



REQUEST FOR PROPOSAL

SUBJECT: THREE YEAR SECURITY GUARD SERVICE

DATE: May 3, 2022

REQUEST NO: 22-12

PROPOSAL DUE DATE: June 8, 2022 Time: 10:00 A.M.

The Memphis Area Transit Authority invites proposals for a three-year contract for security guard service, set forth above in accordance with the specifications enclosed herewith.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Shelia Maclin', is written over the word 'Sincerely,'.

Shelia Maclin
Purchasing Manager

CONTENTS

ADVERTISEMENT

SECTION A INSTRUCTIONS TO PROPOSERS

| | | |
|-----|--|-----|
| 1.0 | General | A-1 |
| 2.0 | Proposal Requirements | A-2 |
| 3.0 | Proposal Format | A-2 |
| 4.0 | Changes to the Specifications | A-3 |
| 5.0 | Proposal Evaluation | A-3 |
| 6.0 | Award of Contract | A-4 |
| 7.0 | Protests | A-4 |
| 8.0 | Disadvantaged Business Enterprises | A-4 |

SECTION B SCOPE OF WORK

SECTION C REQUIRED FORMS AND CERTIFICATIONS

- Addenda Acknowledgement Form
- Affidavit of Non-Collusion (Exhibit I)
- 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)
- Explanation of "No Response"
- Cost Proposal Form

SECTION D UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISE

ATTACHMENT 1 GENERAL CONTRACT PROVISIONS

MEMPHIS AREA TRANSIT AUTHORITY

LEGAL NOTICE TO PROPOSERS

Proposals will be received by the Memphis Area Transit Authority (MATA) at its Purchasing Offices, 1330 Levee Road, Memphis, TN 38108, until 10:00 AM, local time on June 8, 2022, for providing the following:

THREE YEAR SECURITY GUARD SERVICE

MATA hereby notifies all Proposers that in regard to any contract entered into pursuant to this advertisement, disadvantaged 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, Purchasing Manager, (901) 722-7102 or smaclin@matatransit.com

Award of the contract will be made based on the evaluation criteria established in the RFP, as selected by the Authority, provided it is in their best interest to do so.

MATA reserves the right to reject any and all Proposals, and to waive any informality.

**GARY ROSENFELD
CHIEF EXECUTIVE OFFICER**

May 3, June 2, 2022

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)**
 - **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"**
- **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 Proposal to be provided.**
- **Failure to properly label the Proposal package with red Bid/Proposal label.**
- **Proposals received late. All Proposals must be in MATA's possession by the deadline shown in the solicitation. All Proposals received after the deadline will be returned unopened.**

SECTION A
INSTRUCTIONS PROPOSERS

SECTION A

INSTRUCTIONS TO PROPOSERS

1.0 GENERAL

- 1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) seeks written Proposals for professional services from qualified vendors capable of providing the scope of services described in Section B for a period of three years beginning on or about August 1, 2022 and ending on or about July 31, 2025. These instructions provide detailed requirements for the acquisition of these services. This Request for Proposals (RFP) will become part of the contract.

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

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

- 1.2 "Purchaser" or "Grantee", means MATA. The words "statement of qualifications", "PROPOSAL", "bid" 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 "Proposer", "Contractor" and "Vendor" are also synonymous.
- 1.3 This Request for Proposals (RFP) does not commit MATA to award a contract or pay any costs incurred in preparation of Proposals in response to the RFP or to procure or contract for services. Proposers shall be responsible for all costs incurred as part of their participation in the pre-award process.
- 1.4 Proposals will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN 38108, until 10:00 local time on June 8, 2022. **PROPOSALS RECEIVED AFTER THIS DATE AND TIME WILL BE RETURNED TO THE PROPOSER UNOPENED.**

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.

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

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

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

1.6 Neither a Performance Bond nor a Bid Bond is required for this project.

1.7 A pre-proposal conference will be held at MATA offices at 1370 Levee Road. Memphis TN 38108 on May 19, 2022 at 10:00 a.m. Local Time.

2.0 PROPOSAL REQUIREMENTS

2.1 Proposals must concisely 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 Work.

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

2.4 An original and seven (7) copies of The PROPOSAL and all related documents shall be submitted on forms furnished, or copies thereof, and shall be manually signed. If erasures or other changes appear on the forms, the person signing the PROPOSAL shall initial such erasures and changes. Electronic or facsimile Proposals will not be considered. **COST PROPOSALS SHALL BE PROVIDED IN A SEPARATELY SEALED ENVELOPE.**

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

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

3.0 PROPOSAL FORMAT

3.1 All Proposers must provide the following information:

1. Required Forms and Certifications

The following signed forms and certifications shall be provided:

- Addenda Acknowledgement Form
- Affidavit of Non-Collusion
- Certification of Primary participant Regarding Debarment, Suspension, and Other Responsibility Matters
- Certification of Lower Tier Participants Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Certification of Restrictions on Lobbying
- Certification of Utilization of Disadvantaged Business Enterprises.
- Letter of Intent to Perform as a DBE Contractor
- Schedule of DBE Participation
- Explanation of "No Response"
- Cost Proposal Form

Blank Forms are provided in Section C of this RFP.

4.0 CHANGES TO THE SPECIFICATIONS

- 4.1 Any changes to the RFP will be made in written addendum by MATA and will be forwarded to all persons and firms to who documents have been transmitted.
- 4.2 Requests for clarification or approved equal must be submitted in writing to Shelia Maclin, MATA, 1330 Levee Road, Memphis, TN 38108 and must be received **no later than 4:00 p.m. local time on May 23, 2022** in accordance with the Approved Equals procedures described in the General Contract Provisions. Any unapproved deviations, exceptions, substitutes, alternates or conditional qualifications contained in a PROPOSAL may be cause for its rejection. **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.** Questions may be faxed to (901) 272-2912 or email to smaclin@matatransit.com

5.0 PROPOSAL EVALUATION

- 5.1 MATA will appoint an Evaluation Committee to evaluate Proposals and recommend the top ranked proposer. The committee will apply those evaluation criteria set forth in the RFP or in addenda that maybe be issued. An evaluation criterion is deemed to include any unstated "sub criterion" that logically might be included within the scope of the stated criterion.
- 5.2 The Evaluation Committee will likely request interviews with the firms in the competitive range.
- 5.3 MATA reserves the right to enter into negotiations with the top ranked proposer without requesting interviews.
- 5.4.1 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. As proposals are considered by MATA to be more equal in their technical merit, the evaluated cost becomes more important so that when technical proposals are evaluated as essentially equal, cost may be the deciding factor. Technical factors as a whole are more important than cost.

All proposals will be evaluated by the following evaluation criteria:

- A.
 - 1. Experience and Past Performance
 - 2. Qualifications of Employees
 - 3. Understanding the Project
 - 4. Conformance to the RFP

- B. Overall Cost

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. The Evaluation Committee may require firms in the competitive range to appear before it for an interview.

- 5.5 Negotiations will be in conformance with applicable federal, state, local laws, regulations and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract cost. MATA reserves the right to request documentation supporting the proposed contract cost including overhead rates for the firm and subcontractors. Such information can include, but not be limited to:

- a. An overview of the accounting system and its capability to track project costs.
- b. Charts of accounts including a definition of what is included in each account.
- c. A statement indicating the basis of the overhead rate and whether it is historical information or projections. (The proposer will certify that the overhead burden rate separates direct and indirect charges and that indirect charges do not include any unauthorized charges for Federal Acquisition Regulations, Part 31.)

6.0 AWARD OF CONTRACT

- 6.1 The contract will be awarded to the responsible proposer whose proposal is most advantageous to MATA.

- 6.2 MATA reserves the right to reject any and all Proposals or waive informalities and irregularities in offers received. MATA reserves the right to award multiple contracts.

- 6.3 A written notice of award or Acceptance of Offer, mailed or otherwise furnished the Successful Proposer within the time specified in the RFP, shall be deemed to result in a binding contract.

7.0 PROTESTS

- 7.1 MATA will consider all protests filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests are to be submitted in writing, in accordance with the protest procedures described in Section 12 of the General Contract Provisions.

8.0 DISADVANTAGED BUSINESS ENTERPRISE

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/

- 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.

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. This goal reflects 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 DBE goal of 11% for this project. 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.

C. Evaluation of DBE Certification Status

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

DBE certification application can be obtain on line:

Tennessee Department of Transportation
Small Business Development Program
Suite 1800, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-0347
(888)370-3647
(615)741-3681
www.tdot.state.tn.us/civil%20rights/smallbusiness/

Memphis Area Transit Authority
1370 Levee Road
Memphis, TN 38108-1011
(901)722-7139
www.matatransit.com

D. 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 WORK

SCOPE OF WORK SECURITY GUARD SERVICE

Section I - INTRODUCTION

MATA is requesting proposals from qualified security Contractors to provide armed and unarmed uniformed security services for MATA's main operations center, trolley operations center, passenger transit centers, maintenance facilities, and other facilities as described herein.

In addition, MATA is seeking qualified security Contractors to provide specialized security technical services to perform crime prevention assessments, threat & vulnerability assessments TVA's, Baseline Assessments for Security Enhancements (B.A.S.E.) Security Assessments, crime prevention assessments, and DHS/TSA training for its, and MATA employees to meet or exceed DHS/TSA requirements or guidance.

The Request for Proposal (RFP) described herein establishes minimum requirements a bidder must meet in order to be eligible for consideration as well as information to be included in the Contractor's bid response.

Carefully examine the specifications, conditions and limitations. The selection of the successful Contractor will be made based on MATA evaluation and determination of the relative ability of each Bidder to deliver a well-managed, performance-base, and quality service in a cost-effective manner.

The following specific criteria will be evaluated and must be addressed in the proposal:

1. Company History, Organization, and Achievements
2. Contractor's Security Plan
3. Employee Management Approach
4. Security Management Approach
5. Quality Management Systems Program
6. Security Training Programs (Including: Armed & Unarmed Certifications, 49 CFR Parts 1570 & 1582, NIMS)
7. Security Incident Notification, Investigation & Reporting Processes and Procedures
8. Value Added Features
9. Computer Management System
10. Hours of Service & Fatigue Management Program
11. Personnel Selection Process
12. Development and Retention of Personnel
13. Technical support services to provide security assessments, Threat & Vulnerability Assessments, B.A.S.E. Security Assessments)
14. Cost Proposal and Invoicing
15. Insurance
16. Benefits Program
17. Employee Recognition Programs
18. Transition Plan
19. References

MATA is not obligated to accept the lowest bid and reserves the right to reject any and all bids or amend the scope of the project. All Bidders must be duly licensed or otherwise can perform work in accordance with all governing federal, state and local authorities and to the satisfaction of those authorities.

Section II - SUBMISSION OF PROPOSALS

Responses to this RFP are due by 10:00 AM on June 8, 2022. Late submittals will be rejected. All proposals are to be sealed and addressed to Shelia Maclin the manager of the RFP process.

Eight (8) copies of the proposal may mail or delivered to the above address. Any questions regarding this RFP should also be addressed to the above individual. Contractors may not contact other executives, managers or employees of MATA without permission of the manager of the RFP process.

Section III CONTRACT TERM

The term of this contract shall be for a three (3) year period unless terminated by either party with thirty (30) days written notice.

Section IV SCOPE OF SERVICES

This project includes approximately hours of uniformed security service per week, allocated as follows:

| Description of Site & Job Classification | HPW Recommended Wage |
|---|-----------------------------|
| Site & Job Classification 000 | \$0.00 |
| Site & Job Classification 000 | \$0.00 |
| Site & Job Classification 000 | \$0.00 |
| Total 000 | \$0.00 |

Contractor shall provide armed and unarmed uniformed security services at the following locations, days and times, unless otherwise indicated per site specifications.

Contract security personnel will provide a variety of services, implementing MATA's security goals, objectives, and milestones according to policies and procedures which may include but is not limited to the following general tasks:

- **Entry and egress access control**
- **Roving patrols of interior and exterior building areas**
- **Visitor and building employee identification verification**
- **Incident response, notification, investigation, and reporting**
- **Daily operating reports**
- **Monitoring and responding to base building intrusion detection systems, alarms and fire detection equipment**
- **Responding to support other life safety duties as identified in post orders and standard operating procedures.**

Contractor shall provide appropriate and necessary management and supervision for all Contractor's employees and shall be solely responsible for instituting and invoking disciplinary action of employees not in compliance with Contractor's rules and regulations, as well as any other policy established by the contracting parties.

Contractor shall develop a comprehensive Security Plan that meets or exceeds MATA's Security Plan to comply and or conforms to Federal, State, and local regulations, directives, and guidance. The Contractor's Security Plan shall detail its security program, security management approach, goals, objectives, accountabilities, and at a minimum the following: service entailing the Contractor's goals, objectives, milestones, security management approach, employee management approach,

Contractor shall develop a comprehensive set of Post Orders documenting both general procedures and site-specific responsibilities. Post Orders shall be prepared prior to the commencement of the contract and must be reviewed and approved by [Company] management with thirty (30) days from commencement of Contractor's services to [Company]. All security officers will be required to read and verify they understand the Post Orders and at minimum, shall be tested during the On-The-Job Training (OJT) period, annual or more frequently during site inspections. Contractor shall ensure hiring, training and administration of motivated and professional employees that meet or exceed both Contractor's and [Company]'s standards. Contractor is responsible for the daily personal appearance of security personnel. Contractor shall provide seasonal uniforms and weather-appropriate protective clothing necessary to support continuous performance of contract requirements. Security officers are prohibited from carrying weapons of any kind, including but not limited to: firearms, nightsticks, martial arts weapons or equipment, batons or any chemical agent spray or liquid. Contractor shall agree to remove from the site, whenever required to do so by [Company], any employee considered by [Company] to be unsatisfactory or undesirable to [Company], within the limits of any applicable laws. Contractor shall administer all cost accounting and billing relative to this contract. Contractor shall respond as necessary to accommodate additional duty hours as may be requested by [Company].

Section V INSTRUCTIONS TO BIDDERS

Bidder is to address the following subjects in the response. Please insert your text in the space following each section. Reference any attachments in the text and include printed copies of attachments at back of this document.

1 Company History and Organization

Provide a brief company history, mission statement and organizational summary. Explain ownership (private or public) and include brief biographical information regarding the personnel who would be directly responsible for the management and local supervision of this project

2 Management Approach

Describe in detail how your firm will be organized to manage this project. Indicate by position or title, the person who will have the overall responsibility for the [Company] account. Indicate the support staff available to this project manager by function. Bidder must supply an Organization Chart depicting the structure of the local servicing office and regional support.

3 Personnel Selection Process

Describe how recruitment and selection of security officers is accomplished. All personnel and supervision provided under this RFP must be thoroughly trained, experience and qualified to perform the work to which they are assigned. Bidder shall have a documented employment process which shall include application, interview, drug testing and background check phases. A written description of the Bidder's employment process and qualifications is to be included in the response.

4 Development and Retention of Personnel

Describe your [Company] succession planning and development of officers, supervisors and managers. Describe methods and initiatives designed to promote employee retention.

5 Total Quality Management Program

Outline administrative controls, plans and process to monitor and assure contract compliance of security services. Include methods of quality control, contract administration, audits, management inspection programs, conduct and job performance standards, corrective action planning and follow-up reporting.

6 Cost Proposal and Invoicing

Provide billing rates for each of the following:

1. Security Officer

2. Console Operator
3. Shift Supervisor
4. Account Manager

Include overtime policies, holiday policies and rates. Propose invoicing frequency and procedures and applicable discounts. All invoices will clearly identified applicable job site coding in order to associate Contractor's actual costs with [Company]'s job site or job codes. Explain how discounts will be applied for different payment terms.

7 Training Programs

Describe in detail the training programs in place to support this project. Include the following:

1. Pre-Assignment Training
2. Job and Task Specific Training (OJT)
3. Formal Continuous Training
4. Annual Retraining and Recertification
5. Supervisory Development Training (Describe the program that your company utilizes that leads to a professional credential for supervisors.) Include the name, contract information (including email address) and qualifications of the local or regional trainer(s) who will conduct training for the [Company] and the manner in which the [Company] documents training, paper records, online, web accessible, etc.

8 Computer Management System

Describe productivity and technology applications utilized to enhance and improve business processes, integration of scheduling, payroll and billing systems or other benefits of computerization. Summarize how such systems will benefit [Company].

9 Value Added Features

Indicate features or programs not covered elsewhere in the response which are offered to enhance your firm's ability to effectively manage this project.

10 Insurance

The successful bidder shall carry and maintain, with respect to any work or service to be performed at [Company] facilities, insurance written by a responsible insurance [Company], to provide for the following:

1. Workers' Compensation as required by applicable statute and Employer's Liability Insurance.
2. Commercial General Liability Insurance
3. Automobile Liability
4. Excess-umbrella Insurance, including terrorism coverage.

Include a sample Certificate of Insurance including limits with the response. All policies and certificates shall provide for thirty (30) days notification to [Company] in the event of cancellation, reduction in limits or changes in coverage.

11 Benefits Program

Describe in detail all benefits offered to employees. Include health care insurance, life insurance, holiday pay, vacations and any other benefits offered. Cite specific plans offered and employee cost sharing arrangements (payroll deduction). Please include the following:

1. Medical / health insurance (indicate costs for a PPO program including coverage options for employee, employee and spouse and employee and family.)
2. Dental (indicate monthly premium and annual limits.)
3. Life Insurance (indicate amount provided at no cost to employee and any optional coverages available.)

12 Employee Recognition Programs

Outline any specific incentive and recognition programs made available to employees and explain how these programs are managed and if charges to [Company] will be incurred as a result of Contractor implementing these programs.

13 Transition Plan

Submit a projected Transition Plan for implementation if awarded the contract to include tasks and time frames. Include a list of all individuals assigned to your transition team with current contact information, telephone numbers and email addresses.

14 References

Provide at least three (3) client references whose facilities are comparable in size, profile and security service hours to [Company]. Include [Company] name, address, contact person and contact number.

The Memphis Area Transit Authority (MATA) is soliciting offers for security service on a regular basis and at various company functions as needed. The following services will be required:

Administration/Operations 1370 Levee Road

- One armed guard required for guarding MATA's Coin Room from 5:30 a.m. until dismissed usually between 1:00 p.m. and 3:00 p.m. Monday- Friday except on holidays. Armed Service shall be required for escorting the coin room personnel to and from 1370 Levee Road and the Trolley Maintenance and Storage Facility located at 547 North Main Street Monday through Saturday when they collect revenue from this location.
- Two armed guards (One on each main gate-Levee Road entrance and Watkins Street Entrance) 24 hours a day, 7 days a week.
-

PROCEDURES FOR ARMED ESCORT SECURITY SERVICE:

The escort security service will guard the Coin Room personnel from the time they leave the Trolley Maintenance and Storage Facility until they arrive at the Coin Room at 1370 Levee Road. Please contact MATA's dispatch office at 901-722-7129, if security personnel will be late or replaced at least Two (2) hours in advance.

The armed security guard for the Coin Room will be uniformed personnel with badges and will be stationed in the old foreman's office from 8:00 a.m. until MATA's Armored Car Contractor picks up the daily deposit. The Coin Room personnel will notify the armed security guard when they are entering or exiting the Coin Room.

William Hudson Transit 444 North Main Street

- | | | |
|--------------------|-----------------------|-----------------|
| • One armed guard | 5:30 a.m.- 3:00 p.m. | Monday - Friday |
| • One armed guard | 7:00 a.m.- 3:00 p.m. | Monday - Friday |
| • Two armed guards | 9:00 a.m.- 6:00 p.m. | Monday - Friday |
| • Two armed guards | 3:00 p.m.- 12:00 a.m. | Monday - Friday |
| • Two armed guards | 5:30 a.m.- 9:30 p.m. | Saturday |
| • Two armed guards | 9:00 a.m.- 6:00 p.m. | Sunday |

American Way Transit Center 3921 American Way

- | | | |
|--------------------|----------------------|----------------|
| • One armed guard | 6:45 a.m.-6:00 p.m. | Monday-Friday |
| • One armed guard | 7:00 a.m.-4:00 p.m. | Monday-Friday |
| • Two armed guards | 4:00 p.m.-12:00 a.m. | Monday- Friday |
| • Two armed guards | 7:00 a.m.-8:00 p.m. | Saturday |
| • Two armed guards | 7:00 a.m.-7:00 p.m. | Sunday |

The American Way Transit Center may be closed on holidays when MATA operates a Sunday schedule which include New Year's Day, Dr. Martin Luther King, Jr.'s Birthday (Saturday Schedule), Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Licensing Requirements: The Contractor must be licensed by the State of Tennessee in the business of security. A copy of the license shall be enclosed with the proposal. The Contractor and its personnel assigned to provide this security service shall be certified for providing security and documentation of this certification shall be submitted with the proposal.

Vehicles: Any security vehicles proposed to be used by the Contractor on MATA's properties shall be marked "Security". MATA may provide a security vehicle for the 1370 Levee Road, 1364 N. Watkins and 1376 N. Watkins properties. This vehicle may also be used to travel to the 547 N. Main Street MATA's Trolley Facility. This vehicle will also be used for patrolling MATA's Levee Road, Watkins Street and the 547 N. Main Trolley facilities. The cost associated with the MATA vehicle will be applied to the contract. MATA wishes to have an option on vehicles: MATA supplied and Security Company supplied. If the vendor proposes to use a security company vehicle, the vendor shall indicate the hourly rate for that vehicle on the Cost Proposal Form.

Insurance: The Contractor shall take out and maintain during the life of this contract public liability and property damage insurance in the following amounts:

- Public liability insurance for bodily injury: limits of liability in a minimum amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) for each occurrence and subject to an aggregate limit in a minimum amount of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)
- Property damage insurance: limits of liability in a minimum amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for each occurrence and subject to an aggregate limit in a minimum amount of ONE MILLION DOLLARS (\$1,000,000.00)

The policies providing insurance specified above shall include MATA, City of Memphis (a municipal corporation), Mid-South Transportation Management, Inc. (MTM) and First Transit, Inc. as additional insured or loss payees with respect to physical loss or damage to any Memphis Area Transit Authority transit vehicle and property. The successful proposer shall provide a certificate of insurance completed by its insurance carrier, agent or broker certifying that the insurance coverages required are in effect and that coverages will not be canceled or materially changed without thirty (30) days advance written notice to MATA. A certificate of insurance specifying the foregoing coverage shall be received by MATA at the following address:

Memphis Area Transit Authority
Shelia MacIn
1370 Levee Road
Memphis, TN 38108

The successful proposer shall provide to MATA a copy of each year's renewal of the above insurance to the above-listed address.

The successful proposer shall furnish, along with his bid, CERTIFICATES OF INSURANCE endorsed by the insurance company showing the above coverages. Deductions and Self-Insured Retainers, if any, shall be identified in the proposal. All deductible payments are the responsibility of the Contractor. Proof of coverage must be included with the proposal.

The successful proposer shall provide to MATA a copy of each year's renewal of the above insurance to the above-listed address.

The successful proposer shall furnish, along with his bid, CERTIFICATES OF INSURANCE endorsed by the insurance company showing the above coverages. Deductions and Self-Insured Retainers, if any, shall

be identified in the proposal. All deductible payments are the responsibility of the Contractor. Proof of coverage must be included with the proposal.

Compliance with Federal Transit Administration (FTA) Substance Abuse Regulations and The State of Tennessee Department of Labor Drug Free Workplace Program: The FTA of the U.S. Department of Transportation (DOT) has enacted 49 CFR Part 655 that mandates urine drug and evidential breath testing (alcohol testing) for safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result. MATA / MTM and its contractors with safety-sensitive personnel are required to comply with these regulations. MATA / MTM and the Contractor will be required to comply with any amendments to these regulations. All security personnel carrying firearms, and any contractor providing security service with such personnel, are included in the safety-sensitive classification and will be placed in the MATA / MTM random drug and alcohol pool. Any employee involved in an accident falling within the FTA guidelines must follow MATA / MTM Drug and Alcohol Procedures. The testing includes DOT pre-employment, random, post-accident, reasonable suspicion and follow-up testing. The DOT regulations require that each safety-sensitive employee have one hour of training on substance abuse. MATA / MTM will provide this training at no charge to the successful Proposer's safety-sensitive personnel.

All armed security service required by this RFP falls within this category. All costs associated with complying with the regulations including pre-employment, random, post-accident, reasonable suspicion and follow-up testing shall be included in the proposal.

The successful Proposer shall provide documentation of all pre-employment testing to Ms. Susan Schubert, Chief Human Resources Officer, MATA, 1370 Levee Road, Memphis, TN 38108 within 10 days of notification of award of the contract, but no later than the notification of Notice to Proceed.

Detailed information about MATA's security procedures is provided in the remainder of this section.

SECURITY PROCEDURES FOR MEMPHIS AREA TRANSIT AUTHORITY

INTRODUCTION

MATA operates a fleet of almost 200 buses, vans, and service vehicles from its Operations Facility located at 1370 Levee Road and six trolleys from the Trolley Maintenance and Storage Facility located at 547 North Main Street in Memphis. The Operations Facility is the main headquarters for MATA and serves as the maintenance and storage facility for all MATA buses, vans, cars, trucks and other heavy equipment. The facility contains the Maintenance Building, the Operations and Administration Building and the Service Building on a 23-acre site. Other facilities under the control of MATA include the William Hudson Transit Center at 444 North Main Street, the American Way Transit Center at 3921 American Way, and buildings located at 1364 and 1376 N. Watkins Street. The buildings, the land they occupy and all MATA vehicles and equipment are owned by the City of Memphis.

MATA provides transit service every day of the year, and it is imperative that the land, buildings, vehicles, equipment and employees have the necessary security in order for MATA to provide safe, reliable and efficient transit service.

PURPOSE OF SECURITY

The primary purpose of the Contractor will be to provide reasonable security for the employees, visitors and the property of MATA listed above. Employees' and visitors' private vehicles are parked at owner's risk; however, MATA security will be responsible for the safety of the vehicles while parked on MATA's property.

RESPONSIBILITY

The Contractor will be responsible for providing uniformed security personnel with badges for patrolling MATA's properties. The security service personnel on MATA's properties have the authority to investigate any complaint, if unusual, and take reasonable action to resolve the matter. If there are instances where life or property is threatened and physical force or contact may become necessary, or in instances of suspicious activity, the security personnel shall notify the MATA Dispatcher who will notify the necessary emergency agencies. All guards will be trained on all security equipment that they carry and the appropriate certifications will be provided to MATA to be maintained by the Safety and Security Division. Radios will be provided by MATA. It will be the Contractor's responsibility for maintaining possession of the radios.

The Contractor shall be allowed to sub-contract any of the service under this contract. The Contractor shall submit a list of all employees who will be providing this service to the MATA Project Manager along with documentation of their qualifications, certifications and substance abuse training and negative testing results. Employees and relief employees for this service shall be trained as to the procedures used at MATA. The Contractor shall provide quality personnel whose appearance while on MATA property will add to the overall image of this agency and be appropriate for the service being provided.

HOLIDAYS

New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

SECURITY OF THE OPERATIONS AND ADMINISTRATION BUILDING

At 5:00 p.m. during weekdays (with the exception of holidays listed above), the door leading from the operators' assembly room to the MATAPlus and Transportation Department will be locked. On weekends and holidays, only the Dispatcher's office and parts of the Maintenance Department will be open.

The emergency exit doors on the south and north ends of the Operations portion of the building are to remain "locked" from the inside at all times and used primarily for exiting the building.

The door located on the north end of the building leading to the second floor will remain locked at all times; however, it can be used to exit the building or as access to the first or main floor. The door located on the north end of the middle offices of the building will remain locked at all times; however, it can be used as an entrance to personnel with the code or as an exit.

The only person allowed in the Administrative portion of the building after 5:00 p.m. will be employees who work in that area, the cleaning crew and the Run Dispatcher. Permission will be granted to other persons when necessary.

SECURITY OF William Hudson Transit Center AT 444 NORTH MAIN STREET AND THE AMERICAN WAY TRANSIT CENTER AT 3921 AMERICAN WAY:

The following security measures shall be taken:

1. Security personnel shall arrive on the properties on time and notify MATA staff at your arrival time and departure time. Sign-in sheet must be completed.
2. Security personnel shall be professionally uniformed at all times. **NO BDU TYPE UNIFORMS**
3. There are no gates to open and close at the William Hudson Transit Center.
4. Check all entrances and exits every hour.
5. Check restrooms every half hour or when large crowds congregate in the restrooms.
6. Walk external grounds and patrol entire building every 30 minutes including parking lot.
7. Keep unauthorized persons out of designated staff areas.
8. Remind customers of no smoking in the building or under canopy areas.
9. Handle outbursts and disputes in and outside of the building.
10. Ensure that customers are orderly; for example, customers should not sit on the backs of the benches, play radios in the building, fight or use loud offensive language.
11. Guard should be attentive and alert at all times; for example, using cell phones, reading the newspaper, magazines or holding conversations with riders which may distract the guard from observing customers and MATA property.
12. No televisions, radios or IPODs for a guard other than MATA radios or those provided by the security company shall be used during work shift.
13. Keep unauthorized vehicles out of the bus lanes.
14. Maintain surveillance throughout the property with a schedule provided by the security company.
15. Provide appropriate assistance to the Customer Service Representative upon request and respond to paging by Customer Service.

16. Ensure that the building is properly secured at closing with MATA personnel.
17. Escort MATA staff person(s) to their vehicle(s) if requested.
18. Inform MATA personnel if the security guard leaves the premises (they should not leave buildings and staff unattended).
19. Reduce unnecessary mingling and conversations with customers and blockage of doorways.
20. Security personnel shall not conduct personal business on MATA time.
21. Security personnel shall not sit on desks or permit customers to sit on desks.
22. Inform MATA if no security personnel are available to work at least two hours in advance.
23. Do not give transit information to customers. Refer all customers to MATA for assistance.
24. Remain visible throughout the hours scheduled to be on the property.
25. Respond promptly when a MATA personnel notifies Security of problems.
26. Minimize any telephone usage.
27. Do not permit customers to stand at security desk and engage in extended conversations.
28. Monitor parking to ensure reserved employee parking spaces remain open for employee use only.
29. Do not watch or secure packages for customers.
30. For police assistance, contact MATA's Radio room to make the emergency call at 722-7132 or 722-7133,
31. Security may be required to assist in removing disruptive passengers from buses or trolleys.
32. Submit daily reports on activity during each work shift.
33. Restrict persons from soliciting on MATA's premises. No private sales of any type should be conducted. Including but not limited to display or set-up of food, clothing or other sales.
34. Security should bar and report all illegal activity including, but not limited to the sale, distribution, possession of stolen property, dispensing, manufacturing, purchasing, transferring or being under the influence of controlled substances, alcoholic beverages or other intoxicants at any time in or around the William Hudson Transit Center, American Way or other MATA properties.
35. Security shall deter and report all persons engaging in solicitation in or around the William Hudson Transit Center, American Way or other MATA properties.
36. Security shall prohibit and direct all persons attempting to post, distribute, or display any signs, notices, advertisements or other printed or written materials at the William Hudson Transit Center, and American Way or any MATA facilities or properties.
37. Security shall suspend/stop all persons engaging in any form of gambling at the William Hudson Transit Center, American Way or other MATA properties.

38. Security shall remind customers that consumption of alcoholic beverages or the possession of an open container of any alcoholic beverage in or around the William Hudson Transit Center, American Way or other MATA properties is strictly prohibited.

PROCEDURES FOR HANDLING COMPLAINTS

A Project Manager for MATA Safety and Security will be designated and be the liaison between the Contractor and MATA to insure compliance with the provisions of the contract. A designated person at each MATA facility will advise the Project Manager in writing of any complaints, missed assignments or deviation from the procedures that are required by this contract. The Project Manager will be given a representative from the Contractor to investigate these complaints and make adjustments as necessary to be sure the service is handled in compliance with the contract. All complaints will be handled within thirty-six hours from the date they are received. A fax number or e-mail address will be provided so written complaints may be resolved in a timely manner.

OPTIONS

MATA may require the successful contractor to provide their own vehicle(s). Security personnel maybe required to provide security for special situations that may arise and are unforeseen which may require vehicles and some off-site posting.

TRAINING

Each security officer must be trained and the appropriate credentials on file with MATA Safety and Security for each piece of security equipment they carry i.e. baton, handcuffs, and any other authorized equipment.

At the time of submission, each vendor shall provide the total number of training hours that each officer receives during the initial hiring process and copies of the training curriculum.

In addition, all contract security officers working under this contract will be required to attend MATA orientation training program provided by MATA's Safety and Security Division.

SECTION C
REQUIRED FORMS AND CERTIFICATIONS

MEMPHIS AREA TRANSIT AUTHORITY
ADDENDA ACKNOWLEDGEMENT FORM

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

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Name of individual, partner or corporation:

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____ Fax Number: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

EXHIBIT I
MEMPHIS AREA TRANSIT AUTHORITY
AFFIDAVIT OF NON-COLLUSION

Affidavit of Non-Collusion:

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

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

Signed: _____

Firm Name: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public

My Commission expires _____

Bidder's
E.I. Number: _____

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

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

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

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

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

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

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

Signature and Title of Authorized Official

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

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

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

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

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

Signature and Title of Authorized Official

EXHIBIT IV

MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF RESTRICTIONS ON LOBBYING
(For Contracts of \$100,000 or greater)

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

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

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

Executed this _____ day of _____

By: _____
Signature of Authorized Official

Title of Authorized Official

**Certification of Utilization of
Disadvantaged Business Enterprises**

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

Signature _____

Title _____

Date _____

Letter of Intent to Perform as a DBE Subcontractor

To:

Name of Prime/General Bidder

22-12
MATA RFP Number

Address of Prime/General Bidder

City/State/Zip

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

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

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

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

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

DBE Business Name

Signature of Authorized DBE Representative

Certification # / State of Certification

Expiration Date of Certification

Address

Date

City/State/Zip

Phone Number Fax Number

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

Date

Name of Prime or General Bidder

Signature of Authorized Representative

SCHEDULE OF DBE PARTICIPATION

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

P = Prime Contractor
JV = Joint Venture
S = Subcontractor

NO RESPONSE

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

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on RFP #22-12 Three Year Security Guard Service 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: _____

E-mail: _____

Signature: _____

- ☐ Please keep our name on the Bidder's list for this Item.
- ☐ Please remove our name from the Bidder's list for this Item.

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

COST PROPOSAL FORM SECURITY GUARD SERVICE

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

Year 1
Hourly Rate
(08-1-22- 07-31-23)

Year 2
Hourly Rate
(08-1-23 - 07-31-24)

Year 3
Hourly Rate
(08-1-24 - 07-31-25)

ARMED GUARD SERVICE

Sunday

Weekday

Saturday

Holiday

Special Events

OPTION

Contractor Vehicle

NAME OF INDIVIDUAL / PARTNER / CORPORATION:

ADDRESS:

PHONE:

FAX:

E-MAIL:

BY:

TITLE:

SIGNATURE:

IMPORTANT – THIS FORM MUST BE SIGNED

SECTION D

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

Utilization of Disadvantaged Business Enterprises

1. Policy and Terms

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

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

Disadvantaged Business Enterprise Goal: 11%

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

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

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

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

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

2. Definitions

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

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

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

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

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

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

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

3. Counting DBE Participation Toward the Contract Goal

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

The Proposer may count toward its DBE goal only expenditures to firms which are currently certified by the Uniform Certification Agency or the Tennessee Department of Transportation and which perform a commercially useful function. A firm is considered to perform a commercially useful function

when it is responsible for the performance of a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.

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

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

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

4. DBE Substitutions

- a. Arbitrary changes by the Contractor of the commitments previously indicated in the Schedule of DBE participation are prohibited. No changes may be made to the DBE firms listed on this

schedule after the opening of Proposals but prior to contract award. Further, after entering into each approved DBE subcontract, the Contractor shall neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the Compliance Officer, DBE Program. Such approval is required even if the DBE agrees with the change to the DBE's contract desired by the Contractor.

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

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

5. Good Faith Efforts

In order to be responsive, a Proposer must make good faith efforts to meet the DBE participation goal set forth in the contract. The Proposer must document the good faith efforts it made in that regard. Thus, the Proposal submitted to MATA must be accompanied by written documentation prepared by the Proposer evidencing all of its reasonable good faith efforts toward fulfilling the goal. These efforts must be active steps, ones that could reasonably be expected to lead to sufficient DBE participation to meet

the contract DBE participation goal. Mere *pro forma* efforts are not acceptable and will be rejected by the Compliance Officer, DBE Program.

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

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

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

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

b. Joint Ventures

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

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

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

7. Reporting Requirements During the Term of the Contract

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

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

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

8. Prompt Payment to Subcontractors

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

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

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

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

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

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

ATTACHMENT 1
GENERAL CONTRACT PROVISIONS

MEMPHIS AREA TRANSIT AUTHORITY (MATA)

GENERAL CONTRACT PROVISIONS

1. **Non-Collusion** - The Proposer guarantees that the Proposal submitted is not a product of collusion with any other Proposer and no effort has been made to fix the Proposal price of any Proposer or to fix any overhead, profit, or cost element of any Proposal price. An Affidavit of Non-Collusion, as per attached format, must be signed and submitted with Proposal. (Exhibit I)
2. **Proposal Acceptance** - Each Proposal will be submitted with the understanding that the acceptance, in writing by purchaser of the offer to furnish any or all of the items described herein, shall constitute a Contract between the Proposer and the purchaser, which shall bind the Proposer on his part to furnish and deliver at his Proposal price and in accordance with said accepted Proposal and specifications.
3. **Pricing** - The price to be quoted in any Proposal submitted shall include all labor, materials, tools, equipment, and other costs necessary to fully complete the project in accordance with the specifications. Anything omitted from such specifications which is clearly necessary for the completion of the item and its appurtenances shall be considered a portion of such Proposal item although not directly specified or called for in these specifications. All material shall be new and in no case will used, reconditioned, or obsolete material be accepted unless otherwise specified. Proposer should note discounts, if any. Freight charges must be included in Proposal price.
4. **Terms of Payment** - Payment for the specified items shall be net thirty (30) days after acceptance of an approved invoice.
5. **Acceptance of Material** - If the item is not acceptable; MATA will furnish a letter of non-acceptance detailing the deficiencies within thirty (30) days after delivery. Acceptance of delivery of an item shall not release the CONTRACTOR from liability for faulty workmanship or materials appearing even after final payment has been made.
6. **Approved Equal** -
 - a. In all cases, materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.
 - b. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a Proposal may be cause for its rejection.
 - c. If a potential Proposer feels that his product is an equal to the product specified, he must submit a written request to MATA.
 - d. Requests for approved equals, clarification of specifications, and protest of specifications must be received by MATA, IN WRITING, NO LATER THAN 4:00 p.m., local time May 23, 2022 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.
 - e. MATA's replies to requests under paragraph (d) above will be post-marked at least fourteen (14) days before the date scheduled for Proposal opening.

- f. A notice of approved equals shall be furnished to all parties receiving specifications so that all Proposers may prepare their Proposal accordingly.
 - g. Appeal from the decisions of MATA to approve or disapprove approved equal status shall be submitted in writing to the Chief Executive 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 Chief Executive Officer may request additional information from the appealing party, and information or a response from the Proposers which shall likewise be submitted in writing to the Chief Executive Officer not later than ten (10) days from the date of MATA's request. So far as practicable, appeals will be decided upon the basis of the written appeal, information and written response submitted by the appealing party and other Proposers; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by MATA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Chief Executive Officer shall either (a) render a decision which shall be final and advise all interested parties of same in writing, 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 procedure. Following the informal hearing, the Chief Executive Officer shall render a decision, which shall be final and advise all interested parties thereof in writing.
 - h. Changes in the specifications will be made by written addendum by MATA, and will be forwarded to all persons and firms to whom Proposal documents have been furnished.
- 7. Proposal Withdrawal -
 - a. Each and every Proposer who submits his Proposal specifically waives any right to withdraw it except as hereinafter provided. Proposers will be given permission to withdraw any Proposal after it has been deposited with MATA, provided any Proposer makes its request by telephone, telegraph, facsimile, or in writing, twenty-four (24) hours before the time Proposals are due. Requests pertaining to withdrawals by telephone, telegraph or facsimile must be confirmed in writing by the Proposer and must reach the office of the Chief Executive Officer of MATA not later than one (1) hour prior to the time fixed for submission of Proposals.
 - b. No Proposer may withdraw his Proposal within ninety (90) days after the date Proposals are due.
- 8. Proposal Rejection - MATA reserves the right to waive any minor Proposal informalities or irregularities received which do not go to the heart of the Proposal or prejudice other Proposers, or to reject, for good and compelling reasons, any and all Proposals submitted. Conditional Proposals, or those, which take exception to the specifications, may be considered non-responsive and may be rejected.

9. **Tax Exemption** - MATA is exempt from payment of all Federal, State, and local taxes in connection with the project. Said taxes must not be included in Proposal prices. MATA will provide necessary tax exemption certificate to manufacturer, if requested.
10. **Proposal Evaluation** -
 - a. Consideration will be given to Proposer's previous experience, price, financial responsibility of Proposer, responsiveness to these specifications, including level of participation of DBEs.
 - b. Proposers may be required to submit duplicate sworn statements of their financial responsibility, technical qualifications, and performance record before a Contract can be awarded to them.
 - c. MATA reserves the right to award Proposals singularly or collectively on any of the Proposal items.
 - d. The Contract shall be awarded according to Section 5.0 of Section A.
11. **Proposal Price Form** - If MATA includes a Proposal Price Form in the IFB, Proposals must be submitted on the form provided. Each item should be listed separately on the form. Proposals submitted in any other form may be considered non-responsive and may be rejected. Proposals may be submitted on any or all items in this Proposal request.
12. **Protest Procedures** - Protests may be made by prospective Proposers whose direct economic interest would be affected by the award of a Contract, or by failure to award a Contract. MATA will consider all protests requested in a timely manner regarding the award of a Contract, whether submitted before or after an award. All protests are to be submitted in writing to the Contracting Officer, Memphis Area Transit Authority, 1370 Levee Road, Memphis, TN 38108. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protests must include at least the following information:
 1. Name, address, and telephone number of protestor.
 2. Identification of the solicitation or Contract Number.
 3. A detailed statement of the legal and factual grounds of protest, including copies of relevant documents.
 4. A statement as to what relief is requested.

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

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

the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by MATA, the Contracting Officer shall either (a) render a decision, or (b) at the sole election of the Contracting Officer, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not 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. Proposal protest against the making of an award by the MATA Board must be submitted in writing to the Contracting Officer and received by the Contracting Officer within seven (7) days of the award by the MATA Board. The process for resolving protests listed above in Section (a) will be followed for any protest received under this section.

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

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

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

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

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

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

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

- d. Appeals and requests for reconsideration of the determination of the Contracting Officer of protests under (a), (b) and (c) must be submitted to the Chief Executive Officer and received within seven (7) days after the date of the written determination by the

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

- e. Under certain limited circumstances, an interested party may protest to the Federal Transit Administration (FTA) the award of a Contract pursuant to an FTA grant. FTA's review of any protest will be limited to:
 - 1. Alleged failure of MATA to have written protest procedures or alleged failure to follow such procedures.
 - 2. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure which shall be submitted and processed in accordance with that Federal regulation.
- f. Protestors shall file a protest with FTA not later than five (5) working days after a final decision of MATA's Chief Executive Officer is rendered under the MATA protest procedure. In instances where the protestor alleges that MATA failed to make a final determination on the protest, the protestor shall file a complaint with FTA not later than five (5) Federal working days after the protestor knew or should have known of MATA's failure to render a final determination on the protest.
- g. **Submission of Protest to FTA**
 - 1. Protests shall be filed with the appropriate FTA Regional Office with a Concurrent copy to MATA.
 - 2. The protest filed with FTA shall:
 - (i) Include the name and address of the protestor.
 - (ii) Identify MATA project number and the number of the Contract Solicitation.
 - (iii) Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
 - (iv) Include a copy of the local protest filed with MATA and a copy of the MATA decision, if any.

13. **Correspondence -** The Proposer is required to show on all correspondence with MATA and FTA, the following: RFP No.22-12. Communication with MATA should be forwarded directly to Shelia Maclin, Manager of Purchasing, MATA, 1370 Levee Road, Memphis, TN 38108.
14. **Contract Subletting -** No Contract may be assigned, sublet, or transferred without the written consent of MATA.
15. **Miscellaneous -**
 - a. **CONTRACTOR** warrants that it has not been paid any bonus or commission for the purpose of obtaining this Contract.
 - b. Except as otherwise set forth herein, this Contract shall be governed and construed in accordance with the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this Contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.
 - c. The failure of MATA at any time to insist upon a strict performance of any terms, conditions, and covenants herein shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, and covenants herein contained.
 - d. **CONTRACTOR** shall not assign any interest or obligation in this Contract, and **CONTRACTOR** shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of MATA.
 - e. Any proposed change or modification of this Contract shall be submitted in writing to MATA for its prior approval. All changes shall be by written agreement of MATA and **CONTRACTOR**.
 - f. The **CONTRACTOR** acknowledges that MATA is managed and operated by Mid-South Transportation Management, Inc. (MTM). The **CONTRACTOR** shall cooperate with and abide by the instructions of MATA and MTM personnel.
16. **Extent of Agreement -**
 - a. The Proposal submitted by the **CONTRACTOR** is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Proposal, the provisions of this Contract shall control.
 - b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the **CONTRACTOR**, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.
 - c. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the **CONTRACTOR** as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.
17. **Compliance with Applicable Law -**

- a. In the performance of its obligations pursuant to this Contract, the CONTRACTOR shall comply with all applicable provisions of Federal, State, and local law in any manner effecting 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 Proposals 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 (3) 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 (3) 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 of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. Consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- b. **Air Quality.** The CONTRACTOR agrees to comply with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. as follows:
 - 1. The CONTRACTOR agrees to comply with applicable requirements of U.S. Environmental Protection Agency (EPA) regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act", 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the CONTRACTOR agrees to implement each air quality mitigation and control measure incorporated in the Project. The CONTRACTOR agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
 - 2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the CONTRACTOR should be aware that the following U.S. EPA regulations may apply to its Project: "Control of Air Pollution from Motor-Vehicles and Motor-Vehicle Engines", 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.
 - 3. The CONTRACTOR agrees to comply with the notification of violating facilities provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

- c. **Clean Water.** The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Among other things:
 - 1. The CONTRACTOR agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300h et seq.
 - 2. The CONTRACTOR agrees to comply with the notification of violating facilities provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. § 7606 note.
- d. **Use of Public Lands.** The CONTRACTOR agrees that no 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, or any land from a historic site of national, State, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. § 303.
- e. **Wild and Scenic Rivers.** The CONTRACTOR agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 et seq. relating to protecting components of the national wild and scenic rivers system.
- 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 et seq.
- g. **Wetlands.** The CONTRACTOR agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.
- h. **Floodplains.** The CONTRACTOR agrees to comply 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.** The CONTRACTOR agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 et seq.
- j. **Historic Preservation.** The CONTRACTOR agrees to facilitate compliance with 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-l et seq. as follows:
 - 1. In accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, MATA 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 any such properties that will be affected.
 - 2. The CONTRACTOR agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

- k. **Environmental Justice.** The CONTRACTOR agrees to comply 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.
 - 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 those effects as required by 49 U.S.C. § 5324(b), and any other applicable Federal laws and regulations, including 23 C.F.R. Part 771 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 documents required by 49 U.S.C. § 303) and 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. As soon as the Federal Government and the CONTRACTOR reach agreement on any deferred mitigation measures, the CONTRACTOR agrees that those measures will then be incorporated by reference and made part of the Contract. The CONTRACTOR agrees that any mitigation measures agreed upon by MATA and the Federal Government may not be modified or withdrawn without the express written approval of the Federal Government.
22. **Energy Conservation -** The CONTRACTOR shall comply with mandatory energy efficiency standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).
23. **Patent Rights -** The CONTRACTOR does hereby grant to MATA those rights that would be due to the United States of America as set forth in the Patent Rights Clause-Acquisition by the Government, at 41 C.F.R. 1-9.107-5(a).
24. **Rights in Data -**
- a. The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in Specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Contract administration.
 - b. All "subject data" first produced in the performance of this Contract shall be the sole property of the United States Government. MATA and CONTRACTOR agree not to assert any rights at common law or equity, and not to establish any claim to statutory copyright in such data. Except for its own internal use, MATA and the CONTRACTOR shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize other to do so, without the written consent of the Government until such time as the Government may have released such data to public; this restriction, however, does not apply to Agreements with Academic Institutions.
 - c. MATA and CONTRACTOR agree to grant and do hereby grant to the Government and to its officers, agents, and employees acting within the scope of their official duties, royalty-free, non-exclusive, and irrevocable license throughout the world:

1. To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this Agreement but which is incorporated in the work furnished under this Agreement; and
 2. To authorize others to do so.
 - d. The CONTRACTOR shall indemnify, save, and hold harmless MATA, the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MATA of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance use, or disposition of any data furnished under this Agreement.
 - e. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
 - f. Sections (c) and (d) above are not applicable to material furnished to MATA by the Government and incorporated in the work furnished under the Contract provided that such incorporated material is identified by MATA at the time of delivery of such work.
 - g. In the event that the project, which is the subject to this Agreement, is not completed, for any reason whatsoever, all data generated under that project shall become subject data as defined in the Rights in Data clause in this Contract, and shall be delivered as the Government may direct. This clause shall be included in all third-party contracts under the project.
 - h. No reports, maps, or other documents produced in whole or in part under this Contract shall be subject of an application for copyright by or on behalf of the CONTRACTOR.
25. **Vendor Responsibility** - It is the intent of these specifications to provide for goods of first quality and the workmanship must be the best obtainable in the various trades. The design of the goods, which the manufacturer proposes to furnish, must be of substantial and durable construction in all respects. No advantage shall be taken by the Proposer or manufacturer in the omission of any part or detail, which goes to make the product complete and ready for installation and use.
- The vendor shall assume responsibility for all materials used in the Proposal item whether the vendor manufactures the same or purchased ready-made from a source outside the vendor's company.
26. **References** - Proposer shall provide with his Proposal at least five (5) references for projects similar to that described in this Invitation for Proposal. The following must be provided: company name, address and telephone number, fax number, a contact person, and the dates of the contract. The references given should be on contracts within a twelve (12) month period prior to the Proposal due date.
27. **Delivery** - Proposals shall provide for delivery of all equipment 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.** The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(j), FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and implementing guidance FTA may issue. A Buy America certificate (Exhibit II), as per attached format, must be completed and submitted with the Proposal or the Proposal will be considered non-responsive.

A waiver from the Buy America provision may be sought by MATA if grounds for the waiver exist. Section 165a of the Surface Transportation Assistance Act of 1982 permits FTA's participation in this Contract only if iron, steel and manufactured products used in the Contract are produced in the United States. This applies to procurements of \$100,000 and over.

- 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** - 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 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. 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 Proposal being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on Proposal prices. MATA may require a pre-award audit, and potential contractors shall be prepared to submit data relevant to the proposed work which will allow MATA to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and MATA reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, MATA reserves the right to reject the single Proposal.

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

39. **False or Fraudulent Statements or Claims** - The CONTRACTOR acknowledges and agrees that:
- a. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. Department of Transportation (DOT) regulations "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by the Contract. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR 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 EPA 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 Agreement (MA15) FTA Master Agreement dated October 1, 2008) between MATA and FTA, 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. This applies to procurements of \$100,000 or more.

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 (11), dated October 1, 2004, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any MATA requests, which would cause MATA to be in violation of the FTA terms and conditions.
47. Access Requirements for Persons with Disabilities - The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:
- a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - b. U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - c. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - d. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - e. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - f. U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - g. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - h. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
 - i. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
 - j. Any implementing requirements FTA may issue.
48. Disputes, Breaches, Defaults or Other Litigation - **-(Applicable to Contracts Exceeding 100,000)**
- a. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a

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

- b. This Section 48 does not preclude consideration of questions of law in connection with decisions provided for in Paragraph a. above. Nothing in this Contract, however, shall be construed as making final the decisions of the Board or its representative on a question of law.
49. Nondiscrimination - Title VI of the Civil Rights Act - The CONTRACTOR will comply and will assure the compliance by subcontractors under this project with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and the assurances by MATA pursuant thereto.
50. Disadvantaged Business Enterprises - To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:
- a. The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - b. The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subcontract, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its Contract and shall comply with the requirements of 49 C.F.R. Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subcontracts, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT.
51. Prompt Payment - The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from receipt of each

payment the prime contractor receives from MATA. The CONTRACTOR agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MATA. This clause applies to both DBE and non-DBE subcontractors. If the CONTRACTOR determines the work to be unsatisfactory, it must notify MATA's Contracting Officer, Project Manager and DBE Liaison Officer immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract and subject to contract termination.

52. Nondiscrimination in Federal Public Transportation Programs - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
53. Contract Work Hours and Safety Standards Act - The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
54. National Intelligent Transportation Systems Architecture and Standards - To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
55. Seismic Safety (Applicable to Design and/or Construction Contracts Only) - The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, (specifically, 49 C.F.R. § 41.117), and any implementing guidance FTA may issue.
56. Environmental Justice. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.
57. Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.