



MASS TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSAL

**ADA PARATRANSIT ELIGIBILITY ASSESSMENT
SERVICES**

RFP# 2022-09

Issue date:

Monday, August 22, 2022

Bid due date and time:

Friday, September 9, 2022, 10:00 A.M. (EST)

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SECTION 1. INTRODUCTION

The Mass Transportation Authority (MTA) operates a Public Transportation System in Genesee and Surrounding Counties and is located at 1401 South Dort Hwy, Flint, Michigan.

SECTION 2. SCOPE OF WORK

2.1 OVERVIEW

MTA Background Information:

The Mass Transportation Authority (MTA) is a county-wide public transportation provider for the City of Flint and Genesee County. Founded in 1971, MTA services includes primary fixed routes operating seven days a week, peak period routes that supplement the primary routes at high demand times, and county-wide personalized, curb-to-curb transportation through our Your Ride services. MTA’s regional service provides job-related transportation for Genesee County residents to places of employment in several adjoining counties. In addition, through its Rides to Wellness non-emergency medical program, MTA provides door-to-door health and wellness-related transportation services for the elderly, persons with disabilities, veterans, and others. MTA provides millions of rides to Genesee County residents.

RFP Objective:

MTA intends to enter into an agreement with a local agency to assist in the Americans with Disabilities Act (ADA) paratransit eligibility process. The agency contracting with MTA must have professional expertise in disabilities and demonstrate an understanding on how disabilities are related to the functional ability of individuals to use fixed route transit services. The selected agency would serve as an ADA paratransit eligibility reviewer and would be assigned the task of recommending eligibility determination of individuals to use complementary paratransit services as defined by the Americans with Disabilities Act of 1990 (ADA) and the provisions of the U.S. Department of Transportation (DOT) ADA regulations, 49 CFR Part 37, subpart F, sections 37.123-37.127 ADA Paratransit Eligibility Standards. (Attachment #D.)

MTA makes no representations, warranties or agreements with respect to this RFP. In addition, MTA makes no commitment to purchase any products or services or take any other action, including but not limited to, awarding a contract to the individual/firm submitting the most qualified responsive proposal. MTA reserves the right to amend or cancel this RFP at any time for any or no reason. All amendments to this RFP shall be in writing.

2.2 STATEMENT OF WORK

General Information about ADA

As a civil rights statute, the ADA emphasizes nondiscriminatory access to fixed route services. Complementary paratransit service is intended to provide transportation to individuals who, because of their disabilities, are unable to use fixed route services.

All public transit agencies, which operate fixed route transportation services for the general public, are required to provide complementary paratransit service. The MTA meets this requirement with its Your Ride service, which is curb-to-curb transportation. MTA also goes above and beyond the ADA requirements by providing paratransit service countywide to individuals determined to be ADA paratransit eligible.

All public transit entities which operate complementary paratransit services must also establish a process for certifying individuals as ADA paratransit eligible. Eligibility for complementary paratransit service is directly related to the functional ability of individuals with disabilities to use fixed route transit service. Eligibility is not based on a diagnosis or type of disability. Similarly, it is not based on type of mobility aid that individuals use. Also, eligibility is not based on age, income, or whether or not individuals can drive or have access to private automobile transportation.

Applications and requests for certification must be accepted from individuals, regardless of their place of residence. Limiting reviews of applications and determinations of eligibility to individuals residing within a transit agency's service area is not appropriate. If an otherwise eligible applicant is able to travel to a point within an agency's area and wishes to use complementary paratransit within the service area, the agency is required to grant the applicant eligibility and accommodate the trip request.

In addition, transit agencies are required to provide complementary paratransit service to individuals with disabilities visiting their area. Individuals with documentation of ADA eligibility from other transit agencies across the country are entitled to use MTA's ADA paratransit services as a visitor. If they do not have such documentation, we can require individuals to provide proof of residence but only if they do not have an apparent disability. The agency shall make the service to a visitor available for any combination of 21 days during any 365-day period beginning with the visitor's first use during that period.

Important Definitions Under the ADA:

The term "disability" is defined to include any physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

"Major life activities" include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Fixed Route Service" is service provided along a prescribed route according to a fixed schedule.

"Demand Response" service is any transit service which is not fixed route.

"Paratransit" is service provided to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

ADA Eligibility Categories:

The DOT ADA regulations break eligibility types into three categories.

Category 1: Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities. [(37.123(e)(1))]

Examples of eligibility under this category would include:

- A person with an intellectual or cognitive disability who cannot navigate the system. The person may not be oriented to place and time, may not be able to get, understand or act on information needed to use the system, identify the correct vehicle, recognize destinations, or understand how to make transfers from one route to another or make complex trips.
- A person with a vision disability who cannot independently travel through complex bus transfer centers or may not be able to independently travel in unfamiliar places.
- A person with a physical disability who cannot stand on a crowded bus when seats, including priority seats, may not be available and cannot be guaranteed on a vehicle at all times of the day.

The first category of eligibility includes individuals who, because of their disabilities, cannot independently use accessible fixed routes services.

Category #2: Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.[37.123(e)(2)]

Category #3: Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system. [37.123(e)(3)]

Architectural barriers not under the control of the public entity providing fixed-route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location.

Some judgment is required to distinguish between situations in which travel is prevented and situations in which it is merely made more difficult.

Appeals Process:

An individual who has been determined ineligible or eligible on a temporary basis for ADA has the right to an appeal before a person or office other than those who made the initial determination. An applicant may appeal to the MTA's Elderly and Disabled Local Advisory Council (LAC) within

sixty (60) days of the initial decision. If the applicant chooses, a request for appeal may be made in writing, by fax or other appropriate format. If a decision is not made within 30 days of the completion of the appeal process, the MTA is obligated to provide service until and unless it issues a decision to deny the appeal.

The LAC may seek independent expertise in its evaluation of the applicant's ADA eligibility. The LAC will respond to the appeal with a decision in writing, or other appropriate format within (30) days of the appeal hearing. The notification will give reasons for the LAC's decision.

If the person does not qualify as ADA eligible during their initial application, they can re-apply at any time should their conditions and/or limitations change.

Scope of Work:

The Eligibility Review agency must demonstrate a firm knowledge of ADA regulations and eligibility requirements for ADA complementary paratransit service along with MTA ADA paratransit procedures. Overall responsibilities include:

- Review all applications for ADA eligibility and make recommendations to MTA regarding the appropriate ADA eligibility determination, including documentation of basis for the recommendation.
- Gather all additional information required to complete the application and to make a determination, including contacting the applicant and medical, rehabilitation, or other professionals listed on the application for the information.
- Schedule and conduct an in-person interview and assessment of the applicant, if required. This will include contacting the applicant by phone and/or letter regarding scheduling of the assessment.
- Document and communicate all steps in the review process.
- Provide consultation to MTA as required should there be an appeal of the initial determination.
- Assist MTA staff in improving the eligibility application and review process.
- Assist MTA in the recertification process.
- Provide MTA monthly and yearly reports of eligibility determinations.

Eligibility applications will be processed as they are received, on an ongoing basis.

Under the US Department of Transportation regulations, transit agencies have 21 days after receipt of a complete application to issue a determination or they must grant "presumptive eligibility" on the 22nd day until a determination is made. Persons who are presumed to be eligible may use Your Ride until eligibility status is determined.

An application is complete when an applicant has completed all necessary actions and all the required information is received to make an eligibility determination.

ADA Eligibility Reviewer Responsibilities:

General Overview

- Demonstrate knowledge and experience about ADA rules, regulations, and compliance regarding eligibility and certification, along with MTA procedures and a working

knowledge of MTA's fixed route bus service and the skills necessary to independently use the bus service.

- Process and review all applications received by MTA and online, to make an ADA eligibility recommendation, including managing the gathering of all additional information necessary to make the determination.
 - The Reviewer will review the application to assess if all necessary information has been provided and the applicant completed the process.
 - If the application is incomplete, the Reviewer shall contact the applicant and indicate which sections need to be completed or if any supporting documents are needed. If needed, the Reviewer shall return the application to the applicant for completion of missing information.
 - The Reviewer will evaluate the application to determine the need for a Professional Evaluation. It is generally expected that a Professional Evaluation will be required, except when there is a very clear eligibility or a valid reason why the applicant cannot obtain an evaluation. Evaluations can be performed by an appropriate licensed professional such as a therapist, social worker, case manager, nurse practitioner, physician, or other qualified professional. If a professional evaluation is needed, but was not provided in the initial application, the Reviewer is responsible for contacting the applicant and the professional's office and gathering the necessary information.
- Schedule and conduct an in-person interview and assessment of the applicant, if required. This will include contacting the applicant by phone and/or letter regarding scheduling of the assessment.
- Make recommendation of ADA eligibility type for each applicant based on the three criteria categories previously mentioned. Eligibility types include:
 - Unconditional Permanent
 - Unconditional Temporary
 - Not Eligible

Making Timely Determination

- The Reviewer is responsible for making timely determinations. As previously mentioned, a decision regarding eligibility needs to be made within 21 days of the date that the completed application was received. A completed application means the applicant has completed all necessary steps and all information has been received to make a determination. If a determination has not been made by the 22nd day and the application was complete, the applicant is presumed eligible unless the completed review determines otherwise. Persons who are presumed to be eligible may use Your Ride until their eligibility status is determined.
- The Reviewer is responsible for making timely calls and follow up contacts with applicants and professionals when incomplete applications are received. The same is true if scheduling in-person interviews and assessments.
- It is up to the applicant to complete the application process. The Reviewer should document all attempts to contact the applicant and/or professional. After a reasonable period of time, they should then notify the applicant again with a time within which they need to complete the process. If applicants do not complete the process within that time, they can be required to reapply.

Reports and Documentations

- Provide MTA all documentation of ADA recommended eligibility determinations and basis for determination using a method and format that ensure efficiency and confidentiality. The documentation should include the information provided on the applications about applicant using a personal care assistant (PCA) and/or a service animal.
- Inform MTA of any concerns or questions that need to be reviewed, and work collaboratively to address.
- Document and track review process and dates including initial application received date, steps in gathering necessary additional information, if needed, date of application completed, and date of recommended eligibility determination. Submit documentation and all eligibility determinations to MTA in compliance with the 21-day determination date.
- Send monthly and yearly statistical reports to MTA about the review process including, but not limited to, the number of applications reviewed, processed, and types of determinations made.

Improvements to Eligibility Process

- Work with MTA in creating a master list of functional transit tasks and skills to serve as a guide when determining initial eligibilities certifications and subsequent recertifications.
- Assist MTA in revisions of the ADA application, the addition of a professional verification section, and the implementation of an online application.
- Provide assistance to MTA in developing, implementing, and coordinating a recertification process.

Correspondences and Support

- Provide consultation to MTA as required should there be an appeal of the initial determination.
- Coordinate all correspondences concerning the applicant's eligibility and other matters concerning the eligibility review process through MTA's ADA Coordinator.
- Provide qualified, dedicated staff to successfully accomplish the requirements of the Reviewer's responsibilities.
- Ensure availability of the dedicated review staff during the hours of 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, excluding MTA's holidays.
- Make reasonable arrangements to effectively communicate with applicants in languages other than English.
- Maintain any and all office equipment and supplies that are needed to conduct the services under this Agreement including, but not limited to, copiers, facsimile machines, computer hardware and software, and telephone and TDD equipment.

Confidentiality and Regulations

- Comply with all ADA and DOT regulations, as previously mentioned.
- Adhere to confidentiality requirements. All information contained within the ADA application must be kept confidential. Only the information required to determine eligibility may be discussed with the ADA Review staff, authorized health care or other

professional associated with the applicant, and the MTA staff. The Reviewer must adhere to Health Insurance Portability and Accountability Act (HIPAA) Privacy rules.

MTA Responsibilities:

Administration

- Manage the ADA eligibility process and be responsible for the final determination of applicant eligibility. The ADA Coordinator is responsible for the program.
- Provide the Reviewer the ADA applications that are submitted to the ADA Coordinator's office using a method and format established by both parties and which will ensure efficiency and confidentiality.
- Receive and review Reviewer's ADA eligibility recommendations and make final determination in accordance to the 21-day DOT guidelines previously mentioned.
- Issue written letters of determination to the applicant stating whether they are eligible or ineligible for ADA paratransit following the appropriate DOT guidelines.
- Issue ADA certification cards to those applicants determined to be eligible.
- Mail out letters, ADA cards, and appropriate ADA and paratransit brochures to applicant.
- Send list of newly determined eligible applicants to Your Ride Director and appropriate Coordinators to update their records and set applicant up in system.
- Update ADA Coordinator's spreadsheet of ADA eligible clients with all necessary information.
- Issue replacement ADA cards, as needed.
- Send out ADA applications and informational brochure when requests are received.
- Provide ADA applications and informational material in English, Spanish, and other formats, as needed.
- File and store all ADA documentation in a confidential matter.

Improvements to Eligibility Process

- Work with Reviewer to revise the ADA application, add a Professional Verification section, and implement an online ADA application. All final approvals and revisions made, along with the online application implementation, will be MTA's responsibility.
- Work with Reviewer in creating a master list of functional transit tasks and skills to serve as a guide when determining initial eligibilities certifications and subsequent recertifications.
- Work with Reviewer in developing a recertification process.
- Initiate other improvement efforts when necessary.

All decisions about improvements and changes made to the ADA eligibility process are the responsibility of MTA.

Correspondences and Support

- Receive consultation from Reviewer as required should there be an appeal of the initial determination.

- Respond to all Reviewer correspondences concerning the applicant's eligibility and other matters concerning the eligibility review process.

2.3 MINIMUM REQUIREMENTS FOR PRICING

Proposals shall include pricing for all requested services as indicated in the Scope of Work. Proposer price per different deliverable. **The Price Proposal Form will be separate and labeled "Price Proposal for RFP #2022-09."** RFP responses should include a total price broken down by pricing per each deliverable by primary area and also the billable hourly rates for additional work that may be needed.

The Proposer shall establish the total price for the services listed in Section 2.2 on the Price Proposal Form. **The Price Proposal Form shall be signed by a duly authorized representative of the Proposer's company.**

Prices quoted shall be a **firm fixed price** for twelve (12) months from date of contract. Any contract or price revisions shall be based on industry price changes and supported by adequate detail to document same. Any cost revisions shall not be allowed or implemented without prior consent of the MTA Purchasing Department.

SECTION 3. PROPOSAL SUBMISSION

3.1 SUBMISSION OF PROPOSALS

Proposals must be submitted to the MTA **on or before 10:00 A.M. (EDT), Friday, September 9, 2022**, at the Mass Transportation Authority's offices at 1401 South Dort Highway Flint, Michigan or electronically on the Michigan Inter-governmental Trade Network (MITN) a Regional Bid Notification System at <https://www.bidnetdirect.com/mitn>. Proposers must register with MITN to download and submit Proposals. Proposals submitted by facsimile or email will not be accepted. Any electronic altering of this RFP shall be grounds for rejection of your submission. All Proposals become the property of the MTA. Proposals received in response to this RFP shall be considered received at the time actually received by the addressee or designated agent. **Late Proposals shall not be considered.**

MTA reserves the right to waive any informality in the Request For Proposal; to reject any or all proposals; and to make any award which it considers to be in the best interest of the MTA. The MTA reserves the right to use whatever reasonable and prudent evaluation techniques it deems appropriate.

No proposal may be withdrawn for a period of ninety (90) days after submission. Any questions or request for clarification regarding this Request for Proposal must be presented by Friday, September 2, 2022, and addressed to:

Von Redmon
Purchasing Supervisor
E-mail: vredmon@mtaflint.org

MTA will consider no telephone inquiries regarding the RFP and will consider no in-person inquiries. In the event that a firm attempts to contact any official, employee or

representative of MTA in any manner contrary to the above requirements, said firm may be disqualified for further consideration.

3.2 EQUAL EMPLOYMENT OPPORTUNITY

“Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.”

3.3 DISADVANTAGED BUSINESS ENTERPRISES

MTA hereby notifies all Proposers that it will affirmatively insure in regard to any contract entered into pursuant to this Request For Proposal, Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this Request For Proposal and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.

3.4 INELIGIBLE PROPOSERS

“All Proposers will be required to certify that they are not on the Comptroller General's List of Ineligible Contractors.” The successful proposer shall be required to comply with the Mass Transportation Authority's Affirmative Action Plan. The Mass Transportation Authority reserves the right to reject any proposal if the contractor fails to comply.

SECTION 4. PROPOSAL CONTENTS AND FORMAT

The MTA requires the proposing agency to submit a concise proposal clearly addressing all of the requirements outlined in this RFP. The proposal should be submitted in an organized, easy-to-follow format. Proposal must include, at a minimum, the following sections:

- **COVER LETTER:** The proposal must include a cover letter which identifies the proposing agency, mailing address, contact person and telephone number. The cover letter must acknowledge the receipt of all addenda and attachments issued in this RFP and be signed by the individual who is authorized to negotiate and execute a contract on behalf of the proposing agency. The Proposer must submit a date when the agency could begin work for MTA.
- **PROJECT UNDERSTANDING:** Each proposer must include a summary of their understanding of the project requirements. Included in the project understanding summary, the proposer must provide:
 - A detailed work plan describing how they intend to provide the services outlined in the scope of work.
 - Description of the agency's experience working on similar projects and a statement of the services your agency feels differentiates you from others.
 - Tasks proposed to be completed to meet project objectives.
 - Proposed outcomes of each task.
 - Proposed coordination of dedicated agency staff with MTA staff, including proposed hours of availability.
 - Description of the methodology for training of your staff to ensure proper implementation and monitoring of the ADA eligibility review process, including knowledge of all the necessary federal and ADA regulations, the ADA eligibility process, and MTA procedures that pertain to this project.
 - Website online application capability.

- **RESPONSE TIME:** Proposer must describe the “turnaround time” for processing the ADA applications from the time received, reviewed, and processed to time returned to MTA with recommended eligibility determination.
- **QUALIFICATIONS OF THE AGENCY:** Each proposer must provide a narrative description of its agency including its legal status, state of incorporation or organization, authority and/or licenses to operate. The description shall outline the major business functions, history, and organizational structure.
- **QUALIFICATIONS OF STAFF:** Each proposer must summarize and provide resumes showing the names, experience, professional qualifications, and references of the key personnel to be assigned to this project. The person’s qualifications should include current and former duties, length of time in each assignment, educational background and current job description. Documentation of employee training should also be included.
- **REFERENCES:** Proposers must submit a minimum of three (3) company references including contact names, addresses, phone numbers, fax numbers and email addresses that will illustrate the respondent’s past record of performance on similar project. MTA reserves the right to contact any or all of the listed references.
- **FEE PROPOSAL:** Proposers must submit a fee proposal. Proposed price is a consideration which will be weighted in relation to other evaluation criteria. Costs making up price will be evaluated to determine reasonableness and to ensure they are allowable and allocable.
- **COMPLETENESS AND RESPONSIVENESS OF PROPOSAL:** The Proposer must meet all submittal requirements, and the proposal should be thorough and easily understandable to be considered.

SECTION 5. SELECTION CRITERIA

5.1 EVALUATION CRITERIA

All proposals received shall be subject to an evaluation by a selection committee for the purpose of selecting the most qualified proposal for the services required. The following factors **in order of importance** will be considered in making the selection. All proposals received shall be subject to a thorough evaluation by a Selection Committee for the purpose of selecting the most qualified proposal for the services required. MTA will make the award to the responsible Proposer whose proposal is most advantageous to MTA. Accordingly, MTA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest price

proposal if doing so would not be in the overall best interest of MTA. The selection criteria listed below are in Relative Order of Importance.

1. **Project Understanding and Approach:** This criterion is a combination of the Proposer's approach to the problem and deliverables. Also, the quality of the Proposal submission and response.
2. **Key Personnel and Company Experience:** This criterion is a combination of Proposer's prior experience with the ADA paratransit eligibility process, FTA regulations and the qualifications of the person(s) assigned to perform the tasks. Qualifications of professional personnel will be measured by education and experience with reference to experience on projects similar to that described in this RFP. The Selection Committee will consider the reputation and past performance of the Proposer as presented in the Proposal.
3. **Quality of Organization/Management to Accomplish the Services:** This criterion refers to the Proposer's overall organization and considers key components such as organizational reporting structure, quality control, quality assurance, and technical support.
4. **Response Time:** This criterion refers to the "turnaround time" for processing the ADA applications from the time received, reviewed, and processed to time returned to MTA with recommended eligibility determination.
5. **References:** This criterion refers to the overall relevance of the references submitted, information provided by the reference contact, past record of performance and how recent of the service performed.
6. **Price Proposal:** This criterion refers to the overall cost of the service.

5.2 PRESENTATION AND INTERVIEWS

Proposers whose evaluation scores are in the competitive range for this project may be invited to present to and be interviewed by the Selection Committee. The MTA may decide to conduct in person, phone, or online interviews and reserves the right to award the contract without holding interviews. In the event of inclement weather, MTA may reschedule presentations and interviews. Proposers shall follow the guidelines set forth below when preparing for their interviews.

1. The Proposer's presentation shall last a maximum of one hour, and the Selection Committee will use additional time for the interview. It is strongly recommended that the principal(s) in charge, the project manager(s), and key individuals be available to participate in the interview.
2. The Proposer shall provide an interview agenda and a list of names of the participants to the MTA staff for distribution to the Selection Committee members at least three (3) working days prior to the presentation.
3. The Firm's presentation shall cover the following areas within the time limit:
 - a. Understanding of the Scope of Work and Project Objectives

Based on the Scope of Work and the information presented in the RFP, the oral presentation shall include a thorough review of the Proposer's perception of the project. Potential modifications and additional enhancements, which the Proposer deems appropriate and necessary for the success of the project, may also be included. The Proposer shall elucidate the organizations support capabilities and the methods developed

by the Proposer to coordinate and control projects to ensure delivery and coordination with others working on the project.

b. Method of Approach to Project

Based on the Scope of Work and expanding upon the approach to the project provided in the RFP submission, the presentation shall include a demonstration of a draft solution that was developed by the Proposer.

c. Previous Experience

A summary of at least three (3) recent projects that members of the Proposer's team have completed shall be presented. Examples shall demonstrate the Proposer's involvement in projects as similar as possible to the Scope of Work set forth in this RFP. For each project discussed, the Firm shall review its objectives, the Proposer's approach, the schedule, current status, etc.

4. The Firm shall provide an electronic copy of the presentation to MTA at the conclusion of the interview.

5.3 BEST AND FINAL OFFER

Best and Final Offers (BAFO). After evaluations, Proposers in the competitive range **may** be given the opportunity to modify their proposal by submitting a Best and Final Offer (BAFO). The BAFO shall fully comply with the RFP, including all Addenda. Final determination of acceptability of any proposal will be made by the Evaluation Committee on the information contained therein. The request for BAFOs shall include:

- Notice that this is the opportunity for submission of a BAFO;
- A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs;
- Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal;
- Notice that if Proposers do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Offer will be construed as their BAFO.

Any modifications to the initial proposals made by a Proposer in its BAFO shall be identified in its BAFO. After receipt of BAFOs, MTA reserves the right to (a) reopen negotiations; or (b) accept improvements to, enhancements of or other revisions to any proposal or alternate proposal at any time if it deems such to be in its best interest. BAFOs will be evaluated by the MTA according to the same requirements and criteria as the initial proposal selection process. MTA will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFOs.

MTA will then choose that proposal which it finds to be most advantageous to the MTA based upon the evaluation criteria. The results of the evaluations and the selection of a proposal for any award will be documented.

The MTA reserves the right to make an award to a Proposer whose proposal it judges to be most advantageous to the MTA based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs. No Proposer

shall have any rights against MTA arising at any stage of the solicitation from any negotiations that take place, or from the fact that MTA does not select a Proposer for negotiations.

SECTION 6. GENERAL PROPOSAL CONDITIONS

6.1 NOTICE OF FORMAL SOLICITATION

Notwithstanding any other provision of this RFP, all proposers are hereby specifically advised that this RFP is a form solicitation for proposals only, and is not intended and it not to be construed as an offer to enter into an agreement or engage into any formal competitive bidding or negotiation pursuant to any statute, ordinance, rule or regulation.

6.2 METHOD OF RESPONSE

Responses to this RFP shall be made according to the scope of work and instructions contained herein. Failure to adhere to instructions may be cause for rejection of any proposal.

6.3 ACCEPTANCE OF TERMS AND CONDITIONS

Proposers understand and agree that submission of a proposal will constitute acknowledgment and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria contained in this RFP, except as otherwise specified in the proposal. Any and all parts of the submitted proposals may become part of any subsequent Agreement between the selected Contractor and the MTA.

6.4 FALSE, INCOMPLETE OR UNRESPONSIVE STATEMENTS

False, incomplete, or unresponsive statements in connection with a proposal may be sufficient cause for rejection of the proposal. The evaluation and determination of the fulfillment of the above requirement will be MTA's responsibility and its judgment shall be final.

6.5 CLEAR AND CONCISE SUBMISSION

Proposals shall provide a straightforward, concise delineation of the Proposer's capability to satisfy the requirements of the RFP. Each proposal shall be submitted in the requested format and provide all required information, including but not limited to information, if requested, relating to capability, experience, financial resources, management structure and key personnel, and other information as specified in Section 2 and outlined in Section 4 and otherwise required in this RFP. **Each proposal shall be signed in ink by a duly authorized officer of the company.**

SECTION 7. INFORMATION FOR THE CONTRACTOR

7.1 CONTRACT DOCUMENTS

The "Request For Proposal", the "Proposers Submission", the "Contract", the "General Terms and Conditions", and the "Scope of Work", are the contract documents that will form the Contract. Proposers should examine each of the contract documents.

7.2 DATE AND PLACE FOR DELIVERING PROPOSALS

Pursuant to the "Request For Proposal" electronic Proposals will be received by the MTA on or before 10:00 A.M. (EDT), Friday, September 9, 2022. Proposals shall be submitted electronically on the Michigan Inter-governmental Trade Network (MITN), a regional Bid Notification System <https://www.bidnetdirect.com/mitn>. Proposers can download bids, proposals, or formal Proposals and submit bid documents. Proposers must complete a brief online registration process. There are no fees related to registration on this site. The awarding of the Contract, if awarded, will be made by MTA as soon thereafter as practicable.

7.3 PRINTED FORM FOR PROPOSALS

All proposals must include a form with deliverable prices and a total cost (Price Proposal Form), and must be signed and acknowledged by the party, in accordance with the directions in this RFP.

7.4 OMISSIONS AND DISCREPANCIES

Should a Proposer find discrepancies in, or omissions from the Specifications of Contract documents, or should he be in doubt as to their meaning, he should at once notify the Purchasing Agent who may send a written instruction to all proposers.

7.5 ACCEPTANCE OR REJECTION OF PROPOSALS

The MTA reserves the right to reject any or all proposals without limiting the generality of the foregoing. Any proposal which is incomplete, obscure or irregular may be rejected.

7.6 ACCEPTANCE OF PROPOSALS AND THE EFFECT

Within ninety (90) days after the opening of the proposals, MTA will act upon them. The acceptance of a proposal will be a notice in writing signed by a duly authorized representative of the MTA, and no other act of the MTA shall constitute the acceptance of a proposal. The acceptance of a proposal shall bind the successful proposer to receive the Contract. The rights and obligations provided for in the Contract shall become effective and binding upon the parties only with its formal execution by the General Manager.

7.7 TIME FOR EXECUTING CONTRACT AND DAMAGES FOR FAILURE TO EXECUTE

Any proposer whose submission shall be accepted will be required to appear at the office of MTA in person, or, if a firm or corporation, a duly authorized representative shall so appear, and to execute the Contract within seven (7) days after notice that the Contract has been awarded. Failure to do so shall constitute a breach of the agreement effected by the acceptance of the proposal.

7.8 PRIME CONTRACTOR RESPONSIBILITIES

The selected Contractor will be required to assume responsibility for all requested deliverables as indicated in Section 2.0 regardless of who produces them. Further, MTA will consider the selected company to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. Contractor and/or subcontractor shall give a copy of their State of Michigan Contractor License and permits from governmental agencies as required upon notification of award.

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from MTA. Any delay or postponement of payment from the above

referenced time frame may occur only for good cause following written approval of the MTA. The clause applies to both DBE and non-DBE subcontracts.

Retainage:

The prime Contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactory completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTA. This clause applies to both DBE and non-DBE subcontracts.



MASS TRANSPORTATION AUTHORITY

CONTRACT AGREEMENT

This Agreement made this _____ day of _____, 20____, between the Mass Transportation Authority, herein called the “Authority” and/or “Buyer” and _____ herein called the “Contractor” and/or “Seller”.

In consideration of the mutual promises and agreements hereinafter set forth, the parties agree to undertake, carry out and perform this Contract in accordance with the terms and conditions as set forth herein, and as follows:

1. The Contract Documents:
The Contract Documents consist of this Agreement, the “Information for Proposers”, the “Invitation to Bid”, the “Proposer Proposal”, the “General Terms and Conditions”, and the “Scope of Work”. These form the Contract and all are fully a part of the Contract as if attached to this Agreement or reported herein. If there is a conflict between the contract and any of the referenced documents then the original RFP/IFB with addendums shall take precedence. Reference number:_____.
2. The Performance:
The Contractor shall furnish pursuant to the terms and conditions of this Contract labor and material listed in the attached specifications.
3. Time of Commencement and Completion:
The Contractor shall perform under this Contract from the date hereof until _____, or a later date if extended by mutual consent of the parties.
4. Independent Contractor:
The Contractor is employed by the Authority as an independent Contractor and has and retains the right to exercise full control and supervision of the services including compliance with Social Security, withholding and all other regulations governing such matters. The contractor agrees to indemnify, defend and save harmless the Authority, its agents, officers and members of the Board of the Mass Transportation Authority against any and all loss, damage or expense which the Authority may suffer by reason of liability imposed by law upon the Authority or Contractor for damages because of bodily injury, including death at any time resulting there from sustained by any person or persons, or on account of damage to property are due to the fault of the Contractor, its sub-contractors or their employees, agents or any other person under the direct or indirect Contract of the Contractor.
5. Contractor’s Financial Responsibilities:

Any costs due to the fault of the Contractor, sub-contractor, or anyone directly employed by them either for making good of defective work, disposal of material wrongly supplied, making good of damage to property, or excess costs from material or labor, or otherwise shall be borne by this Contractor, and the Authority may withhold money due the Contractor to cover any such costs.

6. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or delegate its performance of duties except on prior written approval of the Authority, which approval shall not be unreasonably withheld. Consent to assign, transfer or delegate any interest or performance of this Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of this Agreement.

7. Payments:

The Authority shall pay the Contractor for the performance of work in current funds per price stated in the "Proposers Proposal" upon completion and acceptance by the Mass Transportation Authority. The Contractor shall invoice each item against an Authority Purchase Order and all invoices for the calendar month shall be payable by the fifteenth day of the following month.

No payment will be made to the Contractor for material not delivered upon the Authority premises, unless otherwise agreed to in writing by the Authority.

Neither payment made under the Contract or used by the Authority of the labor and material provided shall be evidence of performance of the Contract, either in whole or in part, nor shall such payment, final or otherwise, be construed to relieve the Contractor from its obligation to make good any defects arising or discovered in its performance within the period of its guarantee, nor shall the Authority be deemed to waive any specific obligation the contractor may assume as to its performance.

8. Testing:

At any time if it is determined by an independent testing firm analysis that equipment delivered and installed is substandard, the Authority reserves the right to discontinue shipments and shall not be obligated to pay for such substandard shipment already delivered. The Contractor agrees to pay all costs incurred by the Authority to provide test on equipment delivered and installed found not meeting the specification.

9. Termination for Convenience:

The Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Authority's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Authority to be paid the Contractor. If the Contractor has any property in its possession belonging to the Authority, the Contractor will account for the same, and dispose of it in the manner the Authority directs.

10. Termination for Default:

The Authority reserves the right to cancel all or any part of the work covered by this Agreement and/or Purchase Order, if Seller does not make deliveries as specified in the schedules or so fails to make progress as to endanger performance of the work and does not correct such failure after receipt of written notice from the Authority specifying such failure, or if Seller breaches any of the terms hereof, including the warrants of Seller. Should cancellation be made for cause, the Authority reserves the right to purchase elsewhere and if additional costs are incurred, such costs are to be

at the Seller's expense. The Seller shall be liable for any other damages suffered by the Authority as a result of any breach by the Seller in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, as of the day first above written.

VENDOR

MASS TRANSPORTATION AUTHORITY

Title

General Manager, Edgar H. Benning

WITNESS:

WITNESS:



GENERAL TERMS & CONDITIONS

1. ***CONTRACT:***

The Contract resulting from the acceptance of this order is to be construed according to the laws of the State of Michigan and is non-assignable by Contractor except upon prior written approval of the Buyer.

2. ***WARRANTY:***

Contractor expressly warrants that all materials and work covered by an order will conform to the specifications, drawings, samples or other description furnished or specified by the Buyer, and will be merchantable, of good materials and workmanship and free from defect and fit for the purposes intended. Contractor expressly warrants that all the material covered by an order which is product of Contractor, or is in accordance with Contractor's specifications, will be for and sufficient for purposes intended. All labor, materials, and systems shall function at levels meeting or exceeding operational design specifications, and shall be fully warranted for one year.

3. ***POTENTIALLY HARMFUL INGREDIENTS:***

Contractor agrees to promptly furnish to Buyer, 1) Upon written request a list of all ingredients in materials purchased there under, and as necessary, the amount of one or more ingredients; and 2) Thereafter, information concerning any changes in such ingredients.

4. ***TERMINATION FOR DEFAULT:***

MTA reserves the right to cancel all or any part of the work covered by the agreement and/or purchase order, 1) if Contractor does not make deliveries as specified in the schedules; or 2) so fails to make progress as to endanger performance of the work and does not correct such failure after receipt of written notice from Buyer specifying such failure; or 3) refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or

fails to complete the work within this time; or 4) if Contractor breaches any of the terms hereof, including the warrants of Contractor. Should cancellation be made for cause, MTA reserves the right to purchase elsewhere and if additional costs are incurred, such costs are to be at Contractor's expense. Contractor shall be liable for any other damages suffered by the Buyer as result of any breach by the Contractor in the performance of an Agreement.

MTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to MTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from MTA setting forth the nature of said breach or default, MTA shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

5. ***TERMINATION FOR CONVENIENCE:***

MTA reserves the right to terminate an agreement, in whole or in part, at any time by written notice to Contractor when it is in Buyer's best interest. Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to Buyer to be paid the Contractor. If Contractor has any property in its possession belonging to the Buyer, Contractor shall account for the same, and dispose of it in the manner Buyer directs.

Termination for Convenience or Default (Architect and Engineering)

MTA may terminate this contract in whole or in part, for the MTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The MTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the MTA 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. MTA has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the MTA, the MTA's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the MTA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the MTA.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MTA.

6. ***INSPECTION:***

All material shall be received subject to Buyer's inspection and rejection. Defective material or materials not in accordance with Buyer's specifications will be held for Contractor's instructions and at Contractor's expense. Payment for material on an order prior to inspection shall not constitute an acceptance thereof, nor will acceptance remove Contractor's responsibility for latent defects.

7. ***CHANGE IN SPECIFICATIONS:***

Buyer reserves the right at any time, to make changes in drawings and specifications as to any material and/or work covered by an order and/or schedules. Any difference in price or performance time resulting from such changes shall be equitably adjusted and/or schedule shall be modified, in writing, accordingly.

8. ***REMEDIES***

The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver or breach of any provisions of an order shall constitute a waiver of any other breach or such provision.

9. ***INSURANCE:***

If the accomplishment of an order requires the performance of services or labor on the premises of Buyer, Contractor agrees to indemnify and protect Buyer against all liabilities, claims or demands for injuries or damages to any person or property growing out of the performance of this Contract by Contractor, its servants, employees, agents or representatives. Contractor agrees to carry and to furnish certificates from its insurance carriers showing that it carries valid insurance in the following minimum limits:

- A. Workmen's Compensation-statutory limits for State of Michigan or for the state in which the work is to be performed.
- B. General Public Liability \$2,000,000. and Property Damage \$2,000,000.
- C. Automobile Public Liability \$2,000,000. and Property Damage \$2,000,000.

Said certificates must set forth the amount of coverage, number of policy, and date of expiration. If Contractor is a self-insurer, the certificate of the appropriate state agency of the state must be furnished by such agency directly to Buyer. The purchase of such insurance coverage or the furnishing of the aforesaid certificates shall not be a satisfaction of Contractor's liability thereunder or in any way modify Contractor's indemnification of Buyer.

10. ***ADVERTISING:***

Contractor shall not, without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact the Contractor has contracted to furnish Buyer the material herein ordered. Failure to observe this provision permits Buyer to terminate the Contract resulting from the acceptance of an order without any obligation to accept deliveries after the date of termination or make further payments except from completed articles delivered prior to termination.

11. ***STATE APPROVAL:***

If the articles covered by an order require approval for the sale and/or use thereof by State statute or regulations, Contractor certifies it has or will obtain an approval for their sale and/or use from the appropriate agency of the State. Contractor will submit to Buyer a copy of each such approval for sale and/or use.

12. ***GOVERNMENT REGULATIONS:***

In the performance of work under an order, Contractor agrees to comply with all applicable Federal, State, or Local laws, rules, regulations or ordinances.

13. ***EXEMPTION FROM TAXES:***

The Mass Transportation Authority, is tax exempt under Public Act No. 551963, Section 8. The vendor certifies that all such taxes are not included in the prices shown herein.

14. ***INTEREST OF MEMBERS OF STATE LEGISLATURE:***

No member of the State Legislature shall be admitted to any share or any part of a Contract or any benefit arising there from.

15. ***AUDIT & INSPECTION OF RECORDS BY MICHIGAN DEPARTMENT OF TRANSPORTATION:***

The Contractor shall permit authorized representatives of the State or Federal government to inspect and audit all data and records of the Contractor relating to its performance under a Contract until expiration of three (3) years after final payment under this Contract.

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

Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

Access to Records. The Contractor agrees to provide sufficient access to FTA and the State of Michigan and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

Access to the Sites of Performance. The Contractor agrees to permit FTA and the State of Michigan and its contractors access to the sites of performance under this contract as reasonably may be required.

16. ***ADDITIONAL REQUIREMENTS OF MICHIGAN DEPARTMENT OF TRANSPORTATION:***

The Contractor agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts”, as set forth in Appendix A, attached hereto and made a part hereof. The Contractor further covenants that it will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and will require similar covenants on the part of any subcontractor employed in the performance of this Contract.

17. ***EQUAL EMPLOYMENT OPPORTUNITY:***

In connection with Project implementation, the Contractor may not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that during employment, employees are treated without regard to their race, color, disability, 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 this same clause in all subcontracts.

Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

18. ***DISADVANTAGED BUSINESS ENTERPRISES***

A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*". The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.24%.

Each contract MTA signs with a Contractor, (and each subcontract the Prime Contractor signs with a subcontractor) shall include the following assurances:

B. The Contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of a contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of all DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions
- Liquidated damages; and/or
- Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
- Or such other remedy as MTA deems appropriate.

C. Each Contract the MTA signs with a Contractor (and each subcontract the Prime Contractor signs with a subcontractor) shall include a clause requiring the Prime Contractor to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment MTA makes to the Prime Contractor.

D. PROMPT PAYMENT MECHANISM: The Prime Contractor agrees to pay each subcontractor under this Prime Contract for satisfactory performance of its Contract no later than 30 days from the receipt of each payment the Prime Contractor receives from MTA. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the MTA. This applies to both DBE and non-DBE subcontracts.

E. RETAINAGE: The Prime Contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the MTA. This clause applies to both DBE and non-DBE subcontracts.

F. MONITORING AND ENFORCEMENT: The Prime Contractor shall maintain records and documents of payments to DBEs for three (3) years following the performance of the Contract. These records shall be available for inspection upon request by any authorized representative of the MTA or USDOT.

19. ***CIVIL RIGHTS AND EQUAL OPPORTUNITY:***

MTA is an Equal Opportunity Employer. As such, the MTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the MTA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. The Contractor shall comply and assure the compliance by subcontractors under this Contract with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Department of Transportation regulations, "*Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act*", 49 C.F.R. Part 21.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age

Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

20. ***ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES:***

The CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

The CONTRACTOR also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the CONTRACTOR agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, “*Transportation Services for Individuals with Disabilities (ADA)*”, 49 C.F.R. Part 37;

(2) 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;

(3) U.S. DOT regulations, “*Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles*”, 49 C.F.R. Part 38;

- (4) Department of Justice (DOJ) regulations, “*Nondiscrimination on the Basis of Disability in State and Local Government Services*”, 28 C.F.R. Part 35;
- (5) DOJ regulations, “*Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*”, 28 C.F.R. Part 36;
- (6) General Services Administration regulations, “*Accommodations for the Physically Handicapped*”, 41 C.F.R. Subpart 101-19;
- (7) Equal Employment Opportunity Commission, “*Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*”, 29 C.F.R. Part 1630;
- (8) 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
- (9) U.S. ATBCB regulations, “*Electronic and Information Technology Accessibility Standards*,” 36 C.F.R. Part 1194;
- (10) FTA regulations, “*Transportation for Elderly and Handicapped Persons*,” 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

21. ***DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS:***

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act 29 C.F.R. Part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and

fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis- Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(ii)(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(ii)(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will

issue a determination within 30 days of receipt and so advise the Contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (A)(1)(ii), (B), or (C) of this section, shall be paid to all workers performing work in the classification under contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(v)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(v)(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits,

where appropriate), the Contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

(v)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(2) **Withholding** - The MTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same Prime Contractor or any other Federally-Assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the MTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the

apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(3)(ii)(A) Each week any contract work is performed, the Contractor shall submit a weekly copy of all payrolls to the MTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(3)(ii)(B) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(3)(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(3)(ii)(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(3)(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(4)(ii) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee

program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(4)(iii) Equal Employment Opportunity - The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. Part 30.

(5) Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

(6) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(7) Contract termination: Debarment - A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm

is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(10)(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(10)(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

22. ***RIGHTS IN DATA:***

A. The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: Computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

B. The following restrictions apply to all subject data first produced in the performance of this Agreement:

1. Except for its own internal use, the MTA may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the MTA authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.

2. As authorized by 49 C.F.R. Part 18.34, the Government (FTA) reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

(b) Any rights of copyright to which a Recipient, sub-recipient, or a third party contractor purchases ownership with Federal assistance.

- C. When FTA provides assistance to a Recipient for a Project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, the Recipient of FTA assistance to support planning, research, development, or a demonstration financed under Section 49I), 6, 8, 9, 18, 18(h), or 20 of the Urban Mass Transportation Act of 1964, as amended, understands and agrees that, in addition to the rights set forth in Subsection 119.b.(2) of Part II of this Agreement, FTA may make available to any FTA recipient, sub-grantee, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement.
- D. The Recipient shall indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient 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 Agreement.
- E. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- F. Subsections 119.b., 119.c., and 119.d. of Part II of this Agreement are not applicable to material furnished to the Recipient by the Government and incorporated in the work furnished under the Agreement; provided that such incorporated material is identified by the Recipient at the time of delivery of such work.
- G. In the event that the Project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined in Subsection 119.a. of Part II of this Agreement and shall be delivered as the Government may direct.

23. ***BUY AMERICA:***

Each third party contract utilizing FTA assistance must comply with section 165 of the Surface Transportation Assistance Act of 1982, as amended by section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and FTA regulations at 49 C.F.R. Part 661 and any guidance issued by FTA.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are

listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

24. ***DEBARMENT AND SUSPENSION:***

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

25. ***RESTRICTIONS ON LOBBYING:***

No Federal appropriated funds shall be paid or will be paid, by or on behalf of the Contractor, subcontractor, sub-grantee or sub-recipient, 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.

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

26. ***CARGO PREFERENCE -- USE OF UNITED STATES-FLAG VESSELS:***

As required by 46 C.F.R. Part 381, the Contractor agrees --

- (1) To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent 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 Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- (2) To furnish within 20 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 (1) above to the recipient (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, D.C. 20590, marked with appropriate identification of the project.
- (3) To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

27. ***ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS:***

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The Contractor recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; the Clean

Air Act, as amended, 42 U.S.C. 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq. The Contractor also recognizes that the Environmental Protection Agency (EPA), the Federal Highway Administration (FHWA) and other agencies of the Federal Government have issued and are expected in the future to issue requirements in the form of regulations, guidelines, standards, orders, or other directives that may effect the Project. Accordingly, the Contractor agrees to adhere to, and impose on its sub-contractors, any such Federal requirements, as the Government may now or in the future promulgate.

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

28. ***ENERGY CONSERVATION:***

The Contractor and its subcontractors shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

29. ***SAFE OPERATION OF MOTOR VEHICLES:***

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or the MTA. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

30. ***SUBSTANCE ABUSE REQUIREMENTS:***

Contractors who perform *safety-sensitive functions* must comply with FTA’s substance abuse management program under 49 C.F.R. part 655, “Prevention of Alcohol Misuse and

Prohibited Drug Use in Transit Operations.” Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, Contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.”

31. ***BOND REQUIREMENTS:***

THE FOLLOWING BONDING REQUIREMENTS SHALL BE ENFORCED FOR CONSTRUCTION OR FACILITY IMPROVEMENT CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000.00:

Bid Bond Requirements

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to MTA and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder. Bid guarantee shall be the equivalent to five (5) percent of the bid price.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by MTA to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of MTA.

It is also understood and agreed that if the undersigned bidder 1) should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of MTA, 2) should refuse or be unable to enter into this Contract, as provided above, 3) refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and

Material Payments Bonds, as provided above, or 4) refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of MTA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by MTA) shall prove inadequate to fully recompense MTA for the damages occasioned by default, then the undersigned bidder agrees to indemnify MTA and pay over to MTA the difference between the bid security and MTA's total damages, so as to make MTA whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

Performance and Payment Bonding Requirements

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent (100%) of the original Contract price, unless the MTA determines that a lesser amount would be adequate for the protection of the MTA.
2. The MTA may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent (100%) of the increase in Contract price. The MTA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the labor and materials payment bonds shall equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.
2. If the original Contract price is \$5 million (5,000,000.) or less, the MTA may require additional protection as required by subparagraph 1, if the Contract price is increased.

32. ***PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS:***

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, “*Program Fraud Civil Remedies*”, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(l) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

33. ***SEISMIC SAFETY:***

The Contractor agrees that any new building or additions to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

34. ***CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:***

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor agrees it will not use any violating facilities.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

35. ***FLY AMERICA:***

Shipments of federally assisted property by air carrier will require provisions to ensure compliance with section 5 of the International Air Transportation Fair Competitive Prices Act of 1974, as amended, (“*Fly America*” Act), 49 U.S.C. Section 40118, and GSA regulations, “*Use of United States Flag Air Carriers*”, 41 C.F.R. Sections 301-10.131 through 301-10.143. The regulations require shipment by U.S. flag air carriers unless such air carriers are not reasonably available within the standards of GSA’s implementing regulations. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [*State reasons*]:

The Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

36. ***CONSTRUCTION SAFETY:***

The Contractor shall ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are

unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering 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.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

37. ***VIOLATION AND BREACH OF CONTRACT:***

MTA shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

38. ***NO OBLIGATION BY THE FEDERAL GOVERNMENT:***

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of 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 the Purchaser, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting to the underlying Contract.

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

39. ***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 Circular 4220.1F, dated November 1, 2008 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 MTA requests which would cause MTA to be in violation of the FTA terms and conditions.

Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

40. ***METRIC SYSTEM REQUIREMENTS:***

As required by U.S. DOT or FTA, the MTA agrees to use the metric system of measurement in its Project activities, as may be required by 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the MTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

41. ***RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:***

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit

organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

42. ***VETERANS PREFERENCE***

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

43. ***PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS***

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

44. ***RECYCLED PRODUCTS***

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

45. ***PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT***

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
1. Procure or obtain;
 2. Extend or renew a contract to procure or obtain; or

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

I. For the purpose of public safety, security of government facilities, physical security surveillance of

critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

II. Telecommunications or video surveillance services provided by such entities or using such equipment.

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

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1),

heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

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

Attachment “A” - Certification Regarding Lobbying

APPENDIX A, 49 CFR PART 20—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to be the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying”, 61 Fed. Reg. 1413 (1-19-96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq. apply* to this certification and disclosure, if any.

_____ Signature of Contractor’s Authorized Official

_____ Name and Title of Contractor’s Authorized
Official

_____ Date

Updates to Standard Form LLL are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a “covered federal action”;
- a change in the person(s) attempting to influence such action; or
- a change in the officer(s), employee(s), or member(s) contacted to attempt to influence such action.

Attachment “B” - Certificate Regarding Debarment/Suspension

*(To be signed by all General Contractors
in procurements exceeding \$100,000)*

CERTIFICATION OF PRIMARY PARTICIPANT

REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for a FTA grant or cooperative agreement, or 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 of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for a FTA grant, or cooperative agreement, or 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 (APPLICANT FOR A FTA GRANT OR COOPERATIVE AGREEMENT, OR 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. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

Attachment “C”- Bid Protest Procedures

BID PROTEST PROCEDURES

Any protest by an interested party regarding this procurement shall be made in accordance with FTA regulation, pursuant to the procedures provided in FTA C4220.1F. Alleged violations of certain federal requirements provide a separate complaint procedure.

A. PROTEST POLICY AND PROCEDURES

It is the policy of Mass Transportation Authority (MTA) that it is responsible for resolving all Pre-Proposal, Pre-Award and Post-Award Procurement Protest disputes arising out of third party procurements using good administrative practices and sound business judgment. It is the intention of the MTA that its procurement process provides for fair and open competition in compliance with federal and state laws and MTA policies.

The MTA has established these Pre-Proposal, Pre-Award and Post-Award Procurement Protest Policy and Procedures so that all procurement protests/disputes are filed, processed and resolved in a manner consistent with the requirements of the Federal Transit Administration (FTA) Circular (4220.1F) *Third Party Contracting Guidance*, dated November 1, 2008.

When a protest is filed before an award, the MTA will not make the award until the protest is resolved. When a protest is filed before the opening of bids or proposals, the MTA will not open the bids or proposals until the protest is resolved, unless the delay will cause undue harm. In the event that the MTA decides to proceed with a bid, contract, or service before a protest is resolved, it shall document its reasons in writing.

This Protest Procedure is applicable to any Invitation for Bid (IFB) or Request for Proposal (RFP) issued by the MTA.

A. APPLICABILITY

This regulation is applicable to all MTA employees. This regulation is applicable to any Interested Party as defined herein who has a protest/dispute against MTA in the Pre-Proposal, Pre-Award and Post-Award procurement phase.

C. DEFINITIONS

1) **“Common Grant Rules”** refers to the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients/sub recipients of Federal assistance including Indian tribal governments.

2) **“Interested Party”** means a party that is an actual or prospective Proposer whose direct economic interest would be affected by the award or failure to award the third party contract at issue. A subcontractor does not qualify as an “interested party”.

3) **“Protest”** means a formal declaration of disapproval or objection issued by a concerned person, group, or organization that arises during the procurement process. A Protest is a potential Proposer’s or Contractor’s remedy for correcting a perceived wrong in the procurement process. See “Types of Protests” below.

4) **“Protester”** means a person, group, or organization that files a formal declaration of disapproval or objection. A protester must qualify as an “interested party”.

5) **“Types of Protests”** there are three basic types of Protests pursuant to this regulation, based on the time in the procurement cycle when they occur:

6) A pre-proposal or solicitation phase Protest is received not later than three (3) days prior to the proposal opening or proposal due date. Pre-proposal protests are those based on the content of the initial Notice and/or solicitation published by MTA requesting Proposals from vendors or other interested parties.

7) A pre-award Protest is a protest against making an award and is received after receipt of proposals but before award of a contract.

8) A post-award Protest is a protest received after award of a contract. A post-award Protest must be received within ten (10) business days of the making of the award. A post-award Protest generally alleges a violation of applicable federal or state law and/or MTA policy or procedures relative to the seeking, evaluating and/or awarding of the contract.

D. STANDARDS

All Protests must be filed in writing to:
Mass Transportation Authority
Edgar H. Benning, General Manager/CEO
1401 S. Dort Highway
Flint, Michigan 48803

1. A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being

protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking.

The Protester is responsible for adhering to this regulation. A Protester must exhaust all of protest administrative remedies before pursuing a protest with the FTA.

2. Mass Transportation Authority, Edgar H. Benning, General Manager or Designee shall make a determination on the Protest within ten (10) working days from receipt of the Protest. The response of the General Manager or Designee shall be in writing and shall include a response to each substantive issue raised in the Protest.

3. If the General Manager or Designee's response does not provide a resolution of the protest, the Protestor may request that the protest be considered by the members of the Mass Transportation Authority at their next regular meeting. The Authority's decision shall constitute MTA's final administrative determination.

4. The Protester may withdraw its Protest or Appeal at any time before a final decision is issued.

5. Reviews of Protests by FTA are limited to 1) failure to have or follow its protest procedures, or its failure to review a complaint or Protest; or 2) violations of Federal law or regulation.

6. A Protest Appeal to the FTA must be filed in accordance with the provisions of FTA Circular 4220.1F. Any appeal to the FTA shall be made not later than five (5) working days after a final decision by the members of the Mass Transportation Authority is rendered. Protest appeals should be filed with:

Federal Transit Administration
Regional Administrator Region V
200 W. Adams Street
Suite 320
Chicago, Illinois 60606

E. MTA RESPONSIBILITIES TO FTA

MTA will notify FTA when they receive a third party contract protest to which the FTA Circular(4420.1F) *Third Party Contracting Guidance* applies, and will keep FTA informed about the status of the Protest including any appeals.

MTA will provide the following information to FTA:

1)Subjects: A list of Protests involving third party contracts and potential third party contracts that:

- Have a value exceeding \$100,000, or
- Involve controversial matter, irrespective of amount, or
- Involve a highly publicized matter, irrespective of amount.

2)Details: The following information about each Protest:

- A brief description of the Protest,
- The basis of disagreement, and
- If open, how far the Protest has proceeded, or

- If resolved, the agreement or decision reached, and
- Whether an appeal has been taken or is likely to be taken.

3)When and Where: MTA will provide this information:

- In its next quarterly Milestone Progress Report, and
- At its next Project Management Oversight review, if any.

F. Officials to Notify

When MTA denies a proposal Protest, and an appeal is likely to occur, MTA will inform the FTA Regional Administrator for Region V or the FTA Associate Administrator for the program office administering a headquarters project directly about the likely appeal.

1)MTA will disclose information about any third party procurement Protest to FTA upon request. FTA reserves the right to require MTA to provide copies of a particular Protest or all Protests, and any or all related supporting documents, as FTA may deem necessary.

2)Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

3)**MTA reserves the right to modify its protest procedures for the procurement of commodities such as diesel fuel, as award notification must be on the date of the proposal opening or within a relatively short period of time thereafter as pricing is tied to market pricing and subject fluctuations of the market.

Attachment “D”- ADA Paratransit Eligibility Standards

49 CFR Part 37

Subpart F, sections 37.123-37.127

ADA Paratransit Eligibility Standards

(Attachment #D)

Sec. 37.123 ADA paratransit eligibility: Standards.

(a) Public entities required by Sec. 37.121 of this subpart to provide complementary paratransit service shall provide the service to the ADA paratransit eligible individuals described in paragraph (e) of this section.

(b) If an individual meets the eligibility criteria of this section with respect to some trips but not others, the individual shall be ADA paratransit eligible only for those trips for which he or she meets the criteria.

(c) Individuals may be ADA paratransit eligible on the basis of a permanent or temporary disability.

(d) Public entities may provide complementary paratransit service to persons other than ADA paratransit eligible individuals. However, only the cost of service to ADA paratransit eligible individuals may be considered in a public entity's request for an undue financial burden waiver under Sec. Sec. 37.151-37.155 of this part.

(e) The following individuals are ADA paratransit eligible: (1) Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable individuals with disabilities.

(2) Any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route.

(i) An individual is eligible under this paragraph with respect to travel on an otherwise accessible route on which the boarding or disembarking location which the individual would use is one at which boarding or disembarking from the vehicle is precluded as provided in Sec. 37.167(g) of this part.

(ii) An individual using a common wheelchair is eligible under this paragraph if the individual's wheelchair cannot be accommodated on an existing vehicle (e.g., because the vehicle's lift does not meet the standards of part 38 of this title), even if that vehicle is accessible to other individuals with disabilities and their mobility wheelchairs.

(iii) With respect to rail systems, an individual is eligible under this paragraph if the individual could use an accessible rail system, but:

A) There is not yet one accessible car per train on the system; or

(B) Key stations have not yet been made accessible.

(3) Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

(i) Only a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location is a basis for eligibility under this paragraph. A condition which makes traveling to boarding location or from a disembarking location more difficult for a person with a specific impairment-related condition than for an individual who does not have the condition, but does not prevent the travel, is not a basis for eligibility under this paragraph.

(ii) Architectural barriers not under the control of the public entity providing fixed route service and environmental barriers (e.g., distance, terrain, weather) do not, standing alone, form a basis for eligibility under this paragraph. The interaction of such barriers with an individual's specific impairment-related condition may form a basis for eligibility under this paragraph, if the effect is to prevent the individual from traveling to a boarding location or from a disembarking location.

(f) Individuals accompanying an ADA paratransit eligible individual shall be provided service as follows:

(1) One other individual accompanying the ADA paratransit eligible individual shall be provided service--

(i) If the ADA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual;

(ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;

(2) Additional individuals accompanying the ADA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the ADA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to ADA paratransit eligible individuals;

(3) In order to be considered as "accompanying" the eligible individual for purposes of this paragraph (f), the other individual(s) shall have the same origin and destination as the eligible individual.

Sec. 37.125 ADA paratransit eligibility: Process.

Each public entity required to provide complementary paratransit service by Sec. 37.121 of this part shall establish a process for determining ADA paratransit eligibility.

(a) The process shall strictly limit ADA paratransit eligibility to individuals specified in Sec. 37.123 of this part.

(b) All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.

(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.

(e) The public entity shall provide documentation to each eligible individual stating that he or she is "ADA Paratransit Eligible." The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.

(f) The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

(h) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.

(2) Before suspending service, the entity shall take the following steps:

(i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.

(ii) Provide the individual an opportunity to be heard and to present information and arguments;

(iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

(i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

Sec. 37.127 Complementary paratransit service for visitors.

(a) Each public entity required to provide complementary paratransit service under Sec. 37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of Sec. 37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation, the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996]

Attachment “E”- Notice of Intent to Bid

NOTICE OF INTENT TO BID

Please complete and return this form if your intention is to participate in the RFP# 2022-09. This form should be completed and returned by August 29, 2022. Returning this form ensures that you will receive any additional information that may be released regarding this RFP should it be deemed necessary.

Von Redmon
Mass Transportation Authority
1401 S. Dort Highway
Flint, MI 48503

Please Scan and Email the Form to: vredmon@mtaflint.org

Date	
Company Name	
Company Address	
City, State, Zip-Code	
Phone Number	
Email Address	
Company Website	
Contact Name	
Contact Signature	
Contact Title	

Attachment “F”- Certificate of Compliance

Certificate of Compliance with FTA Clauses

The undersigned certifies that in all aspects of this procurement the vendor will abide by all the applicable third party contract clauses as specified in the Federal Transit Administrations’ Third Party Contracting Guideline, Circular 4220.1F. The undersigned also acknowledges the receipt of a copy of these clauses from Mass Transportation Authority in the General Terms and Conditions.

The undersigned understands the noncompliance with these clauses with these clauses may subject the undersigned to civil penalties as outlined in the Department of Transportation’s regulation on Program Fraud Civil Remedies, 49 CFR part 31. In addition, the undersigned understands that FTA may suspend or debar a Contractor or Manufacturer under the procedures in 49 CFR, part 29.

By execution below by a duly authorized representative(s) of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to Mass Transportation Authority in response to Request for Proposal No. #2022-09 in its entirety.

I/We additionally certify that we are fully licensed, insured and have the proper equipment, systems and personnel to handle the project as specified in this procurement document.

Proposer: _____

Street address: _____

City, state, ZIP: _____

Name and title of Authorized Signer(s): _____

Name and title of Authorized Signer(s): _____

Phone: _____

Authorized signature

Date

Authorized signature

Date

Attachment “G”- Checklist for Proposal Submission

RFP#2022-09 SUBMITTAL CHECKLIST

Deadline: September 9, 2022, at 10:00am (A proposal will be automatically rejected if it is received after the stated deadline.)

All forms/Certifications below MUST be completed and included when you submit your Proposal Package:

- Signed and completed Price Proposal Form
- Business Organization Information
- Letter of Interest/Cover Letter
- Project Understanding
- Response Time
- Prior Experience/Qualifications of Agency
- Professional Personnel/Qualifications of Staff
- Three (3) references of similar work completed
- Other Subcontractors and consultants
- Additional Information/MTA Responsibility
- Certification Regarding Lobbying
- Debarment and Suspension Certification
- Certificate of Compliance with FTA Clauses
- Submittal Checklist

See Sections 3 and 4 for more detailed information on proposal submission and format.

SUBMITTED PROPOSAL CONTAINS ALL COMPLETED FORMS/CERTIFICATIONS AS LISTED ABOVE

Authorized Signature _____

Date _____

