



REQUEST FOR PROPOSAL

SUBJECT: ON-CALL STREETCAR RAIL SYSTEM ENGINEERING SERVICES

DATE: APRIL 28, 2021

INVITATION NO.: 21-11

PROPOSAL DUE DATE: JUNE 1, 2021 **Time:** 11:00 A.M.

The Memphis Area Transit Authority invites proposals for On-Call Streetcar Rail System Engineering Services, set forth above in accordance with the specifications enclosed herewith.

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

Sincerely,

Frances Boyland
Senior Contract Administrator

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
 - Exhibit I, Affidavit of Non-Collusion
 - Exhibit III, Certification of Primary Participant Regarding Debarment, Suspension and Other Responsibility matters (prime)
 - Exhibit III, Certification of Lower Tier Participants Debarment, Suspension, Ineligibility and Voluntary Exclusion (subcontractors)
 - Exhibit IV, Certification of Restrictions on Lobbying
 - Certification of Utilization of Disadvantaged Business Enterprises
 - Letter of Intent to Perform as DBE Subcontractor
 - Schedule of DBE Participation
 - Project Proposal Form
 - No Response Form
- **Incomplete or outdated information on client references and/or sufficient number of references provided.**
- **Submittal of too few copies. The RFP specifies the number of originals and number of copies of the proposal to be provided.**
- **Failure to properly label the proposal package with bid label.**
- **Proposal received late. All proposals must be in MATA's possession by the deadline shown in the proposal. All proposals received after the deadline will be returned unopened.**

MEMPHIS AREA TRANSIT AUTHORITY

LEGAL NOTICE TO PROPOSERS

Proposals will be received by the Memphis Area Transit Authority (MATA) at its Purchasing Offices, 1330 Levee Road, Memphis, TN 38108, until 11:00 AM, local time on June 1, 2021 for furnishing the following:

ON-CALL STREETCAR RAIL SYSTEM ENGINEERING SERVICES

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, Frances Boyland, Senior Contract Administrator, (901) 722-7199.

Award of the contract will be made on the basis of the evaluation criteria as shown 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 informalities.

**GARY ROSENFELD
CHIEF EXECUTIVE OFFICER**

April 28, May 20, 21, 2021

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- Exhibit III, Certification of Primary Participant Regarding Debarment, Suspension and Other Responsibility matters (prime)
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- Letter of Intent to Perform as DBE Subcontractor
- Schedule of DBE Participation
- No Response Form

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SECTION A
INSTRUCTIONS TO PROPOSERS

SECTION A

INSTRUCTIONS TO PROPOSERS

1.0 GENERAL

- 1.1 The Memphis Area Transit Authority (hereinafter referred to as MATA) seeks written Proposals for professional services from qualified firms capable of providing the scope of services described in Section B. These instructions provide detailed legal and technical requirements for the acquisition of these services. This Request for Proposal 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. Based on coverage of the trolley area, it presents as such:

	OVERALL	Main	Riverfront*	Madison*
Number of Trolley Routes	3	In-service	Out-of-service	Out-of-Service
Total round-trip lengths for each line	10 miles	4 miles	2 miles	4 miles
Number of Trolley Stops	31 to 34 stops			
Weekday operational schedule		M-F 6:45 am to 12:00 am Sat 8am -12am Sun 10am - 6pm		
Headways for each line		12 mins.		
Avg number of round trips per day		M-F: 85 Sat: 80 Sun: 39		
Operating hours weekday and weekend		M-F: 18 Sat: 17 Sun: 7		
Trolleys operating simultaneously on each rail		4		
Trolleys used daily		4		
Trolleys in stock		5		
Annual passenger boarding/ridership		15K to 40K		
Annual trolley miles**	Main – 79,811 miles	79,811 miles		
Annual trolley hours**		14,611		
Number of maintenance personnel	23			
Number of trolley operators	23			

Total number of Trolley staff	52			
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*Riverfront Interconnects with Main Street Line. It is a counterclockwise loop.

**NTD Report for 2020.

-Seeking to reopen lines soon.

- 1.2 "Purchaser" or "Grantee" means MATA. The words "request for proposals", "RFP", "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 Proposal (RFP) does not commit MATA to award a contract or pay any costs incurred in preparation of Proposals in response to the RFP. Proposers shall be responsible for all costs incurred as part of their participation in the pre-award process.
- 1.4 Proposals will be received by MATA at its Purchasing offices located at 1330 Levee Road, Memphis, TN 38108, until 11:00 a.m., local time on June 1, 2021. **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, miss-delivery and non-delivery.

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

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

Please note that the Purchasing Department's hours are 8:00 a.m. to 4:30 p.m. Acceptance of sealed Proposals and bids will only be made during these hours. If you choose to use a delivery service, please note the deliveries must be made within these hours. Proposers are reminded to examine each page carefully and execute/sign all sections that apply to this solicitation and their sole responsibility for ensuring that it is deposited in the Purchasing Department.

Proposers may verify receipt of Proposals by contacting Frances Boyland at (901) 722-7199 or e-mail fboyland@matatransit.com

- 1.5 All Proposals and related documents shall be subject to a financial assistance contract between MATA and the United States Department of Transportation, under the Federal Transit Act, as amended, and terms and conditions established under the Act will apply.
- 2.0 **PROPOSAL REQUIREMENTS**
- 2.1 Proposals must set forth full, accurate, and complete information required by this RFP including any attachments.
- 2.2 The Proposer shall provide all the work described in Section B - Scope of Work.
- 2.3 **An original and six (6) 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 should be provided in a separately sealed envelope.**

Each proposal should be typed, in Arial (10) or Times New Roman (10), Single-Spaced. Do not include pictures, maps, graphs, or other drawings. Do not send notebooks, portfolios, folders, or

ring-bound proposals. All proposals can be stapled, paper clipped, or use a binder clip. Make sure all pages are numbered with the proposing agency name on each page. (It is not necessary to number those forms required by MATA).

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

3.0 PROPOSAL FORMAT

- 3.1 All Proposers must provide the following information in this order:

1. RFP Cover Letter or Introduction Letter (1 page)

This letter should include a request to accept the response to the RFP; details about the RFP; qualifications; and the list of items being provided for review.

2. Table of Contents (1 page)

3. Personal Qualifications and Related Experience (max. 5 pages)

Resumes must be provided for personnel who are expected to be utilized, based on the technical requirements described in Section B. The person(s) should be available in the Memphis, TN/Shelby County area. Provide a summary of the relevant experience and proposed role for key personnel. This should also any certifications, degrees, project experience with the company, etc.

4. Firm Qualifications and Experience (max. 15 pages)

Specialized and technical experience and competence of the firm must be presented. Please include project management understanding, proposed approaches, and methodologies as to understanding of rail standards, experience with FTA/Federal, State, and Local government involvement in rail projects construction, maintenance, and safety/inspection. Including in the experience agent must address: Proposed management and operations plan for success of project; Risk assessments to prevent excessive change orders and additional Scope of Work; Experience with Safety Inspections, Certifications, Audits, and System Integration Testing; Understanding of Rail Design, Construction, and Maintenance; and those Scopes of Work found in Section B to be addressed individually in the proposal.

There may be instances where a Change Order may be expected. The project scope or site conditions may turn out different from expected. This may require additional time, resources, and supplemental equipment and workers. It is important that change order guidelines are addressed and how this process is managed from a consultant perspective. This includes addressing all probable conditions and costs associated with those conditions, as well as the impact on the consult's potential profit margin.

Address experience with railcars or trolley trucks, repair based on engineering specifications, preparation for inspections, providing construction and repair management support for local trolley projects; and any specialization or certification dealing with rail.

Provide a list of recent projects completed within the past 10 years. Of those projects listed, include information on the four most recent projects to consist of a description of the services provided, client contact name, telephone number and fax number. Indicate if the project was on task, went longer, was on target as far as price, or if the price increased and for what reason. (This information is to determine how well you address emergency, nonurgent, and unforeseeable circumstances.)

5. Firm Resources (max 2 pages)

A description of the resources of the firm/team must be included in the Proposal. At a minimum, this information will consist of number of personnel, by discipline, for (1) the firm/team as a whole and (2) the principal office (headquarters if outside of Memphis, TN) and secondary office or personnel must be based in Memphis, TN from which this work will be conducted.

Specialized equipment, facilities, or other assets that would be useful in completing the requested services should also be described. A *Standard Form (SF) 254* can be submitted if it fulfills the requirements regarding personnel strength.

6. Required Forms and Certifications

The following signed forms and certifications shall be provided:

- Addenda Acknowledgement Form
- Exhibit I, Affidavit of Non-Collusion
- Exhibit III, Certification of Primary Participant Regarding Debarment, Suspension and Other Responsibility matters (prime)
- Exhibit III, Certification of Lower Tier Participants Debarment, Suspension, Ineligibility and Voluntary Exclusion (subcontractors)
- Exhibit IV, Certification of Restrictions on Lobbying
- Certification of Utilization of Disadvantaged Business Enterprises
- Letter of Intent to Perform as DBE Subcontractor
- Schedule of DBE Participation
- No Response Form

Blank Forms are provided in Sections 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 equals must be submitted in writing to Frances Boyland, MATA, 1330 Levee Road, Memphis, TN 38108 or by email at fboyland@matatransist.com and must be received no later than 11:00 a.m. local time, MAY 12, 2021, in accordance with the Approved Equals procedures described in the General Contract Provisions. Any unapproved deviations, exceptions, substitutes, alternates or conditional qualifications contained in a proposal may be cause for its rejection. **VERBAL QUESTIONS WILL NOT BE ANSWERED, THUS PREVENTING AN UNFAIR ADVANTAGE TO ANY PROPOSER.** Questions may also be faxed to (901) 272-2912.

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 short-listed firms.
- 5.3 MATA reserves the right to enter into negotiations with the top ranked proposer without requesting interviews.
- 5.4 Proposals will be evaluated on the basis of the following factors in the following:

1. Specialized experience and technical competence of the personnel proposed for this project.

2. **Qualifications and experience of the firms/team.**
3. **Representation of DBE firms on the project team.**
4. **Past record of performance on contracts including such factors as cost control, quality of work, ability to meet schedules, and responsiveness to the client.**

Scoring on these evaluation factors are as follows:

Evaluation Factors	Weighted Points
Technical Ability (40%)	35
1. Qualifications (20%)	7
2. Proposed Personnel (20%)	7
3. DBE Representation (10%)	3.5
4. Proposed Management and Operations Plan (20%)	7
5. Risks and Added Value Assessment (10%)	3.5
6. Proposed Maintenance and Equipment Plan (20%)	7
Subtotal - Technical	35
Credentials (20%)	20
1. Project Management (30%)	6
2. Rail Safety Certifications, Safety Assessments, and System Integration Testing (30%)	6
3. Transit Rail Design (10%)	2
4. Transit Rail Construction & Maintenance (20%)	4
5. Reference Checks (10%)	2
Subtotal - Credentials	20
Scope of Work (40%)	45
Section B 1.1 - Design Consulting (10%)	4.5
Section B 1.2 - Task Order & Change Order Management (20%)	9
Section B 2.1 - (Engineering Services) (20%)	9
Section B 2.2 - (Design Phase) (20%)	9
Section B 2.2 - (Construction or Repair Phase) (20%)	9
Section B 2.2 - Final Deliverables, Work Products, Drawings and Documentation (10%)	4.5
Subtotal - Scope of Work	45
TOTAL POINTS	100

- 5.5 Price shall not be considered during the technical evaluation. A price proposal will be requested from the top ranked proposal and MATA will enter price negotiations with that proposer. If a fair and reasonable price cannot be agreed upon, then negotiations with the top ranked proposer shall be terminated. A price proposal for the second ranked proposer is then requested and the process is repeated until a mutually agreeable contract is negotiated.
- 5.6 Negotiations will be in conformance with applicable federal, state, local laws, regulations and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed contract, including contract price. MATA reserves the right to request documentation supporting the proposed contract price including overhead rates for the firm and subcontractors. 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 of 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 as determined by ranking on the evaluation criteria and results of negotiation.
- 6.2 MATA reserves the right to reject any and all proposals or waive informalities and irregularities in offers received. MATA reserves the right to award multiple contracts.
- 6.3 A written notice of award or Acceptance of Offer, mailed or otherwise furnished the successful proposer within the time specified in the 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 the General Contract Provisions.

8.0 DISADVANTAGED BUSINESS ENTERPRISE

MATA has not established a goal for Disadvantaged Business Enterprise (DBE) participation at this time since no specific task orders have been determined. A DBE goal will be established individually for each task order. For the purposes of this RFP, proposers must include one or more certified DBE(s) as part of its team (prime or sub-consultant). DBEs should have qualifications and experience in one or more of the disciplines specified in the Scope of Services. Proposers are required to meet this requirement or if the requirement will not be met, describe the "good faith effort" performed in attempting to meet the requirement. (See Section D). Proposers must complete the Certification of Utilization of DBEs, included in Section C. A Schedule of DBE Participation will be required for each task order that is issued.

Any firm unable to comply with the DBE requirements must show Good Faith Efforts as outlined in Section D, of this RFP. THIS MUST BE DONE IN WRITING AND SUBMITTED WITH THE PROPOSAL.

It is very important that proposers read Section D, Utilization of Disadvantaged Business Enterprises for a detailed explanation of MATA's DBE Program requirements.

SECTION B
SCOPE OF WORK

SECTION B

SCOPE OF SERVICES

On – Call Streetcar Rail System Engineering Services

1.0 GENERAL

- 1.1 The Memphis Area Transit Authority (MATA) has various capital projects in development as well as periodic rehabilitation projects for existing rail infrastructure. Some of these projects require time commitments that cannot be accommodated in-house due to the extent of day-to-day responsibilities. Others require specialized expertise that is not available in-house.

Examples of services that may be required by the selected consultant are as follows:

- Engineering and design services for streetcar related track, switches, overhead contact system, traction power substations, signals, gate crossings, bridges, civil, electrical, rail vehicles and transportation related projects.
- The potential firm (vendor) needs to be able to demonstrate the difference with the wheel rail to interface between an AAR type railroad and typical streetcar system that uses a narrower wheel profile, and sharp turns and switches.
- Regulatory compliance assistance for existing and planned rail facilities.
- Specialized rail electrical engineering and testing services for stray current analysis and mitigation

Other projects or potential projects may arise from time to time and require professional engineering and technical assistance.

The consultant's role will generally be to review the designs of others and provide profession rail engineering consulting services.

- 1.2 The current three-year contract for General Engineering and Program Management Services expired in April 2021 and MATA is seeking a separate Streetcar Rail System Engineering Services and Repair consultant. MATA plans to issue separate Task Orders for each project or needed work. Task Orders are generally categorized as follows:

- Various improvements to existing street railway infrastructure such as track, switches, signal system, traction power, overhead catenary etc.
- Drainage improvements.
- Civil and structural design review.
- Various ADA improvements and certifications to existing rail facilities, such as stations, lift equipment, and rail system components.
- Stray current testing, analysis, remediation, and mitigation work.
- Construction management and configuration control for various construction and infrastructure repair work.
- Inspections of tracks and switches.

Total fees over the period covered by this RFP (for the next three years) are expected to be in the range of \$750,000 to \$1,000,000. To keep the cost down, MATA will require a statement as to how the respondent will prevent excessive change orders from happening during this contract period that could potentially increase the contract amount.

2.0 SCOPE OF SERVICES

2.1 This procurement involves professional engineering services to be utilized on an as-needed basis for various projects. At a minimum, the following disciplines must be made available by the Proposer:

- Engineering for streetcar type track and switches, overhead contact system, traction power substation, signal, gate crossings, bridges, civil, electrical, and rail transportation related projects.
- Program management (scheduling, cost estimating, design review, value engineering, construction monitoring and inspection; general administration, and quality assurance/quality control).
- Architectural related services for architectural design related to trolley stops.
- System Integration testing.
- Project Management and/or Construction Management Services.

2.2 Services would be negotiated on a task-by-task basis and would involve some or all of the following phases of project development and implementation (at MATA's discretion):

Design Phase

- Prepare design and construction documents.
- Assist with procurement and contract negotiations.
- Coordinate meetings and other activities with appropriate agencies and groups
- Review work products and invoices.
- Review cost estimates.
- Conduct value engineering of designs of others.
- Conduct design review of designs by others.
- Help with NEPA documentation for rail projects, if requested by MATA.

Construction/Repair Phase

- Assist with preparation of contract scopes of services.
- Assist with pre-bid process.
- Assist with review of bids.
- Assist with review of change orders, disputes and/or protests.
- Supervise construction/repairs on an as needed basis.
- Coordinate with appropriate public agencies and community/business groups.
- Provide construction management or related services related to the project and/or repair.

Final Deliverables, Work Products, Drawings and/or Documentation

All work products, drawings and/or documentation created by the consultant or sub-consultants shall be made available or provided to MATA in original program format. This may include paper copies and/or electronic copies using MS Word, Excel, PowerPoint, or other electronic format such as CAD, ArcGIS and Adobe Acrobat pdf format. MATA will require electronic copies of all drawings in an acceptable original CAD format and/or other acceptable image format compatible with MATA's computer systems.

3.0 CONTRACTUAL ARRANGEMENTS

3.1 MATA will enter into an agreement with one or more successful proposers for services to be provided over a period of three years. When services are needed for a specific task,

MATA will develop a brief description of the requirements of the task and request that the consultant prepare a scope of services, cost estimate, schedule of DBE participation, and schedule for completion of the task. After a satisfactory scope of services, cost, DBE participation percentage, and schedule have been negotiated, a Notice to Proceed will be issued for the Task Order.

- 3.2 The consultant must ensure that adequate manpower is available for routine conduct of the work as well as being "on-call" for meetings and other activities that are required on short notice. Task Orders will be executed on an as-needed basis. This approach could result in multiple task orders being active at one time or no task orders for an extended period. There is no minimum fee guaranteed to the consultant on this contract.
- 3.3 Potential conflicts of interest with other MATA contracts will be addressed on a case-by-case basis, but the following principles will generally apply:
- The prime consultant(s) chosen for this contract will not be allowed to compete for major design contracts.
 - The prime consultant(s) will be allowed to compete for other project-specific program management contracts.
 - Sub-consultants will be allowed to compete for design and project-specific program management contracts but, if successful, would not be allowed to participate on any Task Orders that would constitute a conflict of interest or perceived conflict of interest in the opinion of MATA.

Other Requirements:

Proposer's are expected to have a minimum amount of experience in the following areas:

- 10 years' experience in railroad engineering
- 10 years' experience in street railway design
- 10 years' experience in streetcar track and switch installation
- 10 years' experience in OCS installation
- 10 years' experience in Traction Power Substation technology
- 10 years' experience in signalling and gate crossing technology
- 10 years' experience in equipment technology (modern/vintage Streetcars)

SECTION C
REQUIRED FORMS AND CERTIFICATIONS

MEMPHIS AREA TRANSIT AUTHORITY
ADDENDA ACKNOWLEDGEMENT FORM

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

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Addendum No: _____ Date Received: _____

Name of individual, partner or corporation:

Street Address: _____

City, State and Zip Code: _____

Telephone Number: _____ Fax Number: _____

Printed Name: _____

Authorized Signature: _____

Title: _____

EXHIBIT I

MEMPHIS AREA TRANSIT AUTHORITY

AFFIDAVIT OF NON-COLLUSION

Affidavit of Non-Collusion:

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

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

Signed: _____

Firm Name: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public

My Commission expires _____

Proposer's
E.I. Number: _____

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

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

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

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

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

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

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

Signature and Title of Authorized Official

EXHIBIT III

MEMPHIS AREA TRANSIT AUTHORITY

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

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

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

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

Signature and Title of Authorized Official

EXHIBIT IV

MEMPHIS AREA TRANSIT AUTHORITY

CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

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

Executed this _____ day of _____.

By: _____
Signature of Authorized Official

Title of Authorized Official

**Certification of Utilization of
Disadvantaged Business Enterprises**

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

Signature _____

Title _____

Date _____

Letter of Intent to Perform as a DBE Contractor or Subcontractor

To: _____
Name of Prime/General Proposer

21-11
MATA RFP Number

Address of Prime/General Proposer

City/State/Zip

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

☐ An Individual; ☐ A Corporation; ☐ Partnership; ☐ A Joint Venture

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

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

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

DBE Business Name

Signature of Authorized DBE Representative

Certification # / State of Certification

Expiration Date of Certification

Address

Date

City/State/Zip

Phone Number

Fax Number

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

Date

Name of Prime or General Proposer

Signature of Authorized Representative

SCHEDULE OF DBE PARTICIPATION

[illegible]

P = Prime Contractor
JV = Joint Venture
S = Subcontractor

NO RESPONSE

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

TO: Memphis Area Transit Authority (MATA)

Our company is submitting a "NO RESPONSE" on **RFP# 21-11** ON-CALL STREETCAR RAIL SYSTEM ENGINEERING SERVICES for the reason indicated below.

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

FROM:

Name of Company: _____

Representative: _____

Address: _____

Phone Number: _____

Signature: _____

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

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

SECTION D

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

Utilization of Disadvantaged Business Enterprises

1. Policy and Terms

- a. It is the policy of the Memphis Area Transit Authority (MATA) that Disadvantaged Business Enterprises (DBE) as defined in the United States Department of Transportation (USDOT) Regulation 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.
- b. Refer to Section A, 7.0 for DBE requirements.
- c. The DBE participation goal shall be expressed as a percentage of the total Contract price. The Bidder may also meet the goal by showing good faith efforts to meet the goal as described in 49 C.F.R. Part 26 and as set forth in Section D. Any evidence of good faith efforts must be submitted with the sealed bid or the bid will be rejected in its entirety.
- d. The DBE participation goal shall apply to the total dollar value of this contract, inclusive of all amendments, modifications, and change orders. The Bidder agrees to make its best efforts to include DBE participation in any contract modification work.
- e. The goal may be met, as further explained in Section D hereof, by the Bidder's status as a DBE, by a joint venture with one or more DBEs, by subcontracting a portion of the work to one or more DBEs, by the purchase of materials used in the performance of the contract from one or more DBEs or by any combination of the above or through a showing of good faith efforts as defined in Section D hereof.
- f. A Bidder who fails to meet the DBE goal and fails to demonstrate sufficient good faith efforts shall not be eligible to be awarded the contract. All documentation of good faith efforts by a Bidder must be included in the envelope or package containing the bid.
- g. MATA prohibits agreements between a Bidder and a DBE in which the DBE promise not to provide subcontracting quotations to other Bidders.

2. Definitions

- a. Disadvantaged Business Enterprise (DBE) means a small business concern (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. "Good Faith Efforts" means efforts to achieve 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, skills, and knowledge. Bidders may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture seeking to be credited for DBE participation may be formed among DBE firms or between DBE firms and non-DBE firms.
- d. "Small Business Concern" means a small business be 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 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, Tuvalu, Nauru, Federated States of Micronesia or Hong Kong).
5. "Subcontinent Asian-Indian Americans" which includes persons whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
6. Women.
7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA) at such time as the SBE designation becomes effective.

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

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

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

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

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

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

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

4. DBE Substitutions

- a. Arbitrary changes by the Contractor of the commitments previously indicated in the Schedule of DBE participation are prohibited. No changes may be made to the DBE firms listed on this schedule after the opening of bids 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 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 business days, and a copy submitted to the Compliance Officer, DBE Program.

5. Good Faith Efforts

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

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

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

- a. Attendance at any pre-proposal meetings that were scheduled by MATA to inform DBEs of participation opportunities.

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

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

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

6. Procedure to Determine Bidder Compliance

The Bidder must complete and sign the Letter of Intent to Perform as a DBE. The Letter of Intent must also be signed by any DBEs (prime or subcontractor). A separate Letter of Intent must be included for each DBE included in the bid. It MUST be submitted with the sealed bid. In addition, any documentation evidencing the Bidder's good faith efforts to meet the contract DBE goal must be submitted with the bid. Any bids submitted without a completed and executed Letter of Intent and/or evidence of good faith efforts, if applicable, will be deemed non-responsive and will be rejected by MATA.

- a. Letters of Certification

1. A copy of each proposed DBE firm's current Certificate of Certification from the Uniform Certification Agency or the Tennessee Department of Transportation (TDOT) should be attached to the Letter of Intent to Perform as a DBE.
 2. All DBEs are certified to perform work in a specific specialty or specialties. The DBE firm's scope of work set forth on the Letter of Intent and Schedule of DBE Participation must conform to its stated area of specialization.
- b. **Joint Ventures**
1. Where the Bidder proposes to include in its bid a DBE, which is a joint venture, the Bidder must submit a fully executed copy of the joint venture agreement with its bid. 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.
 2. Further, the proposed joint venture agreement shall include specific details related to:
 - a. contributions of capital and equipment;
 - b. work items to be performed by the DBEs own forces;
 - c. work items to be performed under the supervision of the DBE;
 - d. the DBE management, supervisory and operating personnel to be dedicated to the performance of the project; and
 - e. the authority of each joint venture to contractually obligate the joint venture and to expend funds.
 3. Failure to submit a copy of the joint venture agreement will cause the firm to be considered by MATA to be non-responsible.

7. Reporting Requirements During the Term of the Contract

- a. The Bidder shall, within five 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 bid. These written agreements shall be made available to the Compliance Officer upon request. All contracts between the Bidder and its subcontractors must contain a prompt payment clause as set forth in Section 8 herein.
- b. During the term of the contract, the Bidder shall submit regular "DBE Subcontractor Payment Status Reports" in a form acceptable to MATA. The frequency with which these reports are to be submitted will be determined by the Compliance Officer but in no event will reports be required less frequently than quarterly. In the absence of written notice from the Compliance Officer, the Bidder's first "DBE Subcontractor Payment Status Report" will be due 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 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 30 days after approval of an acceptable invoice. Proposer should note any discounts for payment before 30 days.
5. **Acceptance of Material** - If the item is not acceptable; MATA will furnish a letter of non-acceptance detailing the deficiencies within 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 11:00 A.M. MAY 12, 2021, TO ALLOW ANALYSIS OF THE REQUEST. Any request for an approved equal or protest of the specifications must be fully supported with catalog information, specifications, and illustrations or other pertinent information as evidence that the substitute offer is equal to or better than the specifications' requirement. Where an approved equal is requested, the CONTRACTOR must demonstrate the quality of his product to the Authority and must furnish sufficient information to enable the Authority to determine whether the CONTRACTOR's product is or is not equal to that specified. Such requests may be faxed to Frances Boyland at (901) 278-9108 or (901) 272-2912 or emailed at fboyland@matatransit.com.
 - e. MATA's replies to requests under paragraph (d) above will be post-marked at least 14 days before the due date for submitting Proposals.

- 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 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 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, or in writing, 24 hours before the time Proposals are due. Requests pertaining to withdrawals by telephone must be confirmed in writing by the Proposer and must reach the Office of the Chief Executive Officer of MATA not later than one hour prior to the time fixed for submission of Proposals.
- b. No Proposer may withdraw his Proposal within 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 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 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 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 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 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 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 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 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 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 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 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 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. 21-11 communication with MATA should be forwarded directly to Frances Boyland, Senior Contract Administrator at MATA, 1370 Levee Road, Memphis, TN 38108 or emailed to fboyland@matatransit.com.

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

15. Miscellaneous -

- a. CONTRACTOR warrants that it has not been paid any bonus or commission for the purpose of obtaining this Contract.
- b. Except as otherwise set forth herein, this Contract shall be governed and construed in

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

- c. The failure of MATA at any time to insist upon a strict performance of any terms, conditions, and covenants herein shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, and covenants herein contained.
- d. CONTRACTOR shall not assign any interest or obligation in this Contract, and CONTRACTOR shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of MATA.
- e. Any proposed change or modification of this Contract shall be submitted in writing to MATA for its prior approval. All changes shall be by written agreement of MATA and CONTRACTOR.
- f. The CONTRACTOR acknowledges that MATA is managed and operated by Mid-South Transportation Management, Inc. (MTM). The CONTRACTOR shall cooperate with and abide by the instructions of MATA and MTM personnel.

16. Extent of Agreement -

- a. The Proposal submitted by the CONTRACTOR is incorporated herein by reference as fully set forth verbatim herein. In the event of conflict between this Contract and Proposal, the provisions of this Contract shall control.
- b. This Contract, except as set forth in the preceding paragraph, represents the entire and integrated Agreement between MATA and the CONTRACTOR, and supersedes all prior negotiations, statements, instructions, and representations or agreements, whether written or oral. This Contract may not be modified, amended, or assigned except by written agreement duly signed by both parties.
- c. At the election of MATA, the invalidity or illegality of any provisions of this Contract, other than arising from the fiscal inability of MATA to pay the compensation due to the CONTRACTOR as same becomes due, as determined by a court of last resort of competent jurisdiction, shall not affect the validity of the remainder of this Contract, and this Contract shall remain in full force and effect as if such illegal or invalid provisions were not contained herein.

17. Compliance with Applicable Law -

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

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

20. Interests of Federal and State Governmental Officials -

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

21. Environmental Requirements -

- a. Environmental Protection. The CONTRACTOR agrees to comply with all applicable requirements 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.E. EPA regulations may apply to its Project: "Control of Air Pollution from Motor-Vehicles and Motor-Vehicle Engines", 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.
 - 3. The CONTRACTOR agrees to comply with the notification of violating facilities provisions of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- 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 – Applicable to Contracts for Planning, Research, Development and/or Demonstration Projects Only**

- a. **General.** If any invention, improvement, or discovery by the CONTRACTOR at any tier of the project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the CONTRACTOR agrees to notify MATA immediately and provide a detailed report in a format satisfactory to MATA.
- b. **Federal Rights.** The CONTRACTOR agrees that its rights and responsibilities pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the CONTRACTOR agrees to transmit to MATA those rights due the Federal Government in any invention, improvement, or discovery resulting from the contract as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq.*), irrespective of the status of MATA or the CONTRACTOR at any tier of the Project (i.e., a large business, small business, State government or State instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.)
- c. **License Fees and Royalties.** FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C §§ 200 *et seq.*, which applies to patent rights developed under a research project.

24. **Rights in Data and Copyrights Requirements**

- a. **Definition.** The term "subject data" used in this Section 23 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for contract administration.
- b. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of the contract:
 1. Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.
 2. The restriction on publication of Subsection 23.b. (1) of this contract, however, does not apply to a contract with an institution of higher learning.
- c. **Federal Rights in Data and Copyrights.** MATA and the CONTRACTOR agree to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in Subsections 23.c. (1) and 23.c. (2) of this CONTRACT. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government

may not provide or otherwise extend to other parties of the Federal Government's license to:

1. Any subject data developed under the contract, whether or not a copyright has been obtained; and
2. Any rights of copyright to which MATA and/or the CONTRACTOR purchase ownership with Federal assistance.

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

e. Hold Harmless. Except as prohibited or otherwise limited by State law, upon request by the Federal Government, MATA and the CONTRACTOR agree to indemnify, save, and hold harmless the Federal Government and its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MATA or the CONTRACTOR of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this contract. MATA nor the CONTRACTOR shall be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in this Section 23 of this contract pertaining to rights in data shall imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Statutory Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organization," at 49 C.F.R. § 19.36(d), or by subsequent Federal laws or regulations, MATA and the CONTRACTOR understand and agree that the data and information submitted to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal statute providing access to such records).

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

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

26. References - Proposer shall provide with his Proposal at least five references for projects similar to that described in this Invitation for Proposal. The following must be provided: company name, address and telephone number, fax number, a contact person, and the dates of the contract. The references given should be on contracts within a 12-month period prior to the Proposal due date.
27. Delivery - Proposals shall provide for delivery of all parts or 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 Section 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 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, On-Board Commercial Ocean Bill-Of-Lading in English for each shipment of cargo described in paragraph one above to MATA (through the prime CONTRACTOR in the case of subcontractor Bills-of-Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, DC 20590, marked with appropriate identification of the project.

- 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 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 where Proposals are 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 requiring Proposals will be treated as a negotiated procurement and MATA reserves the right to negotiate with a single Proposer and/or all Proposers in the competitive range to achieve a fair and reasonable price. If any of the parties cannot agree upon a negotiated price, MATA reserves the right to reject any or all Proposals.

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 it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the CONTRACTOR the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), 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 FTA Master Agreement between Purchaser 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 - 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 Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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, 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.

- 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 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. Title VI of the Civil Rights Act of 1964. The CONTRACTOR will comply and will assure the compliance by subcontractors under this Project with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. Section 2000d), the Regulations of DOT issued thereunder, 40 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 sub-recipients of Federal Financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.
58. Prompt Payment. The prime CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime CONTRACTOR receives from MATA. The prime 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 prime CONTRACTOR determines the work to be unsatisfactory, it must notify MATA's Contracting Officer, Project Director 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.