rejected due to being unable to reach a fair and reasonable price with all other requirements considered. All single bids received will require a cost analysis. If MATA has advertised for bids and no acceptable bid has been received. In that case, MATA may proceed with a negotiated contract for the work, service, or product with the apparent lowest and best bidder. MATA cannot negotiate with a vendor who did not submit a bid. The negotiations must be fully documented in writing. MATA should include a survey of potential sources that chose not to submit a bid or proposal.

5.8.3 Change Orders

Change Orders are, in effect, amendments to a contract and may be required periodically to adjust a contract amount or performance period due to unanticipated conditions and be reasonable for the completion of the project scope. Documentation to support all change orders must be kept in the contract file.

- a. Change Orders are considered a non-competitive procurement and, as such, requires
- b. Must be Allowable, Allocable, within the scope of the contract and reasonable for completing the project scope.
- c. An Independent Cost Estimate (ICE) must be completed with appropriate documentation.
- d. All Change Orders must be processed through the Purchasing Office.
- e. If the change is \$50,000 or above or 10% of the original contract, it must be approved by the CEO and, if necessary, the Legal Counsel
- f. Change Orders must address DBE participation if the change involves adding or reducing work requiring changes to compensation.
- g. The Grants Administrator and the Legal/Compliance Officer or designee must be notified

5.8.3.1 Cardinal Changes

Cardinal changes to a contract will not be allowed. Cardinal change means a major deviation from the original purpose of the work or the intended method of achievement or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

Change Orders are required to be reported monthly to the Board or Trustee(s). If the value of a Change Order is unknown, the Board or Trustee(s) must approve the Change Order.

5.9 Contract Options—

The Federal Acquisition Regulation (FAR) defines an option as a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract or may elect to extend the term of the contract.

The award of options is subject to approval by the MATA Board and/or Trustee(s) .

When used properly, options can greatly increase MATA's flexibility. Before inserting an option clause in any solicitation document, the Legal/Compliance Officer or designee shall obtain the approval of the CEO or Trustee(s) or the Chief Operating Officer of Administration. Options should not be added to procurements if not included in the solicitation document. The User Department and Purchasing should ask several questions to determine MATA's best interest before including an option clause in a solicitation document. Such questions should include:

- a. How long may the period for option renewal last?
- b. What is considered an appropriate option quantity (in relation to the base quantity)?
- c. How may option prices be evaluated in the selection process?

5.9.1 Use of Options –

MATA will follow the provisions of current FTA Circular 4220.1 as follows:

- a. Evaluation of Options - The option quantities or periods contained in the bid/proposal/quote must be evaluated to determine the award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- b. Exercise of Options
 - (1) MATA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract/purchase order awarded.
 - (2) An option may not be exercised unless MATA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

5.9.2 Contracts

- a. The total of the base and option periods shall not exceed five years in the case of services and requirements contracts and any such options for three to five years shall be reviewed and approved by the Chief Executive Officer before execution.
- b. The contract shall specify the firm price for the products or services for the specified option period.

5.10 Time and Material Type Contracts

MATA will use time and material type contracts only:

- a. Restricted Use - After a determination that no other type of contract is suitable and
- b. Firm Ceiling Price - If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

5.11 Cost Plus Percentage of Cost Prohibited

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

5.12 Design-Bid-Build Project

A construction project under which MATA commissions an architect or engineer to prepare drawings and specifications under a design services contract and separate contracts for at-risk construction by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

5.13 Design-Build Project

As defined in 49 U.S.C. Section 5325(d)(1), Design-Build means (1) a project under which MATA enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that meets specific performance criteria, and (2) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

5.14 Joint Procurements

Joint procurements are a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for the delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a state or local government purchasing schedule, a joint procurement is not drafted to accommodate the needs of other parties that may later want to participate in the benefits of that contract.

All FTA and Federal Requirements Apply—When obtaining goods or services in this manner if FTA or Federal funds are involved, recipients participating in the joint procurement must ensure compliance with all applicable FTA and Federal requirements and include all required clauses and certifications in the joint solicitation and contract documents.

5.15 State or Local Government Purchasing Schedules or Purchasing Contracts

These involve an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government. Its subordinate government entities acquire specific property or services in the future at established prices. These arrangements are similar to the General Services Administration's Cooperative Purchasing Program, which is available for federal government use. If the State or local government wishes to permit others to use its schedules. In that case, the state or local government might seek the vendor's agreement to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether it wishes to do so.

All FTA and Federal Requirements Apply – When obtaining property or services in this manner, MATA must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or MATA's purchase document. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that affects MATA's procurement. When buying from these schedules, MATA should obtain Buy America certification before entering into the purchase order. If the product to be purchased is Buy America compliant, there is no problem. If the product is not Buy America compliant, MATA must obtain a waiver from FTA before proceeding.

5.16 Unsolicited Proposals

MATA may also enter into contracts based on an unsolicited proposal, as defined in Chapter I of the FTA Circular, 4220.1F when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not justify a contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept essential to contract performance, FTA expects the recipient to seek competition. To satisfy the requirement for full and open competition, FTA expects the recipient to take the following actions before entering into a contract resulting from an unsolicited proposal:

- (1) Receipt. Publicize its receipt of the unsolicited proposal.
- (2) Adequate Description. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought
- (3) Interest in the Property or Services. Publicize its interest in acquiring the property or services described in the proposal.
- (4) Adequate Opportunity to Compete. Provide interested parties with an adequate opportunity to comment on or submit competing proposals.
- (5) Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought. In that case, the recipient may award the sole source to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property, or services proposed.

6.0 Impermissible Methods of Procurement

A contract improperly expanded beyond its original scope may not be used to support federally assisted acquisitions. The following actions are prohibited:

6.1 Improperly Expanded Scope

MATA may not use Federal assistance to acquire property or services through another contract whose scope has been improperly expanded. FTA believes it is extremely important that the recipient ensures that it contracts only for its reasonably anticipated

needs and does not add quantities or options to contracts solely to allow it to assign those quantities or options at a later date.

6.2 *Improperly Expanded Quantity*

MATA may not expand the quantity of property or services to be delivered under its contract beyond the scope of the contract's limits solely to assign those contract rights to another entity.

FTA considers an additional work (property or services) beyond the original contract's scope to constitute a cardinal change. Such practices are sometimes informally referred to as "a tag-on." Changes within the scope of the contract ("in-scope" changes) are not "a tag-on."

Before attempting any change in the quantity of major items (e.g., buses, rail cars), MATA should review their contract clauses to ensure they allow for such changes. In the case of rolling stock, a change in quantity or a substitution of major end items not contemplated in the original competition is an out-of-scope change. FTA also considers an out-of-scope change, which would include changing the engine or changing from a high-floor vehicle to a low-floor vehicle. FTA, however, considers changes to seating fabrics and colors, exterior paint schemes, signage, floor coloring, and other similar changes to be permissible "in scope" changes. As necessary, MATA will consider broader standards applied in Federal contracting practice as reflected in Boards of Contract Appeals, Federal courts, and Comptroller General decisions to determine whether what MATA is trying to do is "in-scope".

7.0 Procurement Summary

This document is a tabulation of bids/proposals received, a technical analysis of the bids/proposals, reasoning for the determination of a successful bidder/proposer, an explanation of the specific procurement process for a specific contract, the basis of contractor selection, the basis for the type of contract and results of negotiations, if applicable. The Contract Administrator is responsible for preparing this document. It shall be reviewed for form and content by Purchasing Management.

8.0 DBE Acquisition Planning

The DBE Officer shall maintain a current list of certified DBE vendors. If the DBE has expressed interest in providing certain goods (e.g., bus filters, bus batteries) or certain services (e.g., electrical, HVAC, plumbing), they shall be maintained on the list. The list will reflect all such goods and services. Vendors included will have already been certified. MATA management and staff will use the DBE vendor list to ensure that certified DBE vendors are included during the early acquisition planning stages at all procurement levels.

MATA's DBE Officer also maintains DBE directories compiled by other governmental entities. Many of the DBEs in these directories serve two useful functions. First, DBEs in other entities' DBE directories serve as a potential source for DBE participation in MATA contracts, particularly in areas where MATA is unaware of existing DBEs. MATA management and staff should consult the DBE directories maintained by the DBE Officer. Second, other entities' DBE directories are useful tools for responding to potential vendors' requests for technical assistance and guidance in maximizing their DBE participation.

9.0 Use of Capital and Planning Funds for Procurement

Before procuring capital equipment, construction, or planning services with operating funds, all User Departments will first ask the Grants Administrator if such an expense can be offset by existing capital and planning funds.

The User department shall complete the MATA Funding Source Form to confirm funding source(s) for all purchases of goods and/or services with a cost of \$5,000 and greater.

V. SOLICITATION

1.0 Bidders/Proposers List

Lists of Bidders/Proposers for equipment, construction, and service procurements shall be maintained by the Purchasing Office. The lists shall be reviewed for additions and deletions. Additions to the lists shall be sought through trade journals, trade shows, and surveys of other operations at the request of vendors.

MATA shall ensure that all lists of pre-qualified persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, MATA shall not preclude potential bidders/proposers from qualifying during the solicitation period, from the issuance of the solicitation document to its closing date.

Deletions from the list shall be based on a determination of non-responsibility by the Purchasing Office or at the Bidder's/Proposer's direction. This determination may be based on MATA's experience or experience that has been documented by other agencies.

MATA shall allow potential Bidders/Proposers to be placed on the Bidders/Proposers list as part of the advertisement of the Advance Notice of Upcoming Purchases described in Section V, 3.0 below, Advertising. No potential Bidder/Proposer shall be precluded from the list.

2.0 Preparing the Solicitation

The Purchasing Office will provide a list of potential bidders and proposers, coordinate all formal bids, and place the required advertisements. Bids will be solicited in writing from sufficient vendors on the appropriate bidders/proposers list. Bidders/proposers shall be provided sufficient time to respond to IFBs/RFPs.

Specifications under normal circumstances shall be prepared by the User Department and be approved by the appropriate department head and the Purchasing Office. The Purchasing Office will coordinate with the User Department to determine the most appropriate method of procurement and to avoid exclusionary or discriminatory specifications in accordance with regulations at 49 U.S.C. § 5323(h)(2). A purchase requisition and cost estimate will be completed, approved, and forwarded to the Purchasing Office when technical specifications are first prepared.

The User Department shall be responsible for submitting the following to the Purchasing Office when requisitioning a product or service:

- a. A completed requisition including a complete description, including part number, if applicable, quantity, date required, account number, and Department Head approval.
- b. List of vendors for non-stock procurements.
- c. Drawings / Diagrams, if required.
- d. Statement of Work (Scope of Work, Specifications);
- e. Cost estimate (ICE and backup documents); and
- f. Amount of liquidated damages (if applicable) and documentation of the derivation of the assessment rate.

- g. Completed/signed MATA Funding Source Form for all purchases of goods and/or services with a cost of \$5,000 or greater.

The Purchasing Office is responsible for assembling the solicitation package. A solicitation package includes instructions to bidders/proposers, technical specifications and plans/drawings, if applicable, any special terms and conditions recommended by the User Department, the section regarding the utilization of DBEs, the general contract provisions required by the federal, the state and local governments, the proposed contract terms and conditions, and the evaluation criteria that will be utilized to determine contractor selection (for RFP/RFQ). Additionally, solicitation documents for construction over \$25,000 shall include the State of Tennessee Contractors' licensing requirements with the proper construction classification.

All departments and groups involved in preparing the IFB/RFP/RFQ shall review the portions for which they are responsible. Every IFB/RFP/RFQ over \$49,999.99 will be reviewed and approved for release by the following persons in order:

- a. Grants Department/ Finance Department
- b. Legal and Compliance, as needed (check for insurance compliance in formal solicitation and pertinent clauses and legal language).
- b. DBE Officer
- c. User Department Head and Project Manager
- d. Evaluation Committee Members (RFP/RFQ)
- f. Procurement & Inventory Controls Sr. Manager
- g Chief Executive Officer or Trustee(s)

When all reviews have been completed and approvals obtained, the Purchasing Office will make any corrections or changes noted and issue the final documents to prospective bidders/proposers.

Exceptions to these requirements are:

- a. Requirements of an unusual or compelling urgency wherein MATA would be seriously injured if bids/proposals were permitted to be made more than ten days from the date of advertising.
- b. Modifications to existing contracts that were advertised before the award.

For negotiated procurements, the User Department shall provide the Purchasing Office with an estimate for the required services with the purchase requisition. The independent estimate shall be utilized to establish the competitive range for the resultant negotiations with potential contractors. This estimate must be computed before the bids/proposals are received.

Solicitations for Professional Services (other than A&E) such as legal services, audit services, management consultants, and other professional services shall require submittal of both technical and cost proposals. After technical and cost evaluations have been completed, negotiations will be entered into with all firms determined to be in the competitive range, and all proposers shall be included with a reasonable chance of being selected for award. The final selection shall be made after formal negotiations and based upon the evaluation of the best and

final offers unless the determination has been made to award based on the initial proposals without conducting discussions with any of the competing firms. [The qualifications-based procurement method will be used for A&E-related services, such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services.]

3.0 Advertising

All IFBs/RFPs above \$49,999.99 will be posted on MATA's website and advertised on its release date to the public in a newspaper published and circulated in the City of Memphis. It may also be advertised in local and national minority newspapers or other publications, depending on the size and nature of the procurement. If the project complexity warrants wider circulation to ensure adequate competition, advertising shall be placed in trade journals/magazines or other mass communication media. The Contract Administrator shall send the advertisements to the necessary publications.

In addition to the above advertisements, all IFBs/RFPs for equipment, construction projects, and professional services above \$49,999.99 will also be publicly advertised in advance of the bid/proposal due date in a manner to provide bidders/proposers sufficient time to prepare bids/proposals. Such an advertisement shall coincide with the release of the IFB/RFP. In no event shall the IFB/RFP be provided to a potential bidder/proposer before making such an advertisement. From time to time, MATA will provide "Advance Notices" of intent to solicit bids/proposals for products, equipment, materials, or services within an estimated time frame. In no event shall information on the bid/proposal be provided to any potential vendor before formally publishing the "Advance Notice." The "Advance Notice" intends to stimulate interest in the pending IFB/RFP. Proof of advertising shall become a part of the contract file.

On an as-needed basis, the Purchasing Office will post an Advance Notice of Upcoming Purchases on MATA's website, which lists procurements MATA anticipates making during the period covered by the Advance Notice. The Advance Notice will include items totaling \$100,000 or above and may include items under \$100,000. The Advance Notice will state that MATA has a DBE program, that additional information as to the DBE program can be obtained from the DBE Officer, and that the additional information as to any item contained in the Advance Notice of Upcoming Purchases, including a request to be added to the mailing list or list for telephone or fax quotes, can be obtained from the Purchasing Office.

3.1 Shortened Bidding Time

For FTA-funded projects, solicitation time is at least 20 calendar days for procuring standard commercial items and shall be at least 30 calendar days when procuring other than standard commercial items. The solicitation period may only be shortened under special circumstances when justified and documented in the contract file. This documentation should include all pertinent facts and reasons for shortening the solicitation time, including any possible detrimental effects to MATA if the time is not shortened. The User Department will be responsible for preparing this documentation.

4.0 Bid, Performance, and Payment Bonds

The Purchasing Office is responsible for recommending to the CEO or Trustee(s) when bid, performance, and payment bonds are required and for indicating the bond requirements in the solicitation document.

State and city laws require (1) a 5% bid bond and (2) a 100% payment and performance bond for all construction projects. Payment bonds are required for all construction projects totaling \$100,000 or more. Bid and/or performance bonds may be required in connection with the purchase of supplies, materials, and equipment only when:

- a. Deliveries are scheduled and made over a period of time, and the item purchased is likely to be subject to price increases during that period.
- b. A time schedule must be met to avoid added expense or liability to MATA.
- c. Quality of item must be tested, or a standard of service must be maintained over a period of time or where a warranty might not offer sufficient protection to MATA.
- d. In the judgment of the Purchasing Office, the nature of the purchase is to warrant a bid and/or performance bond requirement.

The bid bond guarantees that if MATA awards a contract to the bidder/proposer, the bidder/proposer will promptly execute the contract and provide a performance bond (if the IFB/RFP/RFQ requires one).

5.0 Communications with Bidders/Proposers and Potential Bidders/Proposers –

The Purchasing Office will provide technical assistance and guidance to bidders and prospective bidders. Communications with bidders/proposers and potential bidders/proposers once the procurement process has begun will be only through the Purchasing Office or the person designated by MATA in the IFB/RFP. Once the procurement process has begun, all other communication must be in writing to MATA's Purchasing Office. MATA's response will be sent to all bidders/proposers and prospective bidders/proposers. MATA staff and MATA Board members will redirect all inquiries from bidders/proposers and prospective bidders/proposers to the Purchasing Office.

6.0 Insurance

- a. The Legal/Compliance Officer or MATA's designee will review MATA's contractual involvement to evaluate the impact of such a contract on MATA's exposure to risk.
- b. MATA will identify exposures with the risk to MATA in mind and will define a plan of insurance and safety commensurate with the risk.
- c. The evaluation process is subjective; therefore, insurance and safety requirements will vary commensurate with the risk to MATA. The range of insurance requirements will be from none to quite extensive.
- d. Coverages and limits, as dictated, will be maintained within the bounds of "reasonable and prudent" and in keeping with sound procurement practice.
- e. The insurance and safety requirements will be established on a case-by-case basis. The Legal/Compliance Officer or MATA's designee shall submit a recommendation to the MATA Staff member responsible for MATA's insurance program and shall implement his/her decision.
- f. When insurance is required, a detailed form stipulating the exact requirements will be attached to the specifications. The insurance requirements will be in a format that can be added verbatim to the IFB or RFP. Insurance companies providing insurance will be required to meet or exceed the ratings MATA

specified. They must be licensed in Tennessee and have an agent to receive official notices in Shelby County. (This does not mean the policy must be written or issued by an insurance agent residing in Shelby County.) MATA also requires that MATA, the management company, and the City of Memphis be named as additional insureds and that MATA be given 60 days advance notice by the carrier of cancellation or renewal.

- g. Questions regarding insurance related to the contract shall be addressed to the Purchasing Office, who shall forward the request to the MATA Staff member responsible for MATA's insurance program for his/her decision.
- h. Certificates of Insurance required in the contract will be included with the bid/proposal for review. If the insurance is not in order, the Purchasing Office, in consultation with the MATA Staff member responsible for MATA's insurance program, will identify the areas of non-compliance and implement whatever procedure is necessary to correct the matter.
- i. The Contract Administrator/buyer will monitor compliance with insurance requirements throughout the duration of the contract and will correct matters of non-compliance.
- j. The Contract Administrator/buyer is responsible for obtaining renewal certificates during the contract's life.
- k. Upon contract completion and settlement of all insurance claims and/or litigation, all documents relevant to the contract will be forwarded to the Contract Administrator for inclusion in the official file.
- l. The Contractor must report all claims to their appropriate insurance carrier. Incidents that may result in claims against the contract and/or MATA should be reported to MATA immediately. The contract administrator should immediately report the incident to MATA's project manager, who will investigate the matter on MATA's behalf. The Contract Administrator will advise the Contractor to cooperate fully with MATA's Project Manager. Under no circumstances should the Contractor, the Project Manager, and/or the Contract Administrator negotiate claims for damages by third parties against MATA. Any such request for negotiation should be referred to the Legal/Compliance Officer or designee.

7.0 DBE Solicitation

All MATA procurements should seek participation from Disadvantaged Business Enterprises (DBE) to the extent feasible. For bids and proposals, the Purchasing Office shall notify the DBE Officer to determine appropriate participation goals for DBE contractors. (Procurement will notify DBE Officer, the DBE officer can reach-out to the Dept. Head) A contract project goal may be established which ranges from a small percentage to a percentage more than the annual DBE goal reported to FTA as determined by the DBE Officer of the availability of certified, ready, willing and able DBE firms to provide the product or service. For procurements in which a small percentage is determined to be the contract goal, contractors should still be encouraged to identify opportunities for DBE participation. This goal is then incorporated into the evaluation criteria for the procurement. In all contracts, MATA's normal practice requires the Contractor to report DBE participation levels whether a goal has been set or not. The Manager of Purchasing shall consult with the DBE Officer regarding the availability of certified DBEs for the particular contract or purchase.

In all IFBs/RFPs, MATA shall insert a clause stating that in situations involving a procurement with a particular percentage DBE goal, if no bidder/proposer meets or exceeds the set goal, MATA reserves the right to award the contract to the bidder/proposer with an acceptable DBE participation rate, price, and other factors being considered. The DBE Officer shall determine if the bidder/proposer have met DBE requirements.

DBEs who meet or exceed the requirements of the solicitation specifications are welcome to bid as prime contractors. When a DBE bid as a prime, all DBE program requirements shall apply.

All written solicitations and contracts over \$49,999.99 of MATA shall include "Section D, Utilization of Disadvantaged Business Enterprises" as part of their documentation.

8.0 Compliance with Davis-Bacon Act

All procurements involving construction over \$2,000.00 shall include a copy of the labor provisions from MATA's General Contract Provisions for Construction along with the appropriate and most recent wage rates for Shelby County, Tennessee. Contractors must comply with the labor provisions and submit weekly payroll records for the construction work. Such records shall be sent to the User Department for procurements less than \$100,000.00 and to the Project Manager or designee for procurements of \$100,000.00 or above.

All construction procurements of \$2,000.00 or greater shall require bidders/proposers to submit a Davis-Bacon Certification Form with their bid/proposal to signify that they know and understand the Davis-Bacon regulatory requirements.

9.0 Warranty

Warranty provisions shall be included in all solicitation documents for procuring construction, equipment, and service and supply contracts as necessary.

VI. EVALUATION

1.0 Evaluation Committee

An Evaluation Committee shall be appointed by the Project Manager or designee in consultation with the Purchasing Office and the User Department before the issuance of the RFP. It may consist of one of each of the following:

- Purchasing Staff Members;
- Other Staff Members;
- User Department Staff Members; and
- Others as designated.

The Evaluation Committee, in consultation with the Purchasing Office and the Project Manager or designee, shall (1) establish the evaluation method, (2) establish written evaluation criteria for the procurement that shall be a part of the solicitation, (3) determine whether the price proposal shall be in a separately sealed envelope, and (4) determine how cost will be considered in the evaluation process. The evaluation method will be established in writing during the preparation of the IFB/RFP. Best Value and other evaluation methods described in the FTA Best Practices Procurement Manual are acceptable. These include but are not limited to:

- Numerical Weights/Points
- Adjectival Rankings
- Ordinal Rankings
- Narratives

After receiving proposals, the Evaluation Committee shall meet to evaluate them. Evaluation Committee meetings shall be recorded and/or minutes prepared. Once the Evaluation Committee has completed discussing the proposals' adherence to the evaluation criteria, each member shall document his/her evaluation. The Evaluation Committee must evaluate the proposals independently from the other Committee members and any other person.

If the Numerical Weights/Points method is used, all Evaluation Committee members will use the following method to determine points for all responsible and responsive proposers. The Proposer with the lowest price (Proposer A) will receive the maximum points. The responsible and responsive proposer with the next lowest cost (Proposer B) will have their cost divided by the cost of Proposer A. The reciprocal will be multiplied by the maximum number of points possible to reach the total number of evaluation points for Proposer B. All point totals for cost shall be rounded to the nearest point. This process shall be repeated for all proposers in the competitive range. In the case of revenue-generating contracts, the responsible and responsive proposer with the highest revenue will become Proposer A, and the proposer with the next highest revenue will become Proposer B, and so forth. The Evaluation Committee shall determine whether points associated with cost are combined with the other evaluation criteria or considered separately.

The evaluation form shall be signed and dated by the Evaluation Committee member and given to the Contract Administrator. The Contract Administrator shall tabulate the results of the Evaluation Committee's individual evaluation forms into a Summary Form. Copies of individual

and summary forms shall be given to the evaluation committee with the originals being placed into the contract file.

2.0 Sealed Bids/ Proposals

All bids/proposals shall be deemed received by MATA at its Purchasing Office located at 1330 Levee Road, Memphis, TN 38108, unless instructed otherwise in the solicitation documents. Bidders/Proposers are solely responsible for ensuring that their proposal is received in a timely manner. Bidders/Proposers who rely on overnight delivery services, the United States Mail, private mail services, local couriers, or delivery services remain solely responsible for timely delivery of the bid/proposal and assume all risk of late delivery, mis-delivery, and non-delivery.

All bids/proposals will be date/time stamped, logged, and deposited by MATA Procurement staff.

Bids/Proposals must be securely sealed, have a MATA-provided label attached, and be clearly marked 'BID' or 'PROPOSAL.'

Because of security reasons, MATA will only receive bids/proposals during regular business hours (8:00 a.m. – 4:00 p.m., Monday through Friday, except holidays). Bidders/proposers are reminded that it is their sole responsibility to ensure that the Purchasing Office receives their bid/proposal in a timely manner.

Bidders/Proposers may verify receipt of bids/proposals by contacting the Purchasing Office.

An RFP proposal will require proposers to submit a sealed Technical Proposal and a separately sealed Price Proposal. Proposers are reminded that it is their sole responsibility to ensure that the Purchasing Office receives their technical and price proposal in a timely manner by the due date within the RFP document.

If a bidder/proposer believes that a certain portion of its bid/proposal contains trade secrets, confidential information, or proprietary information, it must place all such information in a separately sealed envelope prominently marked as containing confidential or proprietary information.

The Tennessee Open Records Act is a series of laws designed to guarantee that the public has access to public records of government bodies at all levels. Records in the possession of public agencies in Tennessee are open to perusal by the public unless they are specifically exempted by statute or case law. Records are defined as any documents, no matter the physical form which are “made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.”

The Federal Transit Authority FOIA, any person has a right to a copy of certain records possessed by the executive offices, agencies, corporations, administrations, commissions, boards and services. However, some records are protected from disclosure, such as sensitive personal, commercial, and governmental information. FTA FOIA

3.0 Withdrawing Bids/Proposals

Every bidder/proposer who submits his bid/proposal specifically waives any right to withdraw it except as follows: Bidders/Proposers will be permitted to withdraw any bid/proposal after it has been deposited with MATA provided the bidder/proposer makes a request by telephone, or in

writing via email, one hour before the time fixed for bid/proposal due date. Requests pertaining to withdrawals by telephone must be confirmed in writing via email by the bidder/proposer and must reach the office of the Purchasing Office of MATA as designated in the solicitation, not later than one hour before the time fixed for submission of bids/proposals.

No bidder/proposer may withdraw his bid/proposal within 90 days (or number of days included in the solicitation document) after the date fixed for submission unless it is deemed in MATA's best interest.

4.0 Safeguarding Sealed Bids/Proposals

After receiving all sealed bids/proposals, the Purchasing Office will secure them, and access will be denied to anyone until the bids/proposals are due. None of the information in them or concerning the number or identity of bidders/proposers shall be made available to the public or anyone at MATA who does not have a legitimate interest or need to know.

5.0 Bid Openings

Sealed bids (IFBs) will be opened, and the bid prices will be read aloud. For procurements in which bidders/proposers are required to submit a Technical Proposal and a separately sealed Price/Cost Proposal, the Price/Cost Proposal shall remain sealed and will be placed in a secure location until the evaluation of the Technical Proposals is completed. To protect the integrity of the procurement process for proposals, no additional information concerning the contents of a proposal will be released or made available to proposers, potential proposers, or the public until awarded by the MATA Board and/or Trustee(s) and the conclusion of any protests.

5.1 Returned Bids/Proposals

Any bids or proposals received after the date and time specified in the solicitation will be returned to the bidder/proposer unopened.

6.0 Bid Tabulation

All bids will be publicly opened at the time and place prescribed in the IFB. After the bids are opened, they will be tabulated and further analyzed by the Purchasing Office. Bid tabulations will be posted to MATA's purchasing website (Doing Business) for all vendors to see.

7.0 Cost/Price Analysis

MATA is required to perform some form of cost or price analysis in connection with every procurement action, including change orders and options. The method and degree of analysis depend on the facts surrounding the procurement situation, but as a starting point, MATA must have cost estimates before receiving bids or proposals. All proposed costs will be evaluated in accordance with Federal cost principles.

To reach a final evaluation that the proposal to be selected includes fair and reasonable costs/prices, it is required that MATA technical staff (User Department) submit, simultaneously with the Requisition and the Statement of Work, an estimate of the work effort in a detailed format to permit comparability to the expected proposals. Such an estimate provides the basis for negotiating the most favorable contract and assurance that the result is fair and reasonable.

7.1 Cost Analysis

This is a more detailed evaluation of the cost elements in the potential contractor's performance offer. A cost analysis must be performed when the offeror submits the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering service contracts. It is conducted to form an opinion as to the degree to which the Contractor's proposed costs represent what his or her performance should cost. A cost analysis is generally conducted to determine whether the Contractor applies sound management in proposing the application of resources to the contracted effort and whether costs are proper, allowable, and allocable. A cost analysis is a more detailed review of an offeror's proposal than a price analysis. It involves an in-depth look at the Contractor's cost and pricing data and the judgmental factors applied in projecting the data to estimated costs. The objective is to form an opinion as to the degree to which the proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

In conducting a cost analysis, it is not enough to examine a Contractor's proposed figures on the number of hours his staff will work, the amounts and costs of materials, and the labor and overhead rates from accounting records. It is also not enough to project the actual cost experience and call it the estimate of future costs.

Contract cost analysis is the element-by-element examination of the estimated or actual cost of performing a contract, the analysis of cost accounting data furnished by an offeror. It involves:

- a. The verification of cost data;
- b. The evaluation of specific cost elements; and
- c. The projection of the cost data to determine its effect on prices.

A cost analysis investigates such factors as:

- a. The necessity for certain costs;
- b. The reasonableness of amounts estimated for necessary costs;
- c. The basis for allocating overhead costs;
- d. Allowances for contingencies;
- g. The appropriateness of allocations of particular overhead costs to the contract; and
- f. The reasonableness of the profit factor.

A cost analysis is performed on professional consulting and A&E services contracts when the offeror must submit the elements of his estimated cost. It is also required when adequate price competition is lacking and for non-competitive procurements, including change orders and task orders unless price reasonableness can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

7.2 Price Analysis

This evaluation of the proposed price does not involve an in-depth evaluation of all the separate cost elements and profit factors that comprise a potential Contractor's price proposal.

Price analysis is a broad term that includes whatever actions the Purchasing Office and/or User Department takes to decide that the price is fair and reasonable. These actions should include not less than two of the following approaches:

- a. A comparison of competitive price quotations;
- b. A comparison of prior quotations and contract prices with current quotations for the same or similar end items;
- c. The use of rough yardsticks such as dollar per pound, per horsepower, or other units to point up gross inconsistencies;
- d. A comparison of prices or published price lists issued on a competitive basis and published market prices of commodities, together with discount or rebate schedules; and
- e. A comparison of proposed prices with independent estimates.

The conclusion that a price is fair and reasonable is based on either a price analysis or a combination of price analysis and an analysis supported by a discussion of the elements of cost that support the price. Some form of analysis, either price or cost analysis, is performed for every procurement; however, documentation shall be included in all procurements regardless of dollar value, indicating the determination of price reasonableness. The person conducting the price or cost analysis must document that "the price is fair and reasonable" and the basis for that conclusion. This statement is to be a part of the contract file.

When an item is procured from the original equipment manufacturer (OEM) under non-competitive purchasing procedures, the vendor must complete a Certificate of Current Cost or Pricing Data (Certificate). A Certificate is also required when MATA issues a change order exceeding \$100,000.00 under non-competitive conditions that are not within the scope of work and not under the original contract's terms.

With the completion of a Certificate, OEM vendors must provide detailed information, including specifications, if appropriate, that clearly show that the items being procured are proprietary. The cost/price analysis includes a statement by the Purchasing Office referencing the Certificate and proprietary rights submitted by the vendor, certifying the price paid for such items by like customers and that the item is available only from the original supplier.

7.3 Profit

MATA will negotiate profit as a separate element of the price for each contract in which there is no price competition and where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

7.4 Cost Plus Percentage of Cost Prohibited

The cost plus a percentage of cost and percentage of construction cost contracting methods shall not be used.

8.0 DBE Evaluation

MATA will evaluate Contractors on the responsiveness of their proposals/bids to DBE participation and not their intended responsibility in carrying out the program. Certification of DBEs must be accomplished before bids or proposals are due.

DBE participation will be an evaluation criterion in all MATA procurements where a specific goal has been assigned. For procurements over \$49,999.99, the Bid/Proposal Evaluation Committee will weigh the DBE criterion. For contracts less than \$50,000, in which evaluation criteria are not used, and the price is the sole determining criterion, the vendor with the lowest and best bid will be awarded the contract or bid with the following exception understood. If identical bids are received, MATA will notify the identical bidders that at least one other identical bid was received. MATA will then allow the identical bidders to revise their bids. In the unlikely event that the revised bids are identical, MATA reserves the right to negotiate until a successful low bidder is reached.

MATA also reserves the right to award a contract, in situations involving a procurement with a particular percentage DBE goal where no bidder/proposer meets or exceeds the goal, to the bidder/proposer with an acceptable DBE participation rate (satisfactory Good Faith Efforts considered), price and other factors being considered. The DBE Officer shall determine acceptable DBE participation.

9.0 Responsibility Determination

A Responsibility Determination form shall be completed and signed by the Purchasing Office, and Project Manager for all formal procurements prior to the contract being awarded. The Form shall include six questions/statements identifying the method used to make the determination of responsibility.

The Purchasing Office Staff will certify the vendor's responsibility for formal procurements.

VII. NEGOTIATIONS

1.0 Negotiations

- a. The person(s) responsible for negotiations depends upon the nature of the particular procurement. As to all purchases of supplies, services, and/or construction, the Legal/Compliance Officer or his/her designee will conduct all negotiations with assistance from the Project Manager, Construction Manager, the Purchasing Office, and the User Department if necessary.
- b. All proposers selected to participate in negotiations shall be advised, in writing, of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies, technical, or other revisions to their proposals that may result from the discussions. A deficiency is defined as that part of a proposal that would not satisfy MATA's requirements. MATA may request a Best and Final Offer (BAFO) as it relates to proposal cost.
- c. Discussions shall not disclose the strengths or weaknesses of competing proposers or any information from any proposal that would enable another proposer to improve his proposal.
- d. When options have been included in a procurement and negotiations are conducted, negotiations shall also be conducted for the options.
- e. A memorandum and/or written documentation summarizing the negotiations shall be included in the contract file.

2.0 Exercise of Contract Options

- a. Evaluation of Options - The option quantities or periods contained in the bid/proposal must be evaluated to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- b. Exercise of Options
 1. MATA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 2. An option may not be exercised unless MATA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

VIII. AWARD

1.0 Award Process

- a. MATA has the right to reject all bids/proposals and/or not to proceed with an award for a solicitation resulting in a response(s). Notice to Proceed will not be issued until the Board and/or Trustee(s) award (if required), all signature approvals, and all required documentation have been obtained.

Consideration shall be given to contractor integrity, public policy compliance, past performance record, financial and technical resources, and delivery schedule. If the award is to be made to someone other than the apparent low bidder/proposer, a full justification memorandum must be prepared and put into the contract file.

If identical bids are received, MATA will notify the identical bidder that at least one other identical bid was received. MATA will then allow the identical bidders to revise their bids. In the unlikely event that the revised bids are identical, MATA reserves the right to negotiate until a successful low bidder is reached.

- b. The Board of Commissioners and/or Trustee(s) is not bound by the recommendation of the selection committee or working staff when they believe their action will further MATA's statutory functions; however, the decision of the Board of Commissioners must be consistent with the solicitation document's (IFB/RFP) written evaluation criteria and requirements, and must have a rational basis for the decision which is fully documented by the MATA Board and/or Trustee(s) for the procurement files.
- c. All purchase orders awarded to vendors must contain the General Contract Provisions required by Federal, State and Local governments.
- d. The obligation of MATA on all contracts includes those who envision funding through current and successive fiscal years and shall be contingent upon actual MATA appropriations for the fiscal year(s) involved.

2.0 Award of the Contract

Upon contract award by the MATA Board and/or Trustee(s), the Purchasing Office will return bid/proposal bonds to the unsuccessful bidders/proposers. The Contract Administrator will notify all the successful and unsuccessful bidders/proposers in writing. The Purchasing Office will retain bid/Proposal bonds submitted by the successful bidder/proposer. The Contract Administrator will submit the contract e to the successful bidder/proposer. When it is returned, along with the performance bond and certificate of insurance, the Purchasing Office will obtain the appropriate signatures of the CEO or Trustee(s) and Legal Counsel, if required, or the MATA Board Chairman or Vice-Chairman and/or Trustee(s). Copy will be retained along with the bid/proposal bond (for Board records and contract files). An executed copy will be submitted to the vendor.

3.0 Required Federal Clauses

If any exceptions to the proposed contract contained in the solicitation document were made, the Legal/Compliance Officer or designee would review the draft contract before submitting it to the vendor to ensure that the revised contract is acceptable and all applicable federal, state, and local clauses are included. These would include, but not be limited to, Civil Rights, DBE, Buy

America, Lobbying, Debarment, and Davis-Bacon Act. The Contract Administrator will also ensure that, where required, the proper certifications are included and signed.

4.0 Transit Vehicle Award Report

MATA must comply with the procedures of 49 CFR 26.49 (a)(4). We will do so, by ensuring MATA submit the name of the successful bidder and the total dollar value of the contract to the FTA Office of Civil Rights within 30 days of making an award for revenue vehicles. Once the contract is fully executed, the Legal/Compliance Officer or designee will submit the required information using the online Transit Vehicle Award Reporting Form at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. Only eligible TVMs may bid on FTA-assisted transit vehicle procurements, which the Contract Administrator verifies prior to the solicitation process of vehicle procurements.

Specific portions of this procedure will be monitored by MATA's Grant Office, Purchasing Office and the DBE Officer. It addresses post-purchase only. Purchasing Office handles the acquisition of transit vehicles and coordinates with the contract/grant office and DBE Officer. Contract/Grant Office: oversees the process, ensuring all departments fulfill their roles and submits the report on time. The DBE Officer ensures that all Disadvantaged Business Enterprise (DBE) requirements are met, monitored and reported.

1. Record of Purchase will include:
 - Vehicle make, model, and VIN
 - Purchase date
 - Purchase price
 - Vendor details
 - FTA Grant number

Maintain Records

- 1) The Grants department must maintain all records related to the vehicle purchase and FTA reporting for at least five years, and ensure records are accessible for audits and reviews.

By following these procedures, MATA will ensure timely and compliant reporting of transit vehicle purchases funded by FTA grants, maintaining transparency and adherence to federal regulations.

5.0 Protest Procedures

Prospective bidders or proposers whose direct economic interest would be affected by the award or failure to award a Contract may protest. MATA will consider all protests requested promptly regarding the award of a Contract, whether submitted before or after an award.

MATA must notify FTA when it receives a third-party contract protest if Federal funds are involved in the procurement and to keep FTA informed about the status of the protest. MATA is expected to provide the following information to FTA:

1. Subjects – A list of protests involving third-party contracts and potential third-party contracts that:
 - a. Have a value exceeding \$100,000, or
 - b. Involve a controversial matter, irrespective of amount, or
 - c. Involve a highly publicized matter, irrespective of amount.
2. Details – The following information about each protest:
 - a. A brief description of the protest,
 - b. The basis of disagreement, and
 - c. If open, how far has the protest proceeded?
 - d. If resolved, the agreement or decision reached, and
 - e. Whether an appeal has been taken or is likely to be taken.
3. When and where – MATA should provide the following information:
 - a. In its next quarterly Milestone Progress Report, and
 - b. At its next Project Management Oversight review, if any.
4. FTA Officials to Notify – When MATA denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects MATA to inform the FTA Regional Administrator for the region administering a regional project or the FTA Associate Administrator for the program office administering a headquarters project directly. FTA also encourages MATA to keep its FTA Project Manager informed about protests it is involved with. MATA should contact its Project manager about any unusual activity. MATA will disclose information about any third-party procurement protest to FTA upon request.

All protests will be submitted in writing to the Purchasing Office, 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:

- a. Name, address, and telephone number of protestor.
- b. Identification of the solicitation or Contract number.
- c. A detailed statement of the legal and factual grounds for the protest, including copies of relevant documents.
- d. A statement as to what relief is requested.

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

5.1 Protests Before Bid Opening

Bid protests alleging restrictive specifications or apparent improprieties before bid opening or receipt of proposals must be submitted in writing to the Purchasing Office .

They must be received seven days before the bid opening or closing date for receipt of Bids or Proposals. If the written protest is not received by the time specified. In that case, Bids or Proposals may be received, and awards may be made normally unless the Purchasing Office or designee determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Purchasing Office 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 Purchasing Office not later than ten 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 either 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. It will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by MATA, the Legal/Compliance Officer or designee shall either (a) render a decision or (b), at the sole election of the Legal/Compliance Officer or designee, conduct an informal hearing at which the interested participating parties will be allowed 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 Legal/Compliance Officer or designee shall render a final decision, which shall be final, and advise all interested parties thereof in writing but no later than ten days from the informal hearing date.

5.2 Protests After Bid Opening/Prior to Award

Bid protests against the making of an award by the MATA Board and/or Trustee(s) must be submitted in writing to the Purchasing Office or designee and received by the Purchasing Office or designee within seven days before award by the MATA Board and/or Trustee(s). The process for resolving protests listed above in Section 5.1 will be followed for any protest received under this section subject to any current or future federal, state, or local regulations that take precedence over the above provisions.

Where a written protest of an award is received in the time specified, the award will not be made before seven days after the resolution of the protest unless MATA determines that:

- a. The items to be procured are urgently required.
- b. Delivery or performance will be unduly delayed by failure to make award promptly; or
- c. Failure to make an award will otherwise cause undue harm to MATA or the Federal Government.

5.3 Protests-No Bid (Private Enterprise Participation)

In accordance with current FTA Circular 7005, MATA may, from time to time, after considering the option of privatization, decide to operate a new or restructured service "in-house." Current FTA Circular 7005 does not require MATA to solicit bids for the new

service; however, if it elects to operate the service in-house without soliciting competitive bids, MATA must be prepared to process complaints from the private sector for its decision to "no-bid" and provide a procedure for doing so.

For protests filed in "no-bid" situations, the firm or individual wishing to file a protest will have seven days to do so from the date of the MATA Board and/or Trustee(s) meeting approving the operation of the new service in-house. Oral protests not followed up by a written protest will be disregarded. The process for resolving protests listed above in Section 4.1 will be followed for any protest received under this section subject to any current or future federal, state, or local regulations that take precedence over the above provisions.

5.4 Protests After Award

Protests made after the contract award shall be received no later than seven calendar days after the award. The Legal/Compliance Officer or designee will review protests received after the award and, if necessary, MATA's Legal Counsel. When the award has been made, the Contractor shall be furnished with the notice of the protest and the basis. If the Contractor has not executed the Contract as of the date MATA receives the protest, the execution of the Contract will not be made before seven days after the resolution of the protest unless MATA determines that:

- a. The items to be procured are urgently required.
- b. Delivery or performance will be unduly delayed by failure to make award promptly; or
- c. Failure to make an award will otherwise cause undue harm to MATA or the Federal Government.

The process for resolving protests listed above in Section 4.1 will be followed for any protest received under this section subject to any current or future federal, state, or local regulations that take precedence over the above provisions.

5.5 Appeals

Appeals and requests for reconsideration of the determination of the Purchasing Office of protests must be submitted to the Chief Executive Officer or Trustee(s) and received within seven days after the date of the written determination by the Legal/Compliance Officer or designee. The Chief Executive Officer or Trustee(s) may request additional information from the appealing party and information or a response from other Bidders/Proposers, which shall likewise be submitted in writing to the Chief Executive Officer or Trustee(s) not later than ten 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/Proposers. All parties are urged to complete written submissions as soon as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer or Trustee(s) shall either (a) render a decision or (b), at the sole election of the Chief Executive Officer or Trustee(s), conduct an informal hearing at

which the interested participating parties will be allowed to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Chief Executive Officer or Trustee(s) shall render a final decision, which shall be final, and advise all interested parties thereof in writing but no later than ten days from the informal hearing date.

5.6 Appeals of Protest Decisions to the Federal Transit Administration

FTA's Role and Responsibilities – FTA has developed an appeals process for reviewing protests of MATA's procurement process.

1. Requirements for the Protester – The protestor must:
 - a. Qualify as an “Interested Party” – Only an “interested party” qualifies for FTA review of its appeal. An “interested party” is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue.
 - (1) Subcontractors—A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the procurement results.
 - (2) Consortia/Joint Ventures/Partnerships/Teams – An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
 - (3) Associations or Organizations—An association or organization that does not perform contracts does not qualify as an “interested party” because it does not have a direct economic interest in the procurement results.
 - b. Exhaust Administrative Remedies—The protestor must exhaust its administrative remedies by completing MATA's protest procedures before appealing MATA's decision to FTA.
 - c. Appeal Within Five Days – The protestor must deliver its appeal to the FTA Regional Administrator for the region administering its project within five working days after the protestor has received actual or constructive notice of MATA's final decision or when the protestor has identified other grounds for appeal to FTA. For example, other grounds for appeal would include MATA's failure to have or failure to comply with its protest procedures or failure to review the protest.

2. Extent of FTA Review – As provided in the Common Grant Rule for governmental recipients, FTA will limit its review of their party contract protests as follows:
- a. MATA's Procedural Failures – FTA will consider a protest if MATA:
 - (1) Does not have protest procedures, or
 - (2) Has not complied with its protest procedures, or
 - (3) Has not reviewed the protest when presented with an opportunity to do so.
 - b. Violations of Federal Law or Regulations – FTA will not consider every appeal filed by a protestor of MATA's protest decision merely because a federal law or regulation may be involved. Instead, the FTA will exercise discretionary jurisdiction over those appeals involving issues important to the FTA's overall public transportation program. FTA refers to violations of federal law for which it does not have primary jurisdiction to the federal authority having proper jurisdiction.
 - c. Violations of State or Local Law or Regulations – FTA will refer State or local law violations to the State or local authority having proper jurisdiction.

5.7 Submission of Protest to FTA:

- a. Protests shall be filed with the appropriate FTA Regional Office with a concurrent copy to MATA.
- b. The protest filed with FTA shall:
 - 1. Include the name and address of the protestor.
 - 2. Identify the MATA project number and the contract solicitation number.
 - 3. 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.
 - 4. Include a copy of the local protest filed with MATA and a copy of the MATA decision, if any.

5.8 Internal Conflicts of Interest Procedures

To ensure that appropriate conflict of interest measures are implemented, the Purchasing Office shall promptly inform the Chief Executive Officer or Trustee(s) , upon the receipt of all bid/proposal protests, of the identity of the protesting party and all other interested parties, the procurement action which is the subject of the protest, and the general nature of the protest. This information enables the Chief Executive Officer or Trustee(s) to recuse himself/herself properly and initiate institutional conflict of interest

procedures in appropriate instances. In all such instances, the Legal/Compliance Officer or designee shall consult with the Chief Operating Officer, Chief of Staff, and department head after submitting his/her initial screening report to the Chief Executive Officer or Trustee(s).

IX. CONTRACT ADMINISTRATION

1.0 Project Management

The Chief Of Staff or Chief Operating Officer, based upon consultation with the User Department head and the Chief Executive Officer or Trustee(s), shall designate the Project Manager for any planning or capital procurement over \$50,000 or any planning or capital procurement involving construction over \$25,000. If the project is construction and/or will occur over an extended period of time, a Legal/Compliance Officer's or designee Technical Representative may be designated by the Legal/Compliance Officer. The Project Manager shall steer the Contractor throughout the work process. Generally, the Statement of Work in the negotiated contract defines specific tasks, milestones, and review procedures, which vary depending on the specific project. The Project Manager shall provide technical direction to the Contractor and respond to correspondence on technical matters from the Contractor's designated representative. A copy of all correspondence shall be provided to the Contract Administrator. The Project Manager shall review the progress of the work periodically and initiate a review by MATA staff, public agencies, and affected utilities as required.

The Contractor is required to document the amount of time and money spent on the work periodically specified in the Contract. The Project Manager shall review the Contractor's documentation and invoices concerning the milestones, work expended to date, and budgeting information. The Project Manager shall advise the Contract Administrator if the Contractor does not comply with the contract. The Contract Administrator shall take appropriate actions by notifying the Contractor in writing of the consequences if the Contractor does not correct the deficiency. The Project Manager shall also review invoices for accuracy and content and then process the invoices for payment in accordance with Contract Terms and Conditions.

2.0 Contract Amendments and Change Orders

Change Orders are, in effect, amendments to a contract and may be required periodically to adjust a contract amount or performance period due to unanticipated conditions. Change Orders are considered non-competitive and are subject to the same requirements as noted in Section IV, 4.8.

Cardinal changes to a contract will not be allowed. Cardinal change means a major deviation from the original purpose of the work or the intended method of achievement or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Questions to be asked to warn of out-of-scope changes are:

- Is the end item or service substantially changed (by an individual modification or as a cumulative effect of several modifications)?
- Is the proposed change a different product or service from the original contract?
- How does the changed price compare to the contract price? Is it substantial?
- What resources are required to accomplish the new work? A different set of resources signals an out-of-scope change.
- Would the competitive evaluation factors differ if the change had been included in the original specifications?
- Would different or additional firms have bid if this change had been included in the original specifications?

- Could DBE participation be increased in the original contract if this change had been included in the original specifications?

The Legal/Compliance Officer or designee, Chief Executive Officer, or his/her designee has the authority to authorize an expenditure for extra work, as long as the extra work is not a cardinal change to the contract or purchase order, without the necessity of advertising for bids, provided the cost of the extra work does not exceed \$50,000 or 10%, whichever is greater, of the original contract amount. All Change Orders must be processed through the Purchasing Office with supporting documentation. Before issuing any change order, the Grants Administrator shall be informed so that a determination can be made regarding the availability of funds. The Legal/Compliance Officer or designee shall also be contacted to determine if the proposed change order contains a change in scope that may be grounds for bidding the extra work. If over \$50,000 or 10% of the original contract amount, whichever is greater, the CEO or Trustee(s) must review and recommend approval, and the MATA Board and/or Trustee(s) must be allowed to approve the change. All change orders must be signed by the Legal/Compliance Officer or designee, the Chief Executive Officer, or his/her designee and, if necessary, reviewed and approved by Legal Counsel.

A cost analysis must be performed unless price reasonableness can be established based on a commercial product's catalog, written/printed market price, or prices set by law or regulation. Change Orders must address DBE participation if the change involves adding or reducing work requiring changes to the Contractor's compensation.

Change Orders must be prepared. A copy will be retained for Board records and contract files. An executed copy will be submitted to the Contractor. The adjustment may be in the form of a credit (adjusting the total cost downward due to unanticipated savings), an increase (adjusting the contract amount upward due to extra work), or a zero-dollar change. Change Orders must also address whether the change will affect the time required for the project. The Contract Administrator prepares Change Orders.

2.1 General

If, in the course of the work, it becomes apparent that a change in the Statement of Work is required, the Project Manager will initiate a request to the Legal/Compliance Officer or designee for a Change Order, explaining why it is necessary and could not have been anticipated by the contractor. The Project Manager will also provide a cost and price analysis of the proposed changes and, if applicable, any changes to the schedule and changes to the Statement of Work and required documentation to the Legal/Compliance Officer or designee. The Project Manager will notify the Grants Administrator to determine if the Change Order can be funded before signing any changes. The Statement of Work, change in schedule, and cost of the change, if any, are to be negotiated with the Contractor by the Legal/Compliance Officer or designee before the Change Order is processed in accordance with procedures and delegation of authority. The Project Manager has a continuing responsibility to monitor the Contractor's work progress until it is completed, and the product or service is accepted by MATA. The Project Manager must notify the Legal/Compliance Officer or designee when the work is completed.

2.2 Construction

Normally, MATA staff will be augmented by a consultant for construction projects designated as the Construction Manager. The Construction Manager will normally be

appointed as the TR. For technical matters, the Construction Manager/TR works for the MATA Project Manager. However, the construction manager has obligations to the MATA Legal/Compliance Officer or designee as defined in the appointment letter.

Construction changes will normally originate from the Contractor, the Construction Manager, or the design consultant. The Construction Manager will prepare a request for a change order and forward it to the MATA Project Manager. This request will define the scope and reason for the change, including an order of magnitude, estimated cost, and, if applicable, the change to the schedule.

The Project Manager will consult with parties having knowledge of or interest in the contract. This consultation may be a Change Order Review Committee that meets as needed. The pending change will be reviewed to determine that it is not already a contract requirement, that it is needed, and that the scope reflects only the need. After a favorable determination, the Construction Manager, Project Manager, and Contract Administrator will approve the pending change with the concurrence of the Legal/Compliance Officer or designee. A copy will be forwarded to the Construction Manager, who will issue a Request for Proposal. For emergencies, this review will be after the facts and a ratification of the previous verbal actions.

When the Contractor's proposal, the estimate, and the schedule are in hand, the Construction Manager, in conjunction with the Project Manager, will develop MATA's negotiation position and schedule negotiations with the contractor utilizing the assistance of the Legal/Compliance Officer or designee as required. Negotiations will be conducted and documented with the contractor. If negotiations are unsuccessful, the Disputes Section of the contract becomes applicable. If successful, both parties will prepare and execute a change order. All Change Orders will be executed by the Legal/Compliance Officer or designee, the Alternate Legal/Compliance Officer, the Chief Executive Officer, or his/her designee. The cumulative value of all changes for a contract may not exceed \$50,000 or 10% of the original award amount, whichever is greater, without MATA Board approval. A copy of all executed change orders shall be forwarded to the Grants Administrator and the Legal/Compliance Officer.

The change order file shall contain the executed change order, reason/scope of change, record of negotiations, contractor's proposal, estimate, and schedule as appropriate. The debit (or credit if the change order is a deductive change order) to project contingency will be changed to the actual value, as will the credit (or debit) to the contract price.

3.0 File Administration

3.1 Contract Files

Orderly documentation of the entire procurement process is essential to support sound procurement practice. It will be the responsibility of the Purchasing Office to periodically review procurement files and ensure that proper documentation is being maintained. All contract files are centralized and numerically coded. Only limited access to the files is provided. To ensure that all pertinent and required documentation is contained within a standardized filing system, at a minimum, the following documentation will be incorporated in the contract file:

- a. Procurement File Checklist

- b. Procurement Summary
- c. Requisition.
- d. Draft Solicitation Document and Schedule with Approvals.
- e. Legal Notice to Bidders/Proposers.
- f. Solicitation Document with all Addenda.
- g. Technical Specifications and Plans.
- h. Bid/Proposal Requirements and Conditions.
- i. Copy of General Contract Provisions.
- j. Requests for Approved Equals or Clarifications and MATA Responses.
- k. Bids/Proposals and Summary of Bid/Proposal Evaluation.
- l. Board of Commissioners Resolution.
- m. Copy of Executed Contract.
- n. Bid/Proposal Bond and Performance Bond Data.
- o. Change Orders; and
- p. All Closeout Documents

These records will also include internal documentation of the procurement history that, at a minimum, describes.

- a. Rationale for the method of procurement.
- b. Selection of contract type.
- c. Contractor selection or rejection.
- f. Basis for contract price (cost/price analysis),
- g. Negotiation documentation, if applicable; and
- h. Documentation that the price is fair and reasonable.

The contract administrator maintains and controls each file. The Administrator monitors the removal or review of contract files, indicating who removed or reviewed the file, for what purpose, and on what date.

3.2 Construction Contract Files

Construction contract (RFP/IFB) files shall include the items listed in Section 3.1 above, including the following:

- a. Weekly Payroll Sheets as required by the Davis-Bacon Act.
- b. Release of Liens, Materials, and Payments Bonds, etc.
- c. Insurance Document.
- d. Change Orders or pending Change Orders;
- e. As-Built Drawings; and
- f. Warranties.

- g. All Close-out Documents

4.0 Contract Closeout Procedures

Before the contract completion date, the User Department and/or Legal/Compliance Officer or designee shall contact the Project Manager to confirm that the Contractor has complied with all clauses of the Contract, and that no Contractor effort will be required after the specified Contract completion date and that the Contract may be closed out. This action shall be initiated at least 60 days before the specified completion date, whenever possible. This is necessary to determine whether there will be an overrun, negotiate and extend the performance period, if necessary, and allow sufficient procurement lead time if there is a follow-on effort. If the Contract is to be completed on schedule, the Contract Administrator shall proceed with the Contract closure; otherwise, appropriate action shall be taken to extend the Contract.

Upon completion of the work under the Contract, the Contract Administrator shall send the "Contractor's Closeout Letter" to the Contractor. This letter contains the necessary forms for requesting the assignment of rebates and credits, the release of liability, and the Contractor's closing statement if appropriate.

Upon return of the Contractor's closing document the Contract Administrator shall review the documents for completeness and, if acceptable, complete the closeout utilizing MATA's closeout checklist. The Grants Administrator shall also initiate grant closeout with FTA, TDOT, or other federal and state agencies, as applicable. If the documents are unacceptable, the Contract Administrator shall follow up with the Contractor and obtain the required information.

Cost and/or fees withheld pursuant to the Contract provisions shall not be released to the Contractor until the Contractor has completed the required closing documents, made the final disposition of MATA property, and reached a final agreement with MATA regarding the final payment due. Withheld costs, fees, and retainage shall be included in the final payment to the Contractor.

As to all routine contracts for supplies, materials, and non-professional services, the Legal/Compliance Officer or designee shall determine whether a final contract audit is required upon receipt of the Project Manager's confirmation of pending contract completion. A memorandum outlining the contract particulars and status shall be sent to the Grants Administrator for assistance in determining. If an audit is required, the Legal/Compliance Officer or designee shall assist the Grants Administrator in any other way possible to include arranging the audit. As to all other contracts, the Legal/Compliance Officer or designee shall submit a recommendation to the Chief Executive Officer or Trustee(s) or the Chief of Staff of the need for a final contract audit and shall implement the decision of the Chief Executive Officer or Trustee(s) or the Chief of Staff.

The Professional Services contract closeout will occur after all services are accepted. The Contract Administrator is responsible for ensuring that contract files are closed in a timely manner and that closeout actions are documented in detail as appropriate.

The contract file shall be reviewed and certified as complete by the Contract Administrator upon completion of the closeout checklist.

5.0 Contract Termination

The performance of work under a contract may be terminated in part or in whole when the MATA Board or Trustee(s) (as to contracts awarded by the Board) or the CEO or Trustee(s) (as to all other procurements), in consultation with the Legal/Compliance Officer or designee and/or the Purchasing Office and, in the case of a DBE firm the DBE Officer will also be consulted. When necessary, the MATA Legal Counsel, determines that such termination is in the best interest of MATA. Contracts may be terminated for convenience, i.e., a reduced need or in the best interests of MATA, or for default, i.e., the Contractor has failed to perform in accordance with the contractual requirements.

When the decision to terminate a contract is made, a "Notice of Termination" shall be sent by the Legal/Compliance Officer or designee (as to contracts awarded by the Board) or the Purchasing Office (as to all other procurements) to the Contractor. The Notice of Termination shall specify the reason for the termination, the extent to which the work performance is terminated, i.e., in whole or in part, and the day upon which such termination is effective.

After a Notice of Termination is issued pursuant to the Termination/Default Article(s) of the Contract, claims, etc., shall be settled as soon as possible to protect MATA's interests and minimize its liability.

6.0 Disputes

Despite making the contract documents as clear as possible, there will be differences in their interpretations of what may or may not be included in the contract. The objective of dispute resolution is for a prompt agreement on the merit and, if merited, the quantum of the claim.

6.1 Construction Projects

The Contractor will present a claim from which there may be a dispute to the Construction Manager. If such a claim is submitted to any other official, either MATA or consultant, it will be directed to the Construction Manager.

The Construction Manager will review the claim, obtain additional information from the Contractor as required, consult with the Contract Administrator, and make a recommendation as to the merit of the claim. If the Construction Manager believes there is merit, even partial, the fact will be provided to the Contract Administrator. The Contract Administrator will prepare a Memorandum of Merit, which shall be coordinated with the Project Manager. This document will be placed in the contract file. It becomes the basis for a Change Order. From this point on, there is no dispute.

If the Construction Manager believes there is no merit, that individual will formally respond to the Contractor. In the letter, the Contractor will be advised of the right to appeal to the Legal/Compliance Officer or designee as provided in the Disputes clause. The Construction Manager will transmit all the facts to the Legal/Compliance Officer or designee.

6.2 Other Projects

Non-construction projects shall follow the same procedure as construction projects, but instead of the Construction Manager receiving and investigating the claim, the Project Manager will.

6.3 Final Decision

The Contractor may appeal to the Legal/Compliance Officer or designee under the terms of the Disputes clause. The Legal/Compliance Officer or designee may consult with the Construction Manager and/or the Project Manager if one has been appointed. The Legal/Compliance Officer or designee shall review all the facts of the claim and prepare a Legal/Compliance Officer's or designee's Final Decision, provided there is a determination of no merit. This will be documented if partial merit is recognized, and an attempt to settle that portion of the claim shall be made. The Legal/Compliance Officer's or designee's Final Decision shall state the facts and rationale for the decision. It shall also advise the Contractor that an appeal may be made to the CEO or Trustee(s) within ten days.

The decision of the Legal/Compliance Officer or designee shall be final and conclusive unless, within ten days from the receipt of such copy, the Contractor mails or otherwise furnishes to the Legal/Compliance Officer or designee a written appeal addressed to the Chief Executive Officer of MATA. The Chief Executive Officer or Trustee(s) shall review the dispute, related documents, and the Legal/Compliance Officer's or designee's Final Decision. The Chief Executive Officer or Trustee may consult the Construction Manager, Project Manager, and the Legal/Compliance Officer or designee. The decision of the Chief Executive Officer or Trustee(s) shall be final and conclusive unless, within ten days from the date of the receipt of such copy, the Contractor mails or otherwise furnishes to the Legal/Compliance Officer or designee a written appeal addressed to the MATA Board. 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, capricious, 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 Contractor shall be allowed to be heard and offer evidence supporting his appeal. Pending the final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Legal/Compliance Officer's or designee's decision.

6.4 FTA Assistance

If MATA intends to request FTA's permission to use Federal assistance to support payments to a third-party contractor to settle a dispute or even intends to request increased Federal assistance for that purpose, MATA shall notify FTA and provide the following information:

1. Subjects – A list of disputes involving third-party contracts and potential third-party contracts that:
 - a. Have a value exceeding \$100,000, or
 - b. Involve a controversial matter, irrespective of amount or
 - c. Involve a highly publicized matter, irrespective of amount.
2. Details – The following information about each dispute:
 - a. A brief description of the dispute,

- b. The basis of disagreement and
 - c. If open, how far the dispute has proceeded, or
 - d. If resolved, the agreement or decision reached, and
 - e. Whether an appeal has been taken or is likely to be taken.
3. When and where – MATA should provide the following information:
- a. In its next quarterly Milestone Progress Report and
 - b. At its next Project Management Oversight review, if any.
4. Adequate Documentation – MATA will include adequate documentation in its project files of the facts, events, negotiations, applicable laws, and a legal evaluation of the likelihood of success in any potential litigation involving the dispute as may be needed to justify FTA's concurrence in any compromise or settlement of the dispute, should FTA concurrence become necessary.
5. Audit – An audit can help MATA demonstrate that any settlement costs, if incurred, are necessary, reasonable, adequately documented, and appropriate for FTA support. MATA will consider conducting or obtaining a formal audit to substantiate each part of a large contract dispute before entering into a settlement. The audit should be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants. MATA will also consider undertaking an audit or similar analysis before settlement of a smaller dispute.

FTA generally does not become involved in negotiating the resolution of MATA's disputes; however, FTA does reserve the right to become involved as follows:

- 1. Determine Reasonableness – FTA may review the reasonableness of a negotiated settlement to determine the extent of its participation in the costs of the settlement.
- 2. Review Documents – When FTA considers it necessary, they may review MATA's files and history pertaining to the dispute or experience under a particular grant or cooperative agreement. If MATA has already disbursed amounts determined to be ineligible through subsequent audit or FTA review, MATA must return those amounts to FTA unless FTA determines otherwise. FTA reserves the right to defer participation in settlement costs until it receives an adequate audit.

6.5 Claims or Litigation

If MATA's third-party contract using FTA funds involves claims or litigation, MATA shall notify FTA and provide the following information:

- 1. Subjects – A list of claims and litigation involving third-party contracts and potential third-party contracts that:
 - a. Have a value exceeding \$100,000, or
 - b. Involve a controversial matter, irrespective of amount or

- c. Involve a highly publicized matter, irrespective of amount.
2. Details – The following information about each claim or lawsuit:
 - a. A brief description of the claim or litigation,
 - b. The basis of disagreement, and
 - c. If open, how far the claim or litigation has proceeded or
 - d. If resolved, the agreement or decision reached, and
 - e. Whether an appeal has been taken or is likely to be taken.
 3. When and where – MATA should provide the following information:
 - a. In its next quarterly Milestone Progress Report and
 - b. At its next Project Management Oversight review, if any.
 4. FTA Officials to Notify – MATA will notify the FTA Project Manager about claims or litigation involving FTA, including any claims or litigation involving unusual activity.
 5. Legal Rights and Remedies – In resolving third-party contract claims and litigation, MATA will take reasonable measures to pursue its rights and remedies available under law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause MATA to seek additional Federal assistance.
 6. FTA's Role and Responsibilities – In support of its financial interest in the settlement of claims and litigation involving any federally assisted third-party contracts, FTA has retained its discretion to assert the following rights:
 1. Proceeds Recovered—FTA retains a right to a share of any net proceeds recovered through a third-party contract claim or litigation, in proportion to the amount FTA has committed to the project, unless FTA permits other uses of the proceeds recovered.
 2. Liquidated Damages – If the third-party contract includes a liquidated damages provision, FTA expects MATA to credit any liquidated damages recovered to the project unless FTA permits other uses of the liquidated damages. For example, in negotiating the terms of a claim or litigation settlement, it may be reasonable for MATA to exchange some or all liquidated damages due to MATA for additional property or services.

6.6 Settlements, Arbitration Awards, and/or Court Awards

If MATA's third-party contract using FTA funds involves settlements, arbitration awards, and/or court awards:

1. MATA's Responsibilities - MATA shall secure FTA review and its written concurrence in a proposed or final settlement involving a dispute, claim, or litigation before using Federal assistance to support its costs if one of the following circumstances is present:

- a. The settlement, arbitration award, and/or court award exceeds \$100,000.
- b. When the approved project lacks sufficient funds to cover the settlement costs.
- c. When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste, or fraud.

MATA shall maintain sufficient records to demonstrate that MATA has taken reasonable and prudent measures to prevent or offset the actions or circumstances resulting in the underlying protest, dispute, claim, or litigation.

MATA shall only enter into a settlement if the terms are reasonable. Reasonable settlement may include an agreement by the Contractor to provide extra property or services instead of payments or reduced payments for damages, including liquidated damages.

2. FTA's Prerogatives—FTA reserves the right to review MATA's supporting documentation. If FTA assistance is available, the FTA may provide a prorated share of any eligible costs resulting from protests, disputes, claims, litigation, or settlements that were not caused by MATA's mismanagement or are attributable to the Contractor and were otherwise properly incurred.

Protests, disputes, claims, litigation, or settlements that result from MATA's negligence or error are usually ineligible for FTA participation. FTA reserves the right to determine the extent to which FTA assistance may be used for any dispute, claim, litigation, or settlement caused in whole or part by MATA's negligence or error. Examples of situations that might be caused by MATA's negligence or error include, but are not limited to, the following:

- a. Right-of-Way – Failure to ensure clear access to all needed right-of-way before award of the construction contract.
- b. Utility Agreements – Failure to execute all required utility agreements on time to ensure uninterrupted construction progress.
- c. Planning and Scheduling – Failure to undertake comprehensive project planning and scheduling to achieve proper coordination among contractors.
- d. Subsurface Conditions – Failure to inform potential contractors of all available geotechnical information on subsurface conditions.
- e. Materials Compatibility – Failure to ensure that all materials provided by MATA are compatible with contractor project facilities, equipment, or both and are available when needed.
- f. Pre-Construction Surveys and Engineering – Failure to complete all pre-construction surveys and engineering before issuing the Contractor a Notice to Proceed.
- g. Public Authority Approvals – Failure to complete the necessary approvals and agreements from all other public authorities affected by the project before contract award.

- h. Drawing Approvals—MATA failed to approve and promptly provide the contractor with all design and shop drawings as needed.

7.0 Contract Administration-DBE

The Project Manager and/or User Department shall review the Contractor invoices to ensure that the Contractor's proposed DBE participation levels, accepted by MATA, are met. The Project Manager and/or User Department shall provide for review by the DBE Officer sufficient documentation to support this acceptance. Further, MATA will require the Contractor to report its payment of DBE invoices in each reporting period. DBE participation by the Contractor will be defined and measured by the total amount of the contract, including change orders. As of October 3, 2025, FTA revised 49 CFR Part 26. With this revision, the TNUCP has temporarily suspended its DBE list until all DBE participants have been reevaluated under the newly revised regulation. MATA shall continue DBE compliance, promote participation, utilize best available data, and document good faith efforts during transition.

Based on the Contractor's proposed work plan, suppose there is a slippage in DBE participation. In that case, the Project Manager will notify the Contractor and ask it to justify the slippage in a written report to the Project Manager and provide a written action plan to bring the Contractor back into compliance with its work plan. If slippage continues, the Project Manager shall notify the MATA Contract Administrator, the DBE Officer, and the Legal/Compliance Officer or designee to determine appropriate corrective actions. The DBE Officer shall maintain a journal of DBE contracts awarded for each fiscal year and monitor the actual DBE billings and DBE payments by contract.

MATA POSITIONS INVOLVED IN THE PROCUREMENT PROCESS

1. MATA Board of Commissioners
2. Chief Executive Officer or Trustee(s)
3. Chief of Staff/Chief Operating Officer/Chief Financial Officer
4. Legal/Compliance Officer or Designee
5. Procurement and Inventory Controls Sr. Manager
6. Manager of Purchasing
8. Contract Administrator & Buyer
9. Storeroom Personnel
10. Senior Staff Accountant
11. Staff Accountant
12. Grants Administrator
13. DBE Officer
14. Project Manager
15. Legal/Compliance Officer's Technical Representative
16. User Department
17. Legal Counsel

FTA CIRCULARS

Last updated: Monday, February 3, 2025

<https://www.transit.dot.gov/regulations-and-programs/fta-circulars/circulars>

4200 - Procurement

Circular Number	Subject	Date
C 4220.1G	Third Party Legal/Compliance Guidance	01-16-2025

4700 - Civil Rights

Circular Number	Subject	Date
C 4702.1B	Title VI Requirements and Guidelines for Federal Transit Administration Recipients	10-01-2012
C 4704.1A	Equal Employment Opportunity (EEO) Act Guidance	09-29-2016
C 4710.1	Americans with Disabilities Act Guidance	10-05-2015

5000 - Grants Management - General

Circular Number	Subject	Date
C 5010.1F	Award Management Requirements	09-27-2024
C 5200.1A	Full-Funding Grant Agreements Guidance	12-05-2002

Circular Number	Subject	Date
C 5800.1	Safety and Security Management Guidance for Major Capital Projects	08-01-2007

6000 - Technology Development and Deployment

Circular Number	Subject	Date
C 6100.1E	Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines	04-10-2015

7000 - Policy and Program Development

Circular Number	Subject	Date
C 7050.1C	Joint Development Guidance	01-31-2024

8000 - Planning

Circular Number	Subject	Date
C 8100.1D	Program Guidance for Metropolitan Planning and State Planning and Research Program Grants	09-10-2018

9000 - Capital Facilities and Formula Grant Programs

Circular Number	Subject	Date
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Circular Number	Subject	Date
C 9040.1H	<u>Rural Areas Formula Grants Program Guidance</u>	09-27-2024
C 9050.1A	<u>Urbanized Areas Formula Grant Programs Guidance</u>	09-27-2024
C 9070.1H	<u>Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance</u>	09-27-2024
C 9300.1B	<u>Capital Investment Program Guidance and Application Instructions</u>	11-01-2008
C 9500.1	<u>Intergovernmental Review of FTA Planning, Capital and Operating Programs and Activities</u>	03-30-1984

MATRIX OF FTA THIRD-PARTY CONTRACT CLAUSES

Last revised: February 2026

REQUIRED PROVISIONS FOR THIRD-PARTY CONTRACTS

This table shows clauses or certifications a recipient or subrecipient must include in its contracts under an FTA financial assistance award. Citation “MA 34” refers to the FTA Master Agreement version 34. Later versions of the Master Agreement might vary in their requirements or numbering, so it is important for a recipient to review the version of the Master Agreement that is incorporated into its award.

This guidance document is a supplement to existing Federal statutes, regulations, and guidance and the Federal Transit Administration will not rely upon it independently as a basis for affirmative enforcement actions or other administrative penalty. Conformity with this document (as distinct from existing statutes and regulations) is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations. Contracts must contain the applicable clauses, regardless of procurement method (including applicable micro-purchases).

General Provisions Applicable to All Contracts							Additional Provisions for Contracts for Construction, Mechanics, or Laborers			Additional Provisions for Other Special Situations	
PROVISION	All Contracts	Contracts > \$10K	Contracts > \$25K	Contracts > \$100,000	Contracts > \$150,000	Contracts > Simplified Acquisition Threshold (\$250,000 as of May 2025)	Contracts > \$100,000 Involving Laborers, Mechanics	Prime Construction Contracts > \$2,000	Federally Assisted Construction Contracts	Contracts Under Funding Agreements with Small Businesses or Nonprofits	Contracts Where Ocean Transport is Possible
Federal Tax Liability and Recent Felony Convictions (MA 34 § 4(g))	X	X	X	X	X	X					
Access to Records and Audits (49 U.S.C. § 5325(g), 2 CFR § 200.337 & MA 34 § 9)	X	X	X	X	X	X					
Changes to Federal Requirements (MA 34 § 3(i)(6))	X	X	X	X	X	X					
Civil Rights, Nondiscrimination, and DBE Requirements (49 CFR §§ 26.13 and 26.29; MA 34 § 12))	X	X	X	X	X	X					
Seat Belt Use (62 Fed. Reg. 19217, 23 U.S.C. § 402 note, Executive Order 1304 & MA 34 § 34(a))	X	X	X	X	X	X					
Distracted Driving (74 Fed. Reg. 51225, 23 U.S.C. § 402 note, Executive Order 13513, U.S. DOT Order 3902.10 & MA 34 § 34(b))	X	X	X	X	X	X					

General Provisions Applicable to All Contracts							Additional Provisions for Contracts for Construction, Mechanics, or Laborers			Additional Provisions for Other Special Situations	
PROVISION	All Contracts	Contracts > \$10K	Contracts > \$25K	Contracts > \$100,000	Contracts > \$150,000	Contracts > Simplified Acquisition Threshold (\$250,000 as of May 2025)	Contracts > \$100,000 Involving Laborers, Mechanics	Prime Construction Contracts > \$2,000	Federally Assisted Construction Contracts	Contracts Under Funding Agreements with Small Businesses or Nonprofits	Contracts Where Ocean Transport is Possible
Prohibition on Covered Telecommunications and Video Surveillance Equipment or Services (2 CFR 200.16, 2 CFR Appendix II (K))	X	X	X	X	X	X					
Federal Tax Liability and Recent Felony Convictions (DOT Order 4200.6; MA 34 § 4(g)(2))	X	X	X	X	X	X					
Special Notification Requirements for States (MA 34 §37) *	X	X	X	X	X	X					
Domestic Preferences for Procurements (2 CFR 184, 2 CFR 200.322 & 2 CFR Appendix II (L)) (Note: This is separate from Buy America.)	X	X	X	X	X	X					
Procurement of Recovered Materials (40 CFR 247, 2 CFR 200.323 & 2 CFR Appendix II (J))		X	X	X	X	X					
Termination Clauses (2 CFR Appendix II (B))		X	X	X	X	X					
Notification of Fraud, Waste, Abuse, or Misconduct to the U.S. DOT Inspector General (False Claims Act, 31 U.S.C. § 3729 et seq. & MA 34 §39(b))			X	X	X	X					
Debarment and Suspension (2 CFR 180.220 & 2 CFR 200 Appendix II (H); MA 34 § 4(h)(4) & § 39(b))			X	X	X	X					
Byrd Anti-Lobbying Amendment (31 U.S.C.)				X	X	X					

General Provisions Applicable to All Contracts							Additional Provisions for Contracts for Construction, Mechanics, or Laborers			Additional Provisions for Other Special Situations	
PROVISION	All Contracts	Contracts > \$10K	Contracts > \$25K	Contracts > \$100,000	Contracts > \$150,000	Contracts > Simplified Acquisition Threshold (\$250,000 as of May 2025)	Contracts > \$100,000 Involving Laborers, Mechanics	Prime Construction Contracts > \$2,000	Federally Assisted Construction Contracts	Contracts Under Funding Agreements with Small Businesses or Nonprofits	Contracts Where Ocean Transport is Possible
1352 & 2 CFR Appendix II (I)											
Clean Air (42 U.S.C. 7401-7671g , 2 CFR Appendix II (G)) and Water Acts (33 U.S.C. 1251-1387 & 2 CFR 200 Appendix II (G))					X	X					
Remedies for Breach of Contract (2 CFR 200 Appendix II (A))						X					
Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704 , 29 CFR Part 5 & 2 CFR 200 Appendix II (E))							X	If > \$100k	If > \$100k		
Copeland Anti-Kickback Act ((40 U.S.C. 3145 , (29 CFR Part 3 & 2 CFR 200 Appendix II (D))							If > \$2,000 for construction	X	If > \$2,000		
Davis-Bacon (49 U.S.C. § 5333; 29 CFR Part 5 ; 2 CFR 200 Appendix II (D))							If for construction	X	X		
Veterans Employment Preference (49 U.S.C. § 5325(k), 5 U.S.C. § 2108)							If for construction	X	X		
Rights to Inventions (37 CFR Part 401.14 & 2 CFR 200 Appendix II (F))										X	
Cargo Preference – Use of United States-Flag Commercial Vessels (46 U.S.C. § 55305, 46 CFR Part 381.7 & MA 34 §15(c))											X

*Provision is also required in the solicitation.

Source: MATRIX OF FTA THIRD-PARTY CONTRACT CLAUSES updated February 2026 <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contract-provisions-matrix>

FTA CLAUSES

As funding for this Agreement has been derived in whole or in part from Federal sources, we are required as a federal grantee to include the Federal Clauses listed below in this solicitation, which are herewith incorporated into and made a part of this Agreement.

"Recipient" is the Memphis Area Transit Authority (also referred to as "Agency", "MATA").

"Third Party Participant" is the Vendor proposing or bidding on the solicitation (also referred to as "Proposer", "Contractor", "Bidder").

"Underlying Agreement" refers to the Contract between the Federal Transit Administration (FTA) and MATA.

"Third Party Agreement" refers to any Contract between MATA and Vendor that arises from the solicitation.

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11. Civil rights (Title VI, ADA, EEO) – Applicable to all contracts and rolling stock contracts greater than \$10,000 and Construction contracts over \$2,000
12. Clean Air – Applicable to all Contracts greater than \$100,000
13. Clean Water – Applicable to all Contracts greater than \$150,000
14. Contract Work Hours and Safety Standards Act – Applicable to Operations/Management (transportation services), Rolling Stock and Construction Contracts greater than \$100,000
15. Davis Bacon Act and Copeland Anti-Kickback Act- Applicable to all Construction Contracts greater than \$2,000 (also ferries)
16. Debarment and Suspension - Applicable to all Contracts greater than \$25,000
17. Disadvantage Business enterprises (DBE) – Applicable to all Contracts
18. Domestic Preferences for Procurement** - Applicable to Construction Materials only:
19. Energy Conservation – Applicable to all Contracts
20. False Statements or Claims of Civil and Criminal Fraud – Applicable to all Contracts
21. Federal Tax Liabilities and Recent Felony Convictions – Requires Certifications – All Tiers – Applicable to all Contracts
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48. Conflict of Interest Policy – Employees engaged in procurement must comply with 2 CFR §200.318(c).

1. Access to Third Party Contract Records – Applicable to all Contracts

1. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with [2 C.F.R. §200.334](#). The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with [2 C.F.R. §200.337](#).

4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with [2 C.F.R. §200.337](#).

5. All procurement records shall be retained in accordance with federal and state requirements.

2. ADA Access – Applicable to All Contracts

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.

3. Alcohol and Drug Misuse and Testing – Applicable to Transit Operations Contracts

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with [49 C.F.R. part 655](#), produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under [49 C.F.R. part 655](#) and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

4. Bond Requirements - Applicable to Construction Contracts

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold ([2CFR 200.326](#)), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s requirements under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as

required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under [31 C.F.R. part 22](#) as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.

8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under [31 C.F.R. part 223](#) as possessing a Certificate of Authority as described thereunder.

5. Bus Testing – Applicable to all Rolling Stock Contracts

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under [49 U.S.C. 5318\(e\)](#) and FTA's implementing regulation at [49 C.F.R. part 665](#) to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

6. Buy America Requirements - Applicable to Construction contracts and acquisition of goods or rolling stock more than \$150,000

To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

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, 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. This applies to procurements of \$150,000 and over.

7. Build America –Applicable to Construction materials.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," [2 CFR Part 184](#). The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of [49 CFR Part 661](#) to iron, steel, and manufactured products.

8. Cargo Preference Requirements – Applicable to Rolling Stock, Construction and Material and Supply Contracts using transport by ocean vessel.

To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

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 30 days following the date of loading for shipments originating within the United States, or within 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.

9. Changes to Federal Requirements - Applicable to all Contracts

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

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

10. Charter Service – Applicable to all Operations / Management contracts

The contractor agrees to comply with [49 U.S.C. 5323\(d\)](#), [5323\(r\)](#) and [49 C.F.R. part 604](#), which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically [49 U.S.C. §5323\(d\)](#);
2. FTA regulations, “Charter Service,” [49 C.F.R. part 604](#);
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

11. Civil rights (Title VI, ADA, EEO) – Applicable to all contracts and rolling stock contracts greater than \$10,000 and Construction contracts over \$2,000

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Title VI of the Civil Rights Act of 1964. The CONTRACTOR will comply and will assure the compliance by subcontractors under this Project with all the requirements imposed by Title VI of the Civil Rights Act of 1964 ([42 U.S.C. Section 2000d](#)), the Regulations of DOT issued thereunder, [40 C.F.R. Part 21](#) and the assurances by MATA pursuant thereto.

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.

12. Clean Air – Applicable to all Contracts greater than \$100,000

Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. Consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

Air Quality. The CONTRACTOR agrees to comply with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, [42 U.S.C. §§ 7401 et seq.](#) as follows:

1. The CONTRACTOR agrees to comply with applicable requirements of U.S. Environmental Protection Agency (EPA) regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act”, [40 C.F.R. Part 51, Subpart T](#); and “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” [40 C.F.R. Part 93](#). To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation and control measure incorporated in the Project. The CONTRACTOR 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 transit operators, particularly operators of large transit bus fleets. Thus, the CONTRACTOR should be aware that the following U.E. EPA regulations may apply to its Project: “Control of Air Pollution from Motor-Vehicles and Motor-Vehicle Engines”, [40 C.F.R. Part 85](#); “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures,” [40 C.F.R. Part 86](#); and “Fuel Economy of Motor Vehicles,” [40 C.F.R. Part 600](#).

3. The CONTRACTOR agrees to comply with the notification of violating facilities provisions of [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.

13. Clean Water – Applicable to all Contracts greater than \$150,000

Clean Water. The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Among other things:

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. §§ 300h et seq.

2. The CONTRACTOR agrees to comply with the notification of violating facilities provisions of 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.

14. Contract Work Hours and Safety Standards Act – Applicable to Operations/Management (transportation services), Rolling Stock and Construction Contracts greater than \$100,000

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.

15. Davis Bacon Act and Copeland Anti-Kickback Act- Applicable to all Construction Contracts greater than \$2,000 (also ferries)

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts

Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, 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 he or she is otherwise entitled.

16. Debarment and Suspension - Applicable to all Contracts greater than \$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.

17. Disadvantage Business enterprises (DBE) – Applicable to all Contracts

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.

18. Domestic Preferences for Procurement** - Applicable to Construction Materials only:

**On Domestic Preferences for procurement, FTA's Buy America statute at 49 U.S.C. 5323(j) has, with some exceptions, required all steel, iron, and manufactured products used in a federally funded project to be produced in the United States. A principal effect of Build America Buy America (BABA) is to add construction materials to this list of items. BABA does not change FTA's Buy America standards for steel, iron, or manufactured products including rolling stock (e.g., FTA does not apply the 55% cost-of-components standard to procurements).

19. Energy Conservation – Applicable to all Contracts

The CONTRACTOR shall comply with mandatory energy efficiency standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et. Seq.)

20. False Statements or Claims of Civil and Criminal Fraud – Applicable to all Contracts

The CONTRACTOR acknowledges and agrees that:

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. Federal Tax Liabilities and Recent Felony Convictions – Requires Certifications – All Tiers – Applicable to all Contracts

1. The contractor certifies that it:

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

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

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

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

22. Fly America - Applicable to all Contracts with Foreign air transportation / travel

To the extent applicable, the CONTRACTOR agrees to comply with the following U.S. preference requirements:

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.

23. Incorporation of FTA Terms – Applicable to all Contracts

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 Circular 4220.1G](#), dated January 16, 2025, 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.

24. Lobbying – Applicable to all Contracts greater than \$100,000

Federal regulations require MATA to include certifications from contractors. Accordingly, the CONTRACTOR must sign the attached certification.

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. This applies to procurements of \$100,000 or more.

25. National Intelligent Transportation Systems Architecture and Standards – Applicable to all Contracts with ITS Projects

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.

26. No Federal Government Obligations to Third Parties – Applicable to all Contracts

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.

27. Notice to Third Party Participants – Applicable to all Contracts

The Recipient agrees to include notice in each Third-Party Agreement that:

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

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

28. Patent Rights – Applicable to Research and Development Contracts

a. General. If any invention, improvement, or discovery by the CONTRACTOR 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 CONTRACTOR agrees to notify MATA immediately and provide a detailed report in a format satisfactory to MATA.

b. Federal Rights. The CONTRACTOR agrees that its rights and responsibilities pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waive thereof. Absent a determination in writing to the contrary by the Federal Government, the CONTRACTOR agrees to transmit to MATA those rights due the Federal Government in any invention, improvement, or discovery resulting from the contract as specified in 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 (implementing 35 U.S.C. §§ 200 et seq.), irrespective of the status of MATA or the CONTRACTOR at any tier of the Project (i.e., a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.)

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.

29. Pre-Award and Post-Delivery Audits of Rolling Stock Purchases

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

30. Procurement of Recovered Materials – Applicable to All Contracts

a) A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services

that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

31. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment – Applicable to all Contracts

a) Recipients and sub-recipients are prohibited from obligating or expending loan or grant funds to:

- 1) Procure or obtain;
- 2) Extend or renew a contract to procure or obtain; or
- 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

d) See also § 200.471.

32. Prompt Payment – Applicable to all Contracts

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 Authorized Representative of the agency, 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.

33. Recycled Products – Applicable to Operations / Management, Construction and Material & Supply contracts – EPA -selected items \$10,000 or more annually

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

34. Disputes, Breaches or Other Litigation - Notification of Contractor and/or Subcontractor Agency and Agency Notification to FTA – Applicable to all contract greater than \$50,000

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 authorized representative of the agency, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The Authorized Representative of the agency may consult with the Construction Manager if one has been appointed for this project. The decision of the authorized representative of the agency shall be final and conclusive unless, within 10 days from the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the Authorized Representative of the agency a written appeal addressed to the Chief Executive Officer of MATA. The Chief Executive Officer shall review the dispute, related documents and the authorized representative of the agency's Final Decision. The Chief Executive Officer may consult with the Construction Manager and the authorized representative of the agency. The decision of the Chief Executive Officer shall be final and conclusive unless, within 10 days from the date of the receipt of such copy, the CONTRACTOR mails or otherwise furnishes to the authorized representative of the agency 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 authorized representative of the agency's decision.

b. This Section 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.

35. Rights in Data and Copyrights - Applicable to Research and Development Contracts

a. Definition. The term "subject data" used in this Section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. 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" does not include financial reports, cost analyses, or similar information used for contract administration.

b. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the contract:

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 written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.

2. The restriction on publication of Subsection 23.b. (1) of this contract, however, does not apply to a contract with an institution of higher learning.

c. Federal Rights in Data and Copyrights. MATA and the CONTRACTOR agree 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 proposes the "subject data" described in Subsections 23.c. (1) and 23.c. (2) of this CONTRACT. 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 of the Federal Government's license to:

1. Any subject data developed under the contract, whether or not a copyright has been obtained; and

2. Any rights of copyright to which MATA and/or the CONTRACTOR purchase ownership with Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies (Planning) Projects. In general, FTA's purpose in providing financial assistance for a special studies (planning), research, development, or demonstration Project is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, MATA agrees that, in addition to the rights in data and copyrights of Subsection 23.c of this contract, FTA may make available to MATA or the CONTRACTOR, 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 23.a of this contract and shall be delivered as the Federal Government may direct. This Subsection 23.d. of this CONTRACT, however, does not apply to adaptations of automatic data processing equipment or programs for MATA's use when the costs thereof are financed with Federal funds for capital projects.

e. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, MATA and the CONTRACTOR agree 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 MATA or 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 this contract. MATA nor the CONTRACTOR shall be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in this Section 23 of this contract pertaining to rights in data shall 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.

g. Statutory 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 Organization,” at 49 C.F.R. § 19.36(d), or by subsequent Federal laws or regulations, MATA and the CONTRACTOR understand and agree that the data and information submitted to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal statute providing access to such records).

36. Rights to Inventions Made Under a Contract or Agreement - Applicable to Research and Development w/ Small Business or Non-Profit

(in clause above)

37. Safe Operation of a Motor Vehicle – Applicable to all Contracts

Seat Belt Use

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

Distracted Driving

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

38. School Bus Operations – Applicable to all Operations/ Management Contracts

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

39. Seismic Safety – Applicable to all A&E for New Building & Additions and all Construction for New Building & Additions

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.

40. Severability

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

41. Simplified Acquisition Threshold – (\$350,000)

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

42. Special Notification Requirements for States

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

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

2. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

43. Substance Abuse.

a. Drug-Free Workplace. The Recipient agrees to:

1. Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.;

2. Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and
 3. Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.
- b. Alcohol Misuse and Prohibited Drug Use.
1. Requirements. The Recipient agrees to comply and assures that its Third-Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.
 2. Remedies for Non-Compliance. The Recipient agrees that if FTA determines that the Recipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

44. Termination – Applicable to all contracts more than \$10,000

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 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.

45. Trafficking in Persons – Applicable to all Contracts

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

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

46. Transit Employee Protective Arrangements – Applicable to all Transit Operations Contracts

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

47. Veteran's Employment Preference – Applicable to all Construction Contracts

Recipients and sub-recipients 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.

48. Conflict of Interest Policy – Employees engaged in procurement must comply with 2 CFR §200.318(c).

REQUIRED TDOT CONTRACT CLAUSES

Conflicts of Interest.

The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract.

Employees engaged in procurement must comply with 2 CFR §200.318(c).

Lobbying.

The Grantee certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 federally appropriated 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 contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, 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 and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352

Nondiscrimination.

The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Public Accountability.

If the Grantee is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

Public Notice.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee, Department of Transportation." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

Records.

The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

Environmental Tobacco Smoke.

Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn Code Ann. §§39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract.

RESPONSIBLE PARTY

Procurement Department / Contract Administrator/Legal

IMPLEMENTATION DATE

Effective immediately upon approval of this Corrective Action Plan and applied to all future solicitations and contracts.

MONITORING AND COMPLIANCE

- Contracts will be reviewed by MATA's Legal Team prior to execution to ensure inclusion of required TDOT State Clauses.
- Periodic internal audits will be conducted to verify ongoing compliance.

Memphis Area Transit Authority Responsibility Determination Form

Date: _____

Vendor/Contractor: _____

IFB/RFP No.-Name: _____

For each area described below, check that the appropriate research has been accomplished and briefly describe the research and the results. Use "Comment" to describe the documentation that was reviewed to arrive at the acceptability rating. **The user must attach all documentation used to determine that the vendor met the responsibility requirement.**

1. Appropriate administrative, financial, technical, equipment/facility/production, and personnel capacity: (Attach supporting memorandum, organization charts, financial statements, bank references, etc.)

Acceptable: YES NO

Perform an Internet Search: YES NO

Comment: _____

2. Does the Vendor/Contractor meet the responsibility requirements outlined in the RFP/IFB Scope related to the following (based on possible evaluation criteria):

Qualifications: YES NO

Year Project Experience: YES NO

Other Mandatory Requirements: YES NO

Comment: _____

3. Satisfactory period of performance: (Attach supporting memorandum, references, etc.)

Acceptable: YES NO

Comment: _____

4. Satisfactory record of past performance:

Acceptable: YES NO
Repeat Vendor: YES NO

Comment: _____

5. Receipt of necessary Exhibits from Supplier: (Attach Forms)

Acceptable: YES NO
Did you receive the required forms: YES NO

Comment: _____

6. Screen print from SAM.gov verifying Suspension and Debarment Certification (copy attached):

Acceptable: YES NO

Based on the above information, the undersigned Buyer determines that the vendor is a responsible contractor.

Project Manager: _____ Date: _____

Contract Admin: _____ Date: _____

Chief Administrative Officer _____ Date: _____

INDEPENDENT COST ESTIMATE
ATTACH THIS DOCUMENT TO REQUISITION

An ICE is not completed using quotes; it is completed using estimates from an independent source other than for this project. Obtaining invoices from previous similar projects or projects from other systems or agencies is strongly suggested. **Procurement will NOT begin until ICE is completed.**

DATE: _____ NAME OF SUBMITTER: _____

DEPARTMENT: _____ ACCT/GRANT # _____

CONTRACT TYPE: Fixed price Cost Reimbursement Time & Material Labor Hour Contract

RFP RFQ IFB RFQ Other _____
 Request for Qualification Request for Quote
 Sole Source
 Single Source
 Piggyback
 Non-Competitive

FUNDING SOURCE: State Federal Grant # _____

COST ESTIMATE DETAILS: Details for the estimated price/cost identified are shown below:

COST OF STANDARD ITEMS				
Vendor/Cost Source	Product	Unit Cost (\$/each) Delivered	Unit Cost (\$/each) No Freight	Notes

OR

COST OF SERVICES, REPAIRS, OR NON-STANDARD ITEMS								
Vendor/Cost Source	Materials	Other Direct Cost	Labor, rate hours	Labor Class	Allocated Overhead	Selling Goods & Admin	Profit	Total

Note: For complex projects or tasks, attach additional supporting documentation as appropriate.

PRODUCT OR SERVICE REQUIRED (BE DESCRIPTIVE AS POSSIBLE)

Method of Obtaining Estimate: (check all that apply)

Attach additional documentation such as previous pricing documentation, email, internet screenshots, etc.

For professional services, attach estimated labor hours by labor category, labor rates, overhead rate, profit, materials, travel, etc.

- Published Price List _____
- Catalog /Advertised Price _____
SOURCE: (i.e. PUBLICATION, MEDIA, INTERNET) COMPANY or MANUFACTURER NAME (ATTACH DOCUMENTATION)
- Fax / Telephone Quotes within a similar price range (ATTACH DOCUMENTATION)
Historical Pricing (attach documentation from previous contract/PO) *No older than 6 months.*
- Comparable purchases from other Agencies (attach correspondence and documents)
- Engineering or Technical Estimates (attach documents)
- Independent Third-party estimate (attach documents)
- Other (specify) (attach documents. _____

SIGNATURE _____

DATE: _____

INDEPENDENT COST ESTIMATE (ICE) TIPS AND TRICKS

Clearly define the scope of work to be performed, including any specifications, requirements, and timelines.

Identify all potential costs associated with the project, including direct costs (such as materials and labor) and indirect costs (such as overhead, profit, and administrative expenses).

Use historical data, published unit costs, and other relevant sources to estimate costs and document all assumptions and methodologies used.

Verify that all cost elements are included in the estimate and that there are no omissions or duplications.

Ensure that the estimate is realistic and reflects current market prices, including factors that can affect prices, such as resource availability or supply chain issues.

Common ICE Methods:

- A. Publicly published price lists
- B. Recently invoiced price / Previous Purchases
- C. Outreach/market survey
- D. Other Tips & Tricks

A. Publicly published price lists:

Typically appropriate for goods, price lists or catalogs are acceptable price sources for off-the-shelf items such as technology and office supplies. Price lists are often available online or in printed advertisements, and prices posted on a store shelf are also acceptable.



Sales Rep: Mike Weaver
 Phone #: 901-870-1770
 Quote: 40936.1
 Created: 12/19/2023

Quote To: MEMPHIS AREA TRANSIT AUTHORITY
 750230
 ATTN: ACCOUNTS PAYABLE
 1370 LEVEE ROAD
 MEMPHIS, TN 38108 1011

Ln#	Product	U/M	Qty	Unit Price	Extended
1	084899 Calendar, Ers, Vrt/Hz, 32x48 1 EA/EA	EA	8.00	35.93	287.44
2	1094078 Hardboard Clipboard, 1" Cap, 8 1/2 x 14, Brown, 3/Pack 3 EA/PK	PK	2.00	9.24	18.48
3	1116052 File, Latr, 4dwr, 42" Wde, Py 1 EA/EA	EA	1.00	1,030.72	1,030.72
4	1062363 Round Ring Binder, 3 Rings 2" Capacity, 11 x 8.5, White 1 EA/EA	EA	50.00	16.17	808.50
5	1031306 File, 4 Drawer Lateral, Pty 1 EA/EA	EA	1.00	947.78	947.78
Total					3,092.92

Purchasing has catalogs for office supplies, uniforms, etc.

Catalogs will need to be returned prior to order being completed.



16 inch laptop computers with 16 GB Ram

All Shopping Images Forums Videos News Web More Tools

3 results

Solid State Drive Touchscreen Under \$450 Over 4.8 GHz CPU 3.4 - 4.8 GHz CPU 7 - 10 hours battery life 2.2 - 3.4 GHz CPU

- Type
- Hard State Drive
- Hard Disk Drive
- es
- Touchscreen
- with Backlit Keyboard
- Gaming
- Invertible
- re

Sponsored

<p>Dell Inspiron 16 Laptop - w/... \$599.99 \$750 Dell Free by 7/11</p>	<p>Dell - 14 inches - 16 GB RAM ... \$715.99 CDW ★★★★★ (520)</p>	<p>Dell Latitude 3540 - 15.6 -... \$1,125.99 CDW ★★★★★ (1k+)</p>	<p>Lenovo ThinkBook 16... \$752.99 CDW ★★★★★ (535)</p>	<p>Lenovo ThinkPad E16... \$893.99 CDW ★★★★★ (547)</p>	<p>HP - 17.3 inches - 16 G... \$549.99 HP ★★★★★ (89)</p>	<p>Dell Latitude 5550 - 15.6-... \$1,370.99 Insight 30-day return...</p>	<p>Lenovo ThinkBook 16... \$953.47 Lenovo ★★★★★ (184)</p>
--	--	--	--	--	--	--	---

450

Sponsored

B. Recently invoiced price/Previous Purchases:

Typically, it is appropriate for goods or services. If a user department/project manager recently purchased similar goods or services, a recent invoice may help determine a fair and reasonable price. Recently, this may vary according to circumstances (purchases that exceed three years may not reflect the relevant cost. The user department may have to calculate inflation if there has not been a major shift in market standards). -- MATA considers technology procurements over 6 months old insufficient to determine a current fair and reasonable price range.



Approved by *T. Garcia*
1/16/24

Allworld Project Management
60 N BB King
Memphis, TN 38103
901-881-2985

Note: Old invoices, price analysis, purchase orders, etc. (older than 2 years) will need to be calculated for inflation.

Memphis Area Transport Authority
1370 Levee Road
Memphis, TN 38108
John Lancaster

Invoice number 25360
Date 01/08/2024

Project **Project MATA Program Management - Bus Electrification**

P.O. Number: 2022-0002484

See Attached Monthly DBE Participation Report.

Invoice Summary

Description	Contract Amount	Prior Billed	Remaining	Current Billed
TASK 1 FACILITATE PROGRAM MANAGEMENT	486,929.93	503,038.10	-22,156.17	6,048.00
TASK 2 DEVELOP DEMONSTRATION PROGRAM	70,465.50	50,954.20	13,852.32	5,658.98
TASK 3 COORDINATE DEMONSTRATION PROGRAM	0.00	0.00	0.00	0.00
TASK 4 COORDINATE MLGW AND TVA ELECTRIC DEMAND	31,892.50	22,459.74	9,432.76	0.00
TASK 5 DEVELOP CHARGING INFRASTRUCTURE PROGRAM	102,303.93	119,525.88	-17,221.95	0.00
TASK 6 DEVELOP BUS PROCUREMENT SPECIFICATIONS	122,425.64	100,325.09	22,100.55	0.00
Total	814,017.50	796,303.01	6,007.51	11,706.98

Professional Fees

Task 1 Facilitate Program Management

Billable Time

David K. Oppong

Professional 2
(Planner/Engineer/Architect/Economist)

Corresponded with MATA Staff

Coordinated with team to prepare for OAC Meeting
Coordinated sub-consultant activity

Coordinated with MATA Procurement
Coordinated sub-consultant activity

Prepared for MATA OAC Meeting for EV Chargers
Facilitated OAC Meeting and conducted site walk

Coordinated with client

Date	Hours	Rate	Billed Amount
12/01/2023	1.00	150.00	150.00
12/04/2023	3.00	150.00	450.00
12/05/2023	2.00	150.00	300.00
12/06/2023	4.00	150.00	600.00
12/07/2023	2.00	150.00	300.00

Memphis Area Transport Authority

Invoice number 25360

Invoice date 01/08/2024

Page 1 of 3

37 L



INVOICE

716001893-1

Page 1
Invoice Date: 06/05/2024

Ship To:
MATA
1370 Levee Road
Memphis, TN 38108
James Hathcock
901-722-7131

Description	Period	Unit Price	Amount
LABOR		95.00	3,515.00

LABOR
Work Performed 4/29/24 - 5/3/24
37 hours - 2.5 for meal breaks = 34.5 hours
Includes trolley trip on 4/29/24

Subtotal:	\$3,515.00
Tax:	\$0.00
Total Amount:	\$3,515.00

Due to the increased Credit Card processing fees, as of March 1st, 2017 we will charge a 2.5% fee for all Credit Card/P Cards that are not swiped at our office. Checks, ACH and Cash will not incur Processing fees.

J. Hathcock
R20245452 - old acc # opened on 5/29 closed on 5/31
0060
503530
R20245594 - new Rec.

C. Outreach/market survey:

Typically, it is appropriate for goods or services. A user department/project manager may contact other agencies to determine a fair and reasonable price, so long as the agency is of similar size and the purchase or project is of similar scope.

Reach out to other transit agencies. (some examples below)

DART – Dallas

MARTA - Atlanta

WEGO – Nashville

CARTA – Chattanooga

JTAFLA – Jacksonville

D. Other Tips and Tricks

Calculating for Inflation

What is the current inflation rate?

Google: [Current Inflation Rate Percentage](#)

Inflation Calculators

US Inflation Calculator: [Inflation Calculator](#)

Bureau of Labor Statistics: [BLS Inflation Calculator](#)

US Inflation Calculator: [US Inflation Calculator](#)

Finding employment Wages:

Bureau of Labor Statistics: [BLS Quarterly Census of Employment and Wages](#)

SOLE SOURCE JUSTIFICATION GUIDELINES

Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a non-competitive negotiation that must comply with this.

The following are examples of explanations for Sole/Single Source Justifications (SSJ):

- a. The item is available from only a single source. After solicitation of a number of sources, competition is determined inadequate.
- b. Time is of the essence, and only one known source can meet MATA's needs within the required timeframe; administrative delays do not justify the urgency of **SSJ**.
- c. Data is unavailable for competitive procurement.
- d. The item being acquired must be compatible and interchangeable with existing equipment (for example, Maintenance or upgrades for software used by MATA).
- e. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the replacement item. MATA will certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers; or
- f. Even if a procurement meets all other criteria for a sole source procurement unless it also fits within one of the above-listed categories under City law, the procurement must be formally advertised if it is \$50,000 or over.

Important:

- a. Written justification for any sole source or single bid procurement shall be maintained in the contract file by the Contract Administrator. Such justification shall include a market survey and the basis for determining the fair and reasonable price

Reasonableness of Price: A few ways that this can be documented are listed below:

- The vendor's published price list and documented discount
- Invoices or cost sheets from prior state contracts
- Comparisons to other vendors' prices for similar products/services (RFQ)
- Comparison to similar purchases by other agencies
- Price or cost analysis
- Historical cost or price comparison

Requesting Department:
Description of Service/product:
Vendor Name:
Total Projected Costs:
Attached ICE: <input type="checkbox"/>
Sole Source: Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate.

JUSTIFICATION /SELECT WHAT IS APPLICABLE

<input type="checkbox"/>	Item Only Available from One Source. (<u>Explain in detail how this service or product can be purchased from one source</u>). •
<input type="checkbox"/>	Time Constraints & only one known source. (<u>Explain in detail how this service or product can alleviate time constraints (NOTE: administrative delays do not justify urgency for SSJ.)</u>). •
<input type="checkbox"/>	Threat to Property. (<u>Explain in detail how this service product can alleviate a threat to property</u>). •
<input type="checkbox"/>	Detrimental effect on MATA's operation: (<u>Explain in detail how this service or product can alleviate a detrimental effect on operation</u>). •
<input type="checkbox"/>	Compatibility/interchangeability with existing equipment: (<u>Explain in detail how this service or product will be interchangeable with current equipment.</u>). •
I certify that the statements checked and the information provided above is complete and correct to the best of my knowledge. I understand that processing this single/sole source justification precludes the use of full and open competition.	

USER DEPARTMENT SIGNATORY

SIGNATURE: _____ TITLE: _____ DATE: _____

PRINTED NAME: _____

PURCHASING OFFICE

SIGNATURE: _____ TITLE: _____ DATE: _____

PRINTED NAME: _____

Emergency Purchase Justification

Emergency Purchase procurements must be properly justified in writing by the User Department to the satisfaction of the Purchasing Office

STEPS FOR APPROVING EMERGENCY PURCHASE JUSTIFICATION GUIDELINES

- The user department identifies an “emergency purchase” and receives at least three quotes for the services/products.
- The user department completes the emergency purchase justification form with all backup documentation (ICE and three quotes. Note: you cannot use the three quotes for your ICE).
- User department submits a copy of the justification form to the CEO or designate for review and approval.
- The CEO or designee will either approve or deny the request. If a request is approved, the CEO will determine if the purchase should be made immediately or if it can wait for board approval.

Emergency purchases are presented to the Board and/or Trustee(s) for approval or, in some cases, ratification of all emergency procurements of equipment or services totaling \$100,000.00 or greater. Simultaneously, the Legal and Compliance Officer must make a written finding for each emergency purchase totaling \$100,000.00 or greater, which must be publicly announced at the next Board meeting at which contracts are awarded.

MATA Procurement Summary

Procurement Number/Type: _____ Contract Administrator: _____

Procurement Name: _____

Project Manager: _____

Explain each category for the entirety of this procurement in detail. (pictures, emails, and additional documents are needed).

<input type="checkbox"/>	The rationale for the method of procurement (why are we using this type of procurement?):
	-
<input type="checkbox"/>	Selection of contract type (What type of contract is this and why?):
	-
<input type="checkbox"/>	Reason for contractor selection or rejection (why were they deemed responsible/reasonable? (Responsibility Form)):
	-
<input type="checkbox"/>	Attach Bid/Proposal Analysis
<input type="checkbox"/>	Cost / Price Analysis- (How is it Fair and Reasonable/calculations (attach Files):
	-

<input type="checkbox"/>	DBE Notes (Is the DBE selected certified to work in TN. How did the DBE determine DBE Goal):
	-
<input type="checkbox"/>	Evaluation Summary (what is the group concession for picking who was picked):
	-
<input type="checkbox"/>	Change Order Reasoning (whatever change is, it can be shown that the change can be made reasonably in the scope of the original contract (in detail w/calculations of price determination):
	-
<input type="checkbox"/>	Cost/Price Analysis of Change Orders:
	-
<input type="checkbox"/>	Construction Inspection Summary (are there any issues, photos, surveys, notes from consultants (attach files):

<input type="checkbox"/>	Beginning of project:
	-
<input type="checkbox"/>	Middle of Project:
	-
<input type="checkbox"/>	End of project:
	-
<input type="checkbox"/>	Product Delivery Summary (<u>Project manager</u>, is the product up to standard, has everything been received as needed, are the photos, signed documents, etc.) (attach files):
<input type="checkbox"/>	Procurement Closeout (what is the outcome of this procurement?):
<input type="checkbox"/>	Lessons Learned:

CONTRACT NO _____ CHANGE ORDER NO: _____ FTA GRANT NO: _____

DATE: _____ TASK ORDER NO: _____ CONTRACT DATE: _____

CONTRACT FOR: _____

TO: _____

You are directed to make the changes specified in the subject contract as authorized by the MEMPHIS AREA TRANSIT AUTHORITY.

BY: _____ TITLE: _____ EFFECTIVE DATE: _____

NATURE OF CHANGE: _____

TOTAL AMOUNT OF THIS CHANGE ORDER: _____ \$ _____

THE CHANGES RESULT IN THE FOLLOWING ADJUSTMENT OF CONTRACT PRICE AND CONTRACT TIME:

Original Contract Price	\$ _____
Previously Executed Changes (0)	\$ _____
Contract Price Before This Change	\$ _____
Net Increase/(Decrease) From This Change	\$ _____
Current Contract Price Including This Change	\$ _____
Contract Time Before This Change	_____
Net Increase/(Decrease) From This Change	_____
Current Contract Time Including This Change	_____

The Above Changes are Accepted: _____ Company _____

BY: _____ TITLE: _____ DATE: _____