



# ***REQUEST FOR PROPOSAL***

**SUBJECT:** *Program Management Services*

**DATE:** *February 17, 2021*

**PROPOSAL NO.:** *21-09*

**PROPOSAL DUE:** *March 9, 2021 @ 10:00 a.m. Local Time*

The **Memphis Area Transit Authority** invites Proposals for Program Management Services set forth above in accordance with the specifications enclosed herewith.

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

Sincerely,

Shelia Maclin  
Manager of Purchasing

## COMMON PROBLEMS WITH PROPOSAL SUBMITTAL

- Missing or unsigned copies of certain forms and certifications. The following must be included in the proposal:
  - Addenda Acknowledgement Form
  - Affidavit of Non-Collusion (Exhibit I)
  - Buy America Certificate (Exhibit II)
  - Certification of Primary Participation Regarding Debarment, Suspension, and Other Responsibility Matters (Exhibit III)
  - Certification of Lower-Tier Participants (Subcontractors), Debarment, Suspension, Ineligibility and Voluntary Exclusion (Exhibit III)
  - Certification of Restrictions on Lobbying (Exhibit IV)
  - Certification of Utilization of Disadvantaged Business Enterprises
  - Letter of Intent to Perform as a DBE Subcontractor
  - Schedule of DBE Participation
  - Explanation of "No Response"
  - Cost Proposal Form
  
- Incomplete or outdated information on client references and/or sufficient number of references provided.
  
- Submittal of too few copies. The RFP specifies the number of originals and number of copies of the bid to be provided. One electronic file w/cost proposal provided in separate electronic file.
  
- Failure to include adequate documentation about the role of subcontractors in the project.
  
- Failure to properly label the bid package with bid label.
  
- Proposal received late. All proposals must be in MATA's possession by the deadline shown in the proposal. All proposals received after the deadline will be returned unopened.

## TABLE OF CONTENTS

### ADVERTISEMENT

#### SECTION A INSTRUCTIONS TO PROPOSERS

- 1.0 General
- 2.0 Proposal Requirements
- 3.0 Proposal Format
- 4.0 Proposal Procedures
- 5.0 Proposal Evaluation and Award
- 6.0 Protests
- 7.0 Disadvantaged Business Enterprises

#### SECTION B SCOPE OF SERVICES

#### SECTION C REQUIRED FORMS AND CERTIFICATIONS

- Addenda Acknowledgement Form
- Affidavit of Non-Collusion (Exhibit I)
- Buy America Certificate (Exhibit II)
- Certification of Primary Participation Regarding Debarment, Suspension, and Other Responsibility Matters (Exhibit III)
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- Certification of Utilization of Disadvantaged Business Enterprises
- Letter of Intent to Perform as a DBE Subcontractor
- Schedule of DBE Participation
- Explanation of "No Response"
- Cost Proposal Form

#### SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

#### ATTACHMENT 1 GENERAL PROVISIONS FOR CONSTRUCTION

**MEMPHIS AREA TRANSIT AUTHORITY**  
**LEGAL NOTICE TO PROPOSERS**

Proposals will be received by the Memphis Area Transit Authority (MATA) at its Purchasing Offices, 1330 Levee Road, Memphis, TN 38108, until **10:00 a.m., local time on March 9, 2021**, for furnishing the following:

**Program Management Services**

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

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

Further information and proposal requirements may be obtained by contacting, Shelia Maclin, Manager of Purchasing at 901-722-7102.

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

The Memphis Area Transit Authority reserves the right to reject any and all Proposals, and to waive any informality in proposals.

GARY ROSENFELD  
CHIEF EXECUTIVE OFFICER

February 17, March 3, 2021

**SECTION A**  
**INSTRUCTIONS TO PROPOSERS**

**SECTION A  
INSTRUCTIONS TO PROPOSERS**

**1.0 GENERAL**

- 1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) request Proposals from firms qualified to provide Program Management Services for a period of up to five (5) years beginning about April 1, 2021 and ending March 31, 2026 as to the Capital Projects included in Transit Vision, development of an electric bus program and other capital projects identified in Section B Scope of Services "Background."

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

- 1.2 "Purchaser" or "Grantee", means MATA. The words "Proposal" and "offer" are synonymous and it is understood that once MATA accepts the same, the document will constitute the contract contemplated by these instructions. The words "contract" and "lease" are synonymous. The words "Proposer", "Contractor", "Vendor" and "Tenant" are also synonymous.
- 1.3 This Request For Proposal (RFP) does not commit MATA to award a contract or pay any costs incurred in preparation of Proposals in response to the RFP. Proposers shall be responsible for all costs incurred as part of their participation in the pre-award process.

- 1.4 **Proposals will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN 38108, 10:00 a.m., local time on March 9, 2021. PROPOSALS RECEIVED AFTER THIS DATE AND TIME WILL BE RETURNED TO THE PROPOSER UNOPENED.**

**An electronic file(s) of the Proposal and all related documents shall be submitted to MATA. Cost proposals should be provided in a separate electronic file to the attention [smaclin@matatransit.com](mailto:smaclin@matatransit.com)**

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

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

**Proposers are reminded that all Proposals must be securely sealed, have the enclosed label attached and be clearly marked "Proposal".**

**Proposers may verify receipt of Proposals by contacting MATA at (901) 722-7102.**

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

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

1.6 In order to preserve the integrity of the competitive selection process and to avoid institutional or organizational conflicts of interest in the design, competitive procurement process and contract administration of projects identified in this Request For Proposal, the successful Proposer and all members of its team shall be precluded from submitting Proposals (including as a sub-Proposer) or otherwise participating in such projects in any capacity other than the Contract for Program Management services awarded pursuant to this Request For Proposal and any amendments thereto.

## **2.0 PROPOSAL REQUIREMENTS**

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

2.2 The Proposer shall provide all the work described in Section B - Scope of Services.

2.3 The price quoted in any Proposal shall include all labor, materials, tools, equipment and other costs necessary to fully complete the work as set forth in the Scope of Services. Anything omitted from the scope of work, which is clearly necessary for the completion of the work, should be considered a portion of the Proposal.

## **3.0 PROPOSAL FORMAT**

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

- A. Proposal Forms and Attachments (electronic file w/cost proposal in separate electronic file)
  - 1) Addenda Acknowledgement Form
  - 2) Cost Proposal Form (see General Provisions, Section 11)
  - 3) Affidavit of Non-Collusion Exhibit I (See General Provisions, Section 1)
  - 4) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Covered Transaction Exhibit III (See General Provisions, Section 30)
  - 5) Certification of Primary Participation Regarding Debarment, Suspension and Other Responsibility Matters Exhibit III (See General Provisions, Section 30)
  - 6) Certification of Restrictions on Lobbying Exhibit IV (See Section 43)
  - 7) References According to General Provisions (See General Provisions, Section 26)
  - 8) Certification of Utilization of Disadvantaged Business Enterprises
  - 9) Letter of Intent to Perform as a DBE Contractor or Subcontractor
  - 10) Schedule of DBE Participation

## **4.0 PROPOSAL PROCEDURES**

4.1 MATA reserves the right to postpone the Proposal due date for its own convenience and to waive any minor informalities in Proposal submission, which do not go to the heart of the Proposal or

prejudice other Proposers, or to reject, for good and compelling reasons, any and all Proposals submitted.

- 4.2 Changes to the instructions and or specifications will be made by written addendum by MATA and will be forwarded to all persons and firms to whom Proposal documents have been submitted. **ANY VERBAL COMMUNICATION IS NOT CONSIDERED MATA'S OFFICIAL RESPONSE.**
- 4.3 Requests for clarification must be submitted in writing to Shelia Maclin, MATA, 1330 Levee Road, Memphis, TN 38108 and must be received **no later than 3:00 p.m. local time, February 25, 2021** in accordance with the procedures described in the General Contract Provisions. Requests may be faxed to (901) 272-2912 or (901) 274-5866 or email [smaclin@matatransit.com](mailto:smaclin@matatransit.com) **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.**
- 4.4 Proposers shall submit one electronic file with one separate electronic cost proposal file. Proposals shall be securely sealed to prevent access prior to the Proposal closing date. Proposals shall be clearly marked with the enclosed label attached.
- 4.5 Proposals shall be valid for a minimum period of 90 days subsequent to the Proposal closing date. Proposals offering less than 90 days for acceptance by MATA from the Proposal closing date will be considered non-responsive.

## **5.0 PROPOSAL EVALUATIONS AND AWARD**

- 5.1 MATA is using a competitive, qualifications-based procurement for the Program Management Services Contract in keeping with the Brooks Act and FTA requirements for professional services. This program management services contract will include architectural and engineering services, program management, construction management, and other professional services which will require performance by registered or licensed architects and engineers. The Evaluation Committee will evaluate the proposals and establish a competitive range for this procurement. The Evaluation Committee may request interviews with the firms in the competitive range. MATA reserves the right to enter into negotiations with the top ranked Proposer without requesting interviews. The Contracting Officer will negotiate separately with each Proposer whose proposal falls within the competitive range.
- 5.2 Negotiations will be in conformance with applicable federal, state, and local laws, regulations, and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract price.
- 5.3 MATA reserves the right to make contract award based upon the most highly qualified proposals without requesting best and final offers.
- 5.4 MATA reserves the right to reject any and all proposals or to waive minor informalities and irregularities in offers received.
- 5.5 A written notice of award or acceptance of offer, mailed or otherwise furnished the successful Proposer within the time specified in the proposal, shall be deemed to result in a binding contract.
- 5.6 Proposals will be evaluated as "Best Value" per the Federal Transit Administration's (FTA) Circular 4220.1F and Best Practices Manual, defined as follows:

"Best Value" is a selection process in which proposals contain both cost and qualitative components, and award is based upon a combination of cost and qualitative considerations. Qualitative

considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and cost factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.”

MATA will make the award to the responsible Proposer whose proposal is most advantageous. Accordingly, MATA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest Cost Proposal if doing so would not be in the overall best interest to MATA.

The overall criteria listed below are listed in relative order of importance. Technical factors as a whole are more important than cost.

All proposals will be evaluated by the following evaluation criteria:

- A. Technical Qualifications
  - a. Personnel qualifications/background and experience as to (1) projects similar to MATA's and (2) Public Private Partnerships (PPP) projects.
  - b. Firm's knowledge of transit industry and regulations
  - c. Availability of principal personnel
  - d. Capacity to be responsive in a timely manner to MATA's needs
- B. Overall Cost [electronic separately, or in a sealed envelope]

The Evaluation Committee will make an initial review of the Proposals to eliminate those that do not comply with the minimum submittal requirements. The committee will establish a competitive range of responsive proposals that would provide MATA the best value to meet the needs and terms of the solicitation.

## **6.0 PROTESTS**

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

## **7.0 DISADVANTAGED BUSINESS ENTERPRISE**

### **7.1 GENERAL DBE INFORMATION**

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

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

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

In developing its Proposal, all Proposers are encouraged to thoroughly and carefully identify portions of the project that could be performed by DBEs, including but not limited to determining whether portions of the services to be provided pursuant to the RFP can appropriately be unbundled and performed by disciplines. Proposers shall also consider the range and nature of services that will be or likely to be provided pursuant to the Request For Proposals, and to develop components and third-party contracting opportunities that will encourage DBE participation.

The following rules apply to Disadvantaged Business Enterprise participation by firms/teams:

- Only certified Disadvantaged Business Enterprises can be counted toward the goal. Participation by certified “Minority Business Enterprises” (MBE) or certified “Woman Owned Business Enterprises” (WBE) cannot be counted toward the goal. While participation by MBEs and WBEs is encouraged, MATA is governed by the U.S. Department of Transportation program which only recognizes the designation of DBE.
- DBEs must be certified in Tennessee.
- MATA is a member of the Tennessee Unified Certification Program (TN UCP) and accepts Tennessee DBE certifications from the following entities:
  - Memphis Area Transit Authority
  - Tennessee Department of Transportation Unified Certification Program
  - Uniform Certification Agency (managed by the Mid-South Minority Business Council)

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

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

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

## 7.2 DBE GOAL

### A. Annual Overall Goal for DBE Participation

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

B. DBE Goal Applicable to This Contract

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

7.3 DBE ELIGIBILITY AND PARTICIPATION

A. Evaluation of DBE Certification Status

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

B. Determination of Amount of DBE Participation

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

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

The Contractor shall count DBE participation according to the following guidelines and in accordance with 49 CFR §26.55:

- i. DBE Prime Contractor – Count the entire dollar amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as DBE participation by the DBE Prime Contractor.
- ii. DBE Subcontractor – Count the entire amount of the work performed or services provided by the DBE's own forces, including the cost of materials and supplies obtained for the work, except for materials and supplies purchased or leased from the Prime Contractor, and reasonable fees and commissions charged for the services. Do not count any work subcontracted by the DBE Subcontractor to another firm as DBE Participation by said DBE subcontractor. If the work has been subcontracted to another DBE, it will be counted as DBE participation for that other DBE.

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

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

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

**END OF SECTION**

**SECTION B**  
**SCOPE OF SERVICES**

## **SECTION B**

### **SCOPE OF SERVICES**

#### **Background**

The Memphis Area Transit Authority (MATA) is the public transportation provider for the Memphis area. It is a public transportation system and transit authority established pursuant to state and local law. MATA was created by the City of Memphis and is governed by a Board of Commissioners who are nominated by the City of Memphis Mayor and approved by the Memphis City Council. Total employment is about 500.

The City of Memphis purchased a private sector bus company in 1960, and thereafter created the Memphis Transit Authority. The Memphis Area Transit Authority was created under and by virtue of Tennessee Code Annotated §7-56-101 et seq. and Memphis City Code §§2-56 et seq.

A private sector management firm (Mid-South Transportation Management, Inc., MTM) manages and operates MATA's public transportation system. Transit workers are private sector employees of MTM.

MATA provides fixed-route bus and paratransit services throughout the service area, and rail trolley service in the downtown area. The service area covers about 280 square miles in the City of Memphis, and portions of the City of Bartlett, City of Germantown, City of Lakeland (paratransit service only), and unincorporated Shelby County in Tennessee. Annual ridership on the system is about 6 million passengers.

In May of 2019, the MATA Board of Commissioners voted unanimously to approve the Transit Vision, which is the region's short-term plan to guide transit investments over about the next 5-year period. A copy of the Transit Vision is available at the following link:

<https://transitvision.memphistn.gov/wp-content/uploads/2019/07/Memphis-Final-Transit-Vision-Report-20190502.pdf>

The capital projects included in the Transit Vision are as follows:

1. Traffic and circulation improvements and the addition of four new bus bays at the Airways Transit Center and the ability to accommodate electric buses.

2. Creation of a new on-street transit center with four bus bays at the intersection of Brooks and Third Street that will be known as the Southwest Transit Center.
3. Creation of a new on-street transit center with four new bus bays in southeast Memphis that will be known as the Riverdale Transit Center.

In addition to the capital projects associated with the Transit Vision, MATA has obtained about \$23 million in grant funding through the Tennessee Department of Transportation (TDOT) and Tennessee Department of Environment and Conservation (TDEC) to develop an electric bus program and convert about 25% of MATA's existing diesel buses to electric buses. MATA is seeking technical expertise and Program Management services to assist with the implementation of this program and the associated capital projects.

Other major capital projects that MATA is seeking professional Program Management and assistance with or the development of a public-private partnership programs (P3) include:

The relocation and construction of a new Operations and Maintenance Facility for the agency, prior feasibility studies estimate the cost at \$80 to \$120 million.

The redevelopment of the existing city block containing the William Hudson Transit Center as a new multi-story, mixed-use, transit-oriented development at the intersection of Main Street and A.W. Willis Avenue. Preliminary estimates range from about \$20 million to \$200 million depending on the scope of the project.

### **Overall Work Plan**

The Program Manager shall function as an extension of and supplement to MATA's staff by providing specialized oversight and management expertise as required to successfully complete the development and implementation of MATA's projects. The Program Manager will assist in securing funding through various FTA grant programs and effectively managing the planning and National Environmental Policy Act (NEPA) process. Specific items include: the establishment of design criteria for all infrastructure and vehicles, development of an FTA-compliant PMP and procurement support. In addition, the Program Manager shall establish the program for real estate acquisition, utility relocation and construction phasing requirements; and start the commissioning phases of each project.

The tasks anticipated as part of the scope of services shall, at a minimum, include:

#### **1. Program Management scope items include but are not limited to:**

- i. Development and maintaining of FTA approved Program Management Plans to include but not limited to:
  - Organizational and project team structures
  - Project team responsibilities and reporting relationships.
  - Program and project approaches
  - Work breakdown structure for management of cost, schedule, and resources
- ii. Develop and maintain Fleet Management Plans
- iii. Develop and maintain Risk and Contingency Management Plan

- iv. Develop and assist in oversight of QA/QC Program and Project Quality Plan
- v. Start-Up support of each project
- vi. Develop a program master schedule.
- vii. Assist in development of contract packages.

## **2. Contract Administration**

- i. The Program Manager will assist MATA in contract administration and oversight of work performed by other contractors (including contractors engaged by private sector project participants). Work items to be performed by others include but not limited to:
  - General Engineering Services
  - Final Design
  - Construction
  - Construction Management
  - Traffic Engineering
  - Surveying
  - Environmental Services
  - Public and Private Utility Coordination
  - Legal and Regulatory Compliance Support
- ii. Program Manager Contract Administration support of other contractors includes but is not limited to:
  - Development of Scope of Services
  - Scope Compliance Verification
  - Assistance with administration of change orders and contract modifications
  - Documenting project files.
  - Review invoices submitted by any contractors and make recommendations.

## **3. Program Controls**

Program Controls is vital to the success of MATA's of projects. The Program Manager scope of Program Controls scope includes but is not limited to:

- i. Cost & Budget Management
  - The Program Manager shall prepare independent detailed cost estimates and update them as needed to facilitate decision making.
  - Establish format for Program estimates, review, and validation.
  - Document and monitor contingency and assumptions.
  - Support cost analysis as part of FTA processes.
  - Document contingency assumptions considering risks, including findings from risk assessment process.

- Project Status Reporting
  - a) Project Expenditure Tracking
  - b) Forecasting of Project Costs
  - c) Preparation of Monthly Reports
  - d) Monitoring of Critical Path Activities (CPM)
  - e) Provide dashboard for expenditure tracking and forecast tracking can be shared with stakeholders.
  - f) The Program Manager shall provide analysis and recommendations on approving changes and shall recommend budget or schedule recovery strategies where appropriate.
  - g) The Program Manager shall review the design consultant cost estimates for Change Order requests or provide an additional independent estimate.
  
- ii. Schedule Management – The Program Manager shall develop a full Program Schedule for Delivery of all MATA projects.
  - The Program Manager will develop a detailed Program Schedule.
  - The Program Manager will ensure that project schedules are met, will track project performance against schedule, and keep MATA informed of risks to the schedule and changes.
  - The Program Manager will develop schedule formats for sharing it with the FTA and MATA and provide an updated schedule per those formats periodically.
  
- iii. Risk Management
 

To support the successful implementation of MATA projects, the Program Manager shall establish a systematic risk management process for the program and its component projects. This effort shall include:

  - Develop a “Risk Register” to identify and assess risk for each of the projects and the overall program.
  - Develop and implement response and control strategies to manage the identified risks, including a secondary mitigation plan.
  - Monitor the risks to determine how they have been handled or changed and update the register as program/project risk occur, but not less than once every quarter for MATA’s review and approval.
  - The Program Manager shall assist MATA in identifying mitigation strategies and solutions when unanticipated risks arise throughout the duration of the program.
  - Provide technical assistance in developing and evaluating options for program insurance provisions.
  - Evaluate and develop recommendations on a risk management strategy with respect to claims avoidance.

**4. Planning, Project Development and FTA Processes Support**

The Program Manager will provide oversight of concurrent NEPA\Environmental Clearance; most are expected to be site specific.

- i. **Planning and Preliminary Engineering Support**

The Contractor shall provide general planning support services to assist with services related to MATA's Transit Vision or other needs. The Contractor's services shall include:

  - Geographic information systems (GIS) support.
  - Support and coordination in conducting environmental analyses and preparing National Environmental Policy Act of 1969 (NEPA) documents.
  - Quality control and quality assurance in preparation of documents and submittal to the local, state, and federal agencies.
  - Service planning and scheduling services; assistance with conceptual design; private sector financial participation writing assistance and support; grant writing assistance and support.
  - Development of conceptual capital cost estimates and financial plans; support in coordination with agencies and stakeholders.
  - Attendance at MATA/agency/private sector participant meetings.
  - The Contractor shall also provide staff with an understanding of local regional funding mechanisms and strategies.
  - The Contractor shall provide on-site personnel at MATA as required to carry out specific work authorizations issued by the agency.
  - Review and provide comments on capital and operation & maintenance (O&M) cost estimates as well as the basis of estimate methodology.
  - Provide support for coordination with other projects to ensure consistency of design efforts and required elements are being undertaken and on schedule.

## **Public-Private Partnerships (P3) Scope of Services**

### **1. *Statement of Need***

- 1.1. MATA has a requirement for a Program Manager to assist with the development of several major projects and/or Public Private Partnerships (P3).
- 1.2. MATA is seeking the services of a qualified firm(s), hereinafter referred to as Contractor, to provide program management services to assist in the implementation of several projects and programs.

### **2. *Introduction and Background***

- 2.1 MATA seeks to retain a team of advisors that consist of a Program Manager/Technical Advisor, Financial Advisor, and Legal Advisor. These advisors work together to assist MATA in developing and modifying guidelines, establishing procedures, identifying, and evaluating potential projects, carrying out project procurement, advising on issues related to the P3 program, and other related activities. MATA desires to look at a broad range of

possible Program Management and P3 opportunities, with projects currently falling in the broad categories of transportation, construction, and maintenance. Potential delivery methods that MATA may consider under its Program Management and P3 program include:

- Predevelopment Agreements leading to other implementing agreements.
- Design-Build-Maintain Agreements
- Design-Build-Finance-Operate Agreements
- Design-Build-Operate-Maintain Agreements
- Design-Build-Finance-Operate-Maintain Agreements
- A concession providing for the private partner to design, build, operate, maintain, manage, or lease an eligible facility.
- Any other project delivery method or agreement or combination of methods or agreements that MATA determines will serve the public interest.

### **3. General Requirements**

- 3.1 MATA desires to be on the cutting edge of innovative methods to assist in the delivery of new transit and related projects and is seeking one or more Program Manager firms experienced in a wide variety of P3 transactions for advancement of various projects and programs. The Contractor shall be a firm that has the expertise and experience in advising clients in the development, delivery, and implementation of transit projects and P3 agreements.
- 3.2 The Contractor will be responsible for managing MATA's P3 program under the direction of the Chief Executive Officer and appropriate MATA Staff. The Contractor will be responsible for enhancing and refining MATA's P3 policies and procedures, initiating rules and/or guidelines as needed to streamline the program, assist in managing MATA's team of advisors, and ultimately guiding MATA's decisions about moving forward on specific transit program and P3 type projects and the accompanying negotiations with outside concessionaires and contractors.
- 3.3 The Contractor shall have a national and international perspective and be able to demonstrate broad experience with various Program Management and P3 projects. Contractor shall be expected to provide advice across a vast spectrum of issues in the structuring, analysis, evaluation, documentation, and development of transit projects and P3 delivery options. Contractor shall have knowledge of all applicable Federal and State laws and regulations and follow them.
- 3.4 The Contractor shall be able to provide broad advice across a spectrum of issues including the feasibility, structure, analysis, evaluation, and development of Transit Programs and P3 projects. The Contractor shall also be able to coordinate the expertise of a professional team into a cohesive and integrated approach to P3 project development and delivery.

#### **4. Specific Requirements**

- 4.1. Contractor shall perform a variety of services and will provide advice to MATA on programmatic and technical issues related to the Program Management and P3 programs. Specific services may include, but are not limited to, the following:
  - 4.1.1. Assist in analyzing projects using established project screening methodologies and procedures to determine if P3s or traditional methods are most appropriate for procurement.
  - 4.1.2. Assist in updating P3 program procedures, guidelines, project evaluation criteria, and other aspects of the P3 program.
  - 4.1.3. Develop, prepare, and present technical briefing materials and reports to ensure communication with MATA and other key stakeholders.
  - 4.1.4. Support public relations and stakeholder outreach initiatives by aiding in preparing presentations, providing research and analysis, and attending meetings as requested.
  - 4.1.5. Provide ongoing coordination with MATA and its various Program Management and P3 program advisors.
  - 4.1.6. Provide other services, advice, and deliverables as necessary to meet the MATA's Program Management and P3 program objectives, or as requested by MATA.
  - 4.1.7. Under the direction of the Chief Executive Officer and MATA Management Staff, manage the team of advisors, including the financial, legal, engineering, and public involvement advisors, essentially acting as the leading consultant of the MATA's Program Manager and P3 team.
  - 4.1.8. Provide guidance to MATA in determining whether additional advisors are needed and assisting in the development of scopes of work if determined that additional consultant help is warranted.
  - 4.1.9. Continually review MATA's team, processes, and priorities, refining as the agency gains hands-on experience with the Program Management and P3 program.
  - 4.1.10. Identify potential pitfalls, whether technical or political, that may impact the program or specific projects, and suggest approaches to all aspects of the program or projects that will mitigate these issues.
  - 4.1.11. Work closely with internal MATA team, communicating and briefing MATA management on the status of the Program Management of various projects and P3s, and refining existing planning, design, development, and procurement processes to include P3s as an option for project delivery.

- 4.1.12. Coordinate communications and public involvement strategy into the overall program, working closely with outside advisors and MATA's communications team to develop an open and transparent process that involves the public and MATA's key stakeholders.
- 4.1.13. Manage any unsolicited proposal reviews, guiding the feasibility analysis using established screening methodology and coordinating reviews by the remaining advisors and MATA's internal review team.
- 4.1.14. Manage the competitive bid process for unsolicited proposals, developing the procurement criteria for seeking competitive bids, participating with the agency in the review process of competitive submissions, and advising MATA on the selection.
- 4.1.15. Manage the prioritization of projects for solicitation, including refining criteria for selection and establishing a methodology for comparing projects to criteria.
- 4.1.16. Manage the solicited proposal process, developing the procurement criteria for seeking competitive bids, participating with the agency in the review process of competitive submissions, and advising MATA on the selection.
- 4.1.17. Lead MATA's contract negotiations with contractors and private sector participants, respectively, as to Program Management and P3 projects, coordinating strategy among other advisors and MATA, and advising MATA on final negotiating positions.
- 4.1.18. Proactively seek opportunities to meet with elected officials, stakeholders, and others as deemed necessary. Be prepared to attend any such meetings, as necessary.
- 4.1.19. Assist in the strategic development of Program Management service and P3 ideas for transit, operations, maintenance, facilities, services, or other needs where a public-private partnership may enable an outcome that is more efficient, cost effective, sustainable, or innovative.
- 4.1.20. Assist MATA with other services as necessary or requested.
- 4.2. Project Development and Procurement: The scope of services shall be specific to any potential Program or P3 project that comes before MATA, whether solicited or unsolicited,
  - 4.2.1. As required, collect, and review available data for project evaluation.
  - 4.2.2. As required, develop cost estimates for construction, operations, and maintenance of potential projects.
  - 4.2.3. As required, conduct a value analysis.
  - 4.2.4. Assist in the assessment of material risks, including assisting in

- developing risk matrices that reflect current market standards.
- 4.2.5. Develop performance based technical provisions.
- 4.2.6. Develop the Request for Qualifications (RFQ) and Request for Proposals (RFP) for projects. Assist with developing technical evaluation criteria and submission requirements.
- 4.2.7. Participate and assist in RFP/RFQ process, including attending one-on-one meetings with potential proposers and providing input to MATA's responses to submitted questions.
- 4.2.8. Assist in the evaluation of technical elements of proposals received, including an evaluation of the proposers' abilities to design, construct, operate, and maintain the project.
- 4.2.9. Provide advice throughout the selection process with respect to the proposer's technical approach, and alternative technical concepts, and the relative impact of those options on value to the Department, considering broader public policy, and provide input into MATA's evaluations based on such advice.
- 4.2.10. As requested, participate in debriefings of unsuccessful proposers.
- 4.2.11. Assist MATA with all phases of project delivery including procurement, award, and implementation.
- 4.2.12. Assist with any other project-related tasks requested by MATA.

## **5. Contractor's Responsibilities**

- 5.1. The Contractor will be required to deliver, at a minimum, the following deliverables in connection with this engagement.
  - 5.1.1. Within 30 days of award, hold initial meeting with the MATA staff and senior leadership. Develop schedule for at least monthly meetings.
  - 5.1.2. Within 60 days of award, deliver assessment of the Program Management and P3 Program Guidelines, with particular attention to the unsolicited proposal policy and process.
  - 5.1.3. Within 90 days of award, hold initial team meeting of advisors and MATA to outline a plan and expectations.
  - 5.1.4. Annual assessment of existing policies, procedures, and approaches.
  - 5.1.5. Schedule meetings with MATA and/or the consulting team.
  - 5.1.6. Assist in the development of a schedule to meet with elected officials, stakeholders and others as deemed necessary.

## **6. MATA's Responsibilities**

- 6.1. Provide access to the MATA's personnel, offices, and computer information as required.
- 6.2. Provide required statutes, manuals, policies and procedures, organization charts, and records related to MATA's issue positions and desired options.
- 6.3. Provide guidance and direction for all assignments.
- 6.4. Assist in scheduling and coordinating meetings with applicable involved parties.
- 6.5. Review and approve Contractor's reports and invoices for payment.

MATA reserves the right to award contracts to multiple firms.

This Program Management Services contract shall be competitively procured using the Brooks Act through a qualifications-based procurement method.

**SECTION C**  
**REQUIRED FORMS AND CERTIFICATIONS**

**MEMPHIS AREA TRANSIT AUTHORITY**  
**ADDENDA ACKNOWLEDGEMENT FORM**

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

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No: \_\_\_\_\_ Date Received: \_\_\_\_\_

Name of individual, partner or corporation:

\_\_\_\_\_

Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Affidavit of Non-Collusion:

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

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

Signed: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_, \_\_\_\_\_

Proposer's  
E.I. Number: \_\_\_\_\_

(Number used on Employer's Quarterly Federal tax return)

**EXHIBIT II**

**MEMPHIS AREA TRANSIT AUTHORITY**

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

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

Date\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

**or**

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

Date\_\_\_\_\_

Signature\_\_\_\_\_

Title\_\_\_\_\_

**EXHIBIT III**

**MEMPHIS AREA TRANSIT AUTHORITY**

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

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

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

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

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

\_\_\_\_\_  
Signature and Title of Authorized Official

**EXHIBIT III**

**MEMPHIS AREA TRANSIT AUTHORITY**

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

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

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

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

\_\_\_\_\_  
Signature and Title of Authorized Official

**EXHIBIT IV**

**MEMPHIS AREA TRANSIT AUTHORITY**

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

I, \_\_\_\_\_, hereby certify on behalf of \_\_\_\_\_  
Name of Official Name of Contractor

that:

- (1) No Federal appropriated funds have been paid or will be paid on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

**Certification of Utilization of  
Disadvantaged Business Enterprises**

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

To: \_\_\_\_\_  
 Name of Prime/General Proposer  
 \_\_\_\_\_  
 Address of Prime/General Proposer  
 \_\_\_\_\_  
 City/State/Zip

21-09  
 MATA RFP Number

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

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

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

\_\_\_\_\_  
 \_\_\_\_\_

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

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

\_\_\_\_\_  
 DBE Business Name

\_\_\_\_\_  
 Signature of Authorized DBE Representative

\_\_\_\_\_  
 Certification # / State of Certification

\_\_\_\_\_  
 Expiration Date of Certification

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 City/State/Zip

\_\_\_\_\_  
 Phone Number                      Fax Number

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

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name of Prime or General Proposer

\_\_\_\_\_  
 Signature of Authorized Representative

**SCHEDULE OF DBE PARTICIPATION**

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

P = Prime Contractor  
 JV = Joint Venture  
 S = Subcontractor

**NO RESPONSE**

\* PLEASE EITHER PRINT OR TYPE INFORMATION ON THIS FORM \*

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on RFP# 21-09 Program Management Services for the reason indicated below.

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

FROM:

Name of Company: \_\_\_\_\_

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**SECTION D**

**UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

## Utilization of Disadvantaged Business Enterprises

### 1. Policy and Terms

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

b. MATA has established The DBE participation goal for this project, if any, is stated in Section A.

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

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

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

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

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

### 2. Definitions

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

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

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

d. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, including Title 13 C.F.R., Part 121, except that a small business concern shall not include any concern or group of concerns controlled

by the small socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$16.6 million over the previous three (3) fiscal years, as such figure may thereafter be adjusted by the Secretary of the DOT.

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

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

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

### **3. Counting DBE Participation Toward the Contract Goal**

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

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

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

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

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

#### **4. DBE Substitutions**

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

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

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

subcontract; adequate documentation to support the Contractor's proposed action; and a proposed substitute firm to complete the DBE's portion of work.

2. The following is a non-exclusive list of the types of reasons, which justify substitution: the DBE was found not to be able to perform, or not to be able to perform on time; the DBE's work product was not acceptable; the DBE demands an unreasonable escalation of its price.

3. The following is a non-exclusive list of the types of reason which do not justify substitution: a replacement firm has been recruited by the Contractor to perform the same work under more advantageous terms; performance issues by the DBE were disputed and every reasonable effort to have the dispute resolved or mediated has not been taken; the DBE has requested a reasonable price escalation which may be justified due to unforeseen circumstances (e.g. a change in scope of DBE's work).

4. If the subcontractor to be substituted for the DBE is not a DBE, the Contractor must show adequate good faith efforts as set forth in Section D hereof.

5. The Contractor's request for approval of a substitution must include the name, address, and principal official of the proposed substitute subcontractor and the dollar value and scope of work of the proposed subcontract. If the new subcontractor is a DBE, all DBE affidavits and documents required by the contract shall be attached.

6. MATA will evaluate the submitted documentation and respond within ten (10) business days to the request for approval of a substitution. MATA's response may approve the request, seek more information, request an interview to clarify the problem or reject the proposed DBE substitution, with the reasons for the rejection stated in MATA's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, MATA will respond as soon as practicable.

7. Actual substitution by the Contractor may not be made prior to MATA approval. Once notified of MATA approval, the substitute subcontract must be executed within five (5) business days, and a copy submitted to the Compliance Officer, DBE Program.

## **5. Good Faith Efforts**

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

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

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

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

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

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

## **6. Procedure to Determine Proposer Compliance**

The Proposer must complete and sign the Letter of Intent to Perform as a DBE. The Letter of Intent must also be signed by any DBEs (prime or subcontractor). A separate Letter of Intent must be included for each DBE included in the Proposal. It MUST be submitted with the sealed Proposal. In addition, any documentation evidencing the Proposer's good faith efforts to meet the contract DBE goal must be

submitted with the Proposal. Any Proposals submitted without a completed and executed Letter of Intent and/or evidence of good faith efforts, if applicable, will be deemed non-responsive and will be rejected by MATA.

a. Letters of Certification

1. A copy of each proposed DBE firm's current Certificate of Certification from the Uniform Certification Agency or the Tennessee Department of Transportation (TDOT) should be attached to the Letter of Intent to Perform as a DBE. **A firm which is in the process of certification or which is not currently certified at the date the proposals are due cannot be counted as a DBE as set forth in 49 CFR Part 26.55.**

2. All DBEs are certified to perform work in a specific specialty or specialties. The DBE firm's scope of work set forth on the Letter of Intent and Schedule of DBE Participation must conform to its stated area of specialization.

b. Joint Ventures

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

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

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

**7. Reporting Requirements During the Term of the Contract**

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

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

c. The address for the Compliance Officer, DBE Program, is: MATA, Attn: Compliance Officer/DBE Program, 1370 Levee Road, Memphis, TN 38108.

**8. Prompt Payment to Subcontractors**

- a. Prime Contractors are required to pay all subcontractors, both DBE and non-DBE, for all work which the subcontractor has satisfactorily completed, no later than ten (10) business days after the prime Contractor received payment from MATA.
- b. In addition, all retainage amounts must be returned by the prime Contractor to the subcontractor no later than fourteen (14) business days after the subcontractor has satisfactorily completed its portion of the contract work.
- c. A delay or postponement of payment to the subcontractor requires good cause and prior written approval of the Compliance Officer and the Project Manager.
- d. All prime Contractors are required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
- e. MATA will not reimburse Contractors for work performed unless and until the prime Contractor ensures that the subcontractors are promptly paid for the work they have performed to date as evidenced by the submittal of the "DBE Subcontractor Payment Status Report" with canceled checks/wire transfers as supporting documentation.
- f. MATA will consider failure to comply with these prompt payment requirements a contract violation, which may lead to any remedies permitted under law, including but not limited to, contract debarment.

**ATTACHMENT 1**

**GENERAL CONTRACT PROVISIONS**

**MEMPHIS AREA TRANSIT AUTHORITY (MATA)**

**GENERAL CONTRACT PROVISIONS**

1. Non-Collusion - The Bidder guarantees that the Bid submitted is not a product of collusion with any other Bidder and no effort has been made to fix the Bid price of any Bidder or to fix any overhead, profit, or cost element of any Bid price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Bid. (Exhibit I)

2. Bid Acceptance - Each Bid will be submitted with the understanding that the acceptance, in writing by purchaser of the offer to furnish any or all of the items described herein, shall constitute a Contract between the Bidder and the purchaser, which shall bind the Bidder on his part to furnish and deliver at his Bid price and in accordance with said accepted Bid and specifications.

3. Pricing - The price to be quoted in any Bid submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the project in accordance with the specifications. Anything omitted from such specifications which are clearly necessary for the completion of the item and its appurtenances shall be considered a portion of such Bid item although not directly specified or called for in these specifications. All material shall be new and in no case will used, reconditioned, or obsolete material be accepted unless otherwise specified. Bidder should note discounts, if any. Freight charges must be included in Bid price.

4. Terms of Payment - Payment for the specified items shall be net thirty (30) days after acceptance. Bidder should note any discounts for payment before thirty (30) days. Discounts of two percent (2%)-fifteen (15) days or better will be considered in the evaluation.

5. Acceptance of Material - If the item is not acceptable; MATA will furnish a letter of non-acceptance detailing the deficiencies within thirty (30) days after delivery. Acceptance of delivery of an item shall not release the CONTRACTOR from liability for faulty workmanship or materials appearing even after final payment have been made.

6. Approved Equal -

a. In all cases, materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.

b. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a Bid may be cause for its rejection.

c. If a potential Bidder feels that his product is an equal to the product specified, he must submit a written request to MATA.

d. Requests for approved equals, clarification of specifications, and protest of specifications must be received by MATA, **IN WRITING, NO LATER THAN 3:00 p.m. local time, February 25, 2021 TO ALLOW ANALYSIS OF THE REQUEST**. Any request for an approved equal or protest of the specifications must be fully supported with catalog information, specifications, and illustrations or other pertinent information as evidence that the substitute offer is equal to or better than the specifications' requirement. Where an approved equal is requested, the CONTRACTOR must demonstrate the quality of his product to the Authority and must furnish sufficient information to enable the Authority to determine whether the CONTRACTOR's product is or is not equal to that specified. Such requests may be faxed to (901) 278-9108 or (901) 272-2912. They may also be e-mailed to Shelia Maclin, Manager of Purchasing, at [smaclyn@matatransit.com](mailto:smaclyn@matatransit.com)

e. MATA's replies to requests under paragraph (d) above will be post-marked at least fourteen (14) days before the date scheduled for Bid opening.

f. A notice of approved equals shall be furnished to all parties receiving specifications so that all

Bidders may prepare their Bid accordingly.

g. Appeal from the decisions of MATA to approve or disapprove approved equal status shall be submitted in writing to the Contracting Officer, MATA, 1370 Levee Road, Memphis, TN 38108, not later than five (5) days from the date of MATA's decision. The appeal shall, at a minimum, identify the decision in question, specify all reasons why the appealing party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Contracting Officer may request additional information from the appealing party, and information or a response from the Bidders which shall likewise be submitted in writing to the Contracting Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Contracting Officer shall either (a) render a decision which shall be final and advise all interested parties of same in writing, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedure. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing.

h. Changes in the specifications will be made by written addendum by MATA, and will be forwarded to all persons and firms to whom Bid documents have been furnished.

7. Bid Withdrawal -

a. Each and every Bidder who submits his Bid specifically waives any right to withdraw it except as hereinafter provided. Bidders will be given permission to withdraw any Bid after it has been deposited with MATA, provided any Bidder makes its request by telephone, telegraph, or in writing, twenty-four (24) hours before the time Bids are due. Requests pertaining to withdrawals by telephone or telegraph must be confirmed in writing by the Bidder and must reach the Office of the Contracting Officer of MATA not later than one (1) hour prior to the time fixed for submission of Bids.

b. No Bidder may withdraw his Bid within ninety (90) days after the date Bids are due.

8. Bid Rejection - MATA reserves the right to waive any minor Bid informalities or irregularities received which do not go to the heart of the Bid or prejudice other Bidders, or to reject, for good and compelling reasons, any and all Bids submitted. Conditional Bids, or those, which take exception to the specifications, may be considered non-responsive and may be rejected.

9. Tax Exemption - MATA is exempt from payment of all Federal, State, and local taxes in connection with the project. Said taxes must not be included in Bid prices. MATA will provide necessary tax exemption certificate to manufacturer, if requested.

10. Bid Evaluation -

a. Consideration will be given to Bidder's previous experience, price, financial responsibility of Bidder, responsiveness to these specifications, including level of participation of DBEs.

b. Bidders may be required to submit duplicate sworn statements of their financial responsibility, technical qualifications, and performance record before a Contract can be awarded to them.

- c. MATA reserves the right to award Bids singularly or collectively on any of the Bid items.
- d. The Contract shall be awarded according to Section 5.0 of Section A.

11. Bid Price Form - If MATA includes a Bid Price Form in the IFB, Bids must be submitted on the form provided. Each item should be listed separately on the form. Bids submitted in any other form may be considered non-responsive and may be rejected. Bids may be submitted on any or all items in this Bid request.

12. Protest Procedures - Protests may be made by prospective Bidders whose direct economic interest would be affected by the award of a Contract, or by failure to award a Contract. MATA will consider all protests requested in a timely manner regarding the award of a Contract, whether submitted before or after an award. All protests are to be submitted in writing to the Contracting Officer, Memphis Area Transit Authority, 1370 Levee Road, Memphis, TN 38108. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:

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

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

- a. Bid protests alleging restrictive specifications or improprieties which are apparent prior to Bid closing time or receipt of Bids must be submitted in writing to the Contracting Officer and must be received seven (7) days prior to Bid closing time or receipt of Bids. If the written protest is not received by the time specified, Bids may be received and award may be made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing to the Contracting Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not subject to formal rules or evidence or procedures. Following the informal hearing, the Contracting Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.
- b. Bid protest against the making of an award by the MATA Board must be submitted in writing to the Contracting Officer and received by the Contracting Officer within seven (7) days of the award by the MATA Board. The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

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

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

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

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

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

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

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

d. Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under (a), (b) and (c) must be submitted to the Chief Executive Officer and received within seven (7) days after the date of the written determination by the Contracting Officer. The Chief Executive Officer may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing to the Chief Executive Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer shall either (a) render a decision, or (b) at the sole election of the Chief Executive Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Chief Executive Officer shall render a decision, which shall be final and advise all interested parties thereof in writing but no later than ten (10) days from the date of the informal hearing.

e. Under certain limited circumstances, an interested party may protest to the Federal Transit Administration (FTA) the award of a Contract pursuant to an FTA grant. FTA's review of any protest will be limited to:

1. Alleged failure of MATA to have written protest procedures or alleged failure to follow such procedures.

2. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure which shall be submitted and processed in accordance with that Federal regulation.

f. Protestors shall file a protest with FTA not later than five (5) working days after a final decision of MATA's Chief Executive Officer is rendered under the MATA protest procedure. In instances where the protestor alleges that MATA failed to make a final determination on the protest, the protestor shall file a complaint with FTA not later than five (5) Federal working days after the protestor knew or should have known of MATA's failure to render a final determination on the protest.

g. Submission of Protest to FTA

1. Protests shall be filed with the appropriate FTA Regional Office with a concurrent copy to MATA.

2. The protest filed with FTA shall:

(i) Include the name and address of the protestor.

(ii) Identify MATA project number and the number of the Contract Solicitation.

(iii) Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.

(iv) Include a copy of the local protest filed with MATA and a copy of the MATA decision, if any.

13. Correspondence - The Bidder is required to show on all correspondence with MATA and FTA, the following: RFP No. **21-09** Communication with MATA should be mailed directly to Shelia Maclin, Purchasing Manager, MATA, 1370 Levee Road, Memphis, TN 38108, or sent by fax to (901) 274-5866 or (901) 272-2912, or sent by e-mail to [smaclin@matatransit.com](mailto:smaclin@matatransit.com)

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

15. Miscellaneous -

a. CONTRACTOR warrants that it has not been paid any bonus or commission for the purpose of obtaining this Contract.

b. Except as otherwise set forth herein, this Contract shall be governed and construed in accordance with the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.

c. The failure of MATA at any time to insist upon a strict performance of any terms, conditions, and covenants herein shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, and covenants herein contained.

d. CONTRACTOR shall not assign any interest or obligation in this Contract, and CONTRACTOR shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of MATA.

e. Any proposed change or modification of this Contract shall be submitted in writing to MATA for its prior approval. All changes shall be by written agreement of MATA and CONTRACTOR.

f. The CONTRACTOR acknowledges that MATA is managed and operated by Mid-South Transportation Management, Inc. (MTM). The CONTRACTOR shall cooperate with and abide by the instructions of MATA and MTM personnel.

16. Extent of Agreement -

a. The Bid submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Bid, the provisions of this Contract shall control.

b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.

c. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the CONTRACTOR as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.

17. Compliance with Applicable Law -

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

b. To accommodate changing Federal requirements, the CONTRACTOR agrees that Federal requirements may change and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise. All standards or limits within FTA's Master Agreement are minimum requirements, unless modified by FTA.

c. The CONTRACTOR agrees to comply with FTA Circular 4220.1F, "Third Party Contracting Requirements", any revisions or replacement thereof, and applicable Federal regulations or requirements, including FTA third party contracting regulations when promulgated.

18. Audit and Inspection -

a. The CONTRACTOR shall permit MATA, the Secretary, and Comptroller General of the United States or any of their duly authorized representatives access to all CONTRACTOR records as they request for audits and inspections related to any Contract not awarded on the basis of competitive bidding for a capital or improvement project, as needed for compliance with 49 U.S.C. § 5325(a). The CONTRACTOR shall permit said persons to inspect all work materials, payrolls, and other data with regard to the project, and to audit the books, records, and accounts pertaining to such Contracts with regard to the project. The CONTRACTOR shall provide sufficient access to contract records as needed for compliance with federal regulations or to assure proper project management as determined by FTA.

b. The CONTRACTOR shall maintain documentation for all charges against MATA under this Contract. The books, records, and documents of the CONTRACTOR, insofar as they relate to work performed or money received under the Contract, shall be maintained in conformity with generally accepted

accounting principles for a period three full years from the date of final payment, and shall be subject to audit, at any reasonable time upon reasonable notice, by MATA, the State of Tennessee or the Comptroller of the Treasury or their duly appointed representatives, or a licensed independent public accountant. Further, the records shall be maintained for a period not less than that recommended in the Uniform Manual for Development Districts of Tennessee, published by the Comptroller of the Treasury, State of Tennessee, but not less than three years from the date of final payment.

c. In the event any Federal or State agency audits MATA, the CONTRACTOR shall provide whatever records, information, and assistance as MATA may reasonably require.

d. The CONTRACTOR shall provide information and assistance requested by MATA for progress reports required of MATA by Federal or State Government, or agencies.

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

20. Interests of Federal and State Governmental Officials -

a. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising therefrom.

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

21. Environmental Requirements -

a. Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and other applicable Federal environmental protection regulations that may be promulgated at a later date. The CONTRACTOR agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and, as applicable, 23 U.S.C. § 326, pertaining to State responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 *Fed. Reg.* 66576 *et seq.*, November 15, 2006, and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

b. Air Quality (Applicable to Contracts Exceeding \$100,000) – Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all applicable Federal laws and regulations and follow applicable Federal

directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

1. The CONTRACTOR agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying the approval of the Project. The CONTRACTOR further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

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

c. Clean Water Requirements (Applicable to Contracts Exceeding \$100,000) - Except to the extent the Federal Government determines otherwise in writing, the CONTRACTOR agrees to comply with all Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

1. The CONTRACTOR agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

2. The CONTRACTOR agrees to comply with the notice of violating facilities provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. §§ 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Certain Public Lands. The CONTRACTOR agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, unless the Federal Government makes the findings required by 49 U.S.C. § 303. The CONTRACTOR also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

e. Wild and Scenic Rivers. The CONTRACTOR agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system, with applicable implementing U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with applicable implementing U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

f. Coastal Zone Management. The CONTRACTOR agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

g. Wetlands. The CONTRACTOR agrees to comply with the protections for wetlands addressed in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

h. Floodplains. The CONTRACTOR agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

i. Endangered Species and Fisheries Conservation. The CONTRACTOR agrees to comply with applicable protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq.*

j. Historic Preservation. The CONTRACTOR agrees as follows:

1. The CONTRACTOR agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.

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

(a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the CONTRACTOR agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.

(b) The CONTRACTOR agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

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

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

22. Energy Conservation - The CONTRACTOR agrees to comply with applicable mandatory energy

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

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

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

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

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

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

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

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

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

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

c. Federal Rights in Data and Copyrights. The CONTRACTOR agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of the FTA Master Agreement. As used herein, “for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government’s license to:

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

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

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

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no

obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

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

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

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

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

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

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

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

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

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

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

a. Buy America (Applicable to Contracts Exceeding \$100,000) - The CONTRACTOR agrees to

comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and implementing guidance FTA may issue. A Buy America certificate (Exhibit II), as per attached format, must be completed and submitted with the Bid or the Bid will be considered non-responsive.

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

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

1. To utilize privately owned United States-Flag Commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates to United States-Flag Commercial vessels.
2. To furnish within thirty (30) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, On-Board Commercial Ocean Bill-Of-Lading in English for each shipment of cargo described in paragraph one above to MATA (through the prime CONTRACTOR in the case of subcontractor Bills-of-Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification of the project.

c. Fly America. The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301.131 through 301.143.

30. Debarment, Suspension, and Other Responsibility Matters (Applicable to Contracts Exceeding \$25,000) - Unless otherwise permitted by law, any person that is debarred, suspended, or voluntarily excluded may not take part in a federally covered transaction, either as participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, neither FTA nor MATA may enter into any transaction with such debarred, suspended or voluntarily excluded persons during such period.

A certification process has been established by 49 CFR, Part 29 as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. Each CONTRACTOR and subcontractor must provide to MATA a signed certification in compliance with 49 CFR, Part 29 as part of this Contract. (Exhibit III)

31. Prohibited Interests - No member, officer, or employee of MATA, MTM, First Transit, Inc., or the City of Memphis during his or her tenure or one year thereafter shall have interests, direct, or indirect in this Contract or the proceeds thereof, or if a conflict, real or apparent, as defined in MATA's Code of Ethics, would be involved.

32. Copeland "Anti-Kickback" Act, as amended (Applicable to Construction Contracts) - The CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. 874 and 40 U.S.C. 276c, and U.S. Department of Labor (DOL) regulations, "Contractors and Subcontractors on Public

Building or Public Work Financed in Whole or in part by Loans or Grants from the United States", 29 C.F.R. Part 3. In addition to other requirements that may apply:

- a. The CONTRACTOR will not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
- b. MATA agrees to report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its Federal implementing regulations to FTA.

33. Termination of Contract -

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

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

- b. If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or shall violate any of the covenants, agreements, or stipulations of this Contract, MATA shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR for such termination and specifying the effective date of such termination. In the event of termination, the CONTRACTOR shall be entitled to just and equitable compensation for any satisfactory work through the date of termination specified by the MATA.

- c. In the event of default by the CONTRACTOR, MATA shall be entitled to all of its reasonable expenses, and its costs to include, but not limited to its reasonable attorney's fees incurred by reason of such default.

- d. In addition to the foregoing, MATA reserves the right to cancel any services or portion of services to be provided hereunder upon written notice to the CONTRACTOR specifying the canceled services and the effective date of such cancellation. In the event of such cancellation, the CONTRACTOR shall be compensated for satisfactory work completed and, further, the compensation due to the CONTRACTOR hereunder shall be reduced accordingly effective said cancellation date.

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

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

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

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

38. Cost Analysis - MATA reserves the right to conduct a cost or price analysis for any purchase. MATA may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single Bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on Bid prices. MATA may require a pre-award audit, and potential contractors shall be prepared to submit data relevant to the proposed work which will

allow MATA to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single Bid will be treated as a negotiated procurement and MATA reserves the right to negotiate with the single Bidder to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, MATA reserves the right to reject the single Bid.

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

39. False or Fraudulent Statements or Claims - The CONTRACTOR acknowledges and agrees that:

- a. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. Department of Transportation (DOT) regulations "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by the Contract. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
- b. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

40. No Contingency Fees - The CONTRACTOR shall warrant that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business, for the breach or violation of which warranty MATA shall have the right to annul said Contract without liability or, in its discretion, to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

41. Excluded Facilities - The CONTRACTOR shall comply with the provisions of 40 CFR Part 15 which prohibit the use of facilities included on the Environmental Protection Agency list of violating facilities.

42. Federal Changes - The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement dated October 1, 2012, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

43. Lobbying Requirements (Applicable to Contracts Exceeding \$100,000) - Federal regulations require MATA to include certifications from contractors. Accordingly, the CONTRACTOR must sign the attached certification. (Exhibit IV)

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

- a. No Federal appropriated funds have been paid or will be paid on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriate funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Office of Management and Budget Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The CONTRACTOR shall insert the language of this certification in all subcontracts, and require that all subcontractors at any tier shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

45. No Government Obligation

a. MATA and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MATA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

b. The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

46. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Master Agreement (17), dated October 1, 2010, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any MATA requests, which would cause MATA to be in violation of the FTA terms and conditions.

47. Access Requirements for Persons with Disabilities - The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49

C.F.R. Part 37;

- b. U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,"49 C.F.R. Part 27;
- c. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,"36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- d. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services,"28 C.F.R. Part 35;
- e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,"28C.F.R. Part 36;
- f. U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped,"41 C.F.R. Subpart 101-19;
- g. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,"29 C.F.R. Part 1630;
- h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,"47 C.F.R. Part 64, Subpart F; and
- i. FTA regulations, "Transportation for Elderly and Handicapped Persons,"49 C.F.R. Part 609; and
- j. Any implementing requirements FTA may issue.

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

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

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

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

54. National Intelligent Transportation Systems Architecture and Standards - To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
55. Seismic Safety (Applicable to Design and/or Construction Contracts Only) - The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, (specifically, 49 C.F.R. § 41.117), and any implementing guidance FTA may issue.
56. Environmental Justice. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
57. Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.
58. Public Transportation Employee Protective Arrangements  
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.
59. Charter Service. 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.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

60. School Bus Operations. 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.

61. Substance Abuse Testing The Contractor agrees to participate in MATA's drug and alcohol program established in compliance with 49 C.F.R. part 655.