



Mass Transportation Authority

REQUEST FOR PROPOSAL

**Enterprise Resource Planning (ERP) Software
Software Requirements Specification**

RFP# 2023-13

Issue date:

Monday, September 25, 2023

Proposal due date and time:

Friday, October 20, 2023, 1:00 P.M. (EDT)

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Table of Contents

Table of Contents	ii
1. Introduction.....	1
1.1 Purpose.....	1
2. Scope of Work	1
2.1 Product Scope and Functions	1
2.2 User Classes and Characteristics	2
2.3 Operating Environment.....	2
2.4 User Documentation & Training.....	2
3. Technical and Functional Requirement.....	3
3.1 Software Interfaces	3
3.2 Browser Based Interface.....	3
3.3 Relational Database	3
3.4 Database Import and Export.....	3
3.5 User Specific Access Control.....	3
3.6 Commercial, Open Source Software	3
3.7 Software Capacity	3
3.8 Reports (Standard Reports)	4
3.9 Ad-Hoc Reports.....	4
3.10 Reporting Capabilities	4
3.11 Report Exporting	4
3.12 Provider Web Portal	4
4. System Features and Additional Functions.....	4
4.1 Finance Features.....	4
4.2 Procurement – Requisitions/Purchase Orders	9
4.3 Inventory Management Module	10
4.4 Software Requirements.....	11
5. Other Nonfunctional Requirements	11
5.1 Application Support.....	11
5.2 Security Requirements	11
5.3 Software Quality Attributes.....	11
6. Proposal Submission.....	11
6.1 Pre-Proposal Meeting	11
6.2 Submission of Proposals.....	12
6.3 Minimum Requirements For Pricing	12
6.4 Proposal Contents and Format.....	12
7. Selection Process	16
7.1 Evaluation Criteria.....	16
7.2 Presentation and Interviews.....	17
7.3 Best and Final Offer	18
8. General Proposal Conditions.....	19
8.1 Notice of Formal Solicitation	19
8.2 Method of Response	19
8.3 Acceptance of Terms and Conditions.....	19
8.4 False, Incomplete or Unresponsive Statements	20
9. Information for the Proposer.....	20
9.1 Contract Documents	20
9.2 Addenda.....	20
9.3 Date and Place for Delivering Proposals.....	20
9.4 Equal Employment Opportunity.....	20
9.5 Disadvantaged Business Enterprises	20
9.6 Ineligible Proposers	21
9.7 Printed Form for Proposals.....	21

9.8 Omissions and Discrepancies 21

9.9 Acceptance or Rejection of Proposals 21

9.10 Acceptance of Proposals and the Effect 21

9.11 Time for Executing Contract and Damages for Failure to Execute..... 21

9.12 News Releases 21

9.13 Proprietary Information 22

9.14 Bid Protest Procedures..... 22

CONTRACT AGREEMENT23

Attachment “A”- Checklist for Proposal Submission51

Attachment “B” - Certification Regarding Lobbying52

Attachment “C” - Certificate Regarding Debarment/Suspension54

Attachment “D”- Certificate of Compliance55

Attachment “E”- Notice of Intent to Bid56

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.

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.

1.1 Purpose

The Mass Transportation Authority (MTA) is the countywide public transportation provider for the City of Flint and Genesee County, Michigan. The MTA family of services includes fourteen primary routes operating seven days a week; 42 peak period routes that augment the primary routes at high demand times; regional service taking Genesee County residents to work places in five adjoining counties; and countywide on-demand services. In addition, MTA provides door through door non-emergency medical transportation (NEMT) services for the elderly, persons with disabilities, and veterans. MTA's specialized services include a Ride to Groceries bus route serving an area of the city that has limited access to grocery stores and a circulator-style bus route that serves six healthcare facilities throughout Flint. In 2016, MTA received an FTA Rides to Wellness grant to support development of a robust mobility management program that includes an on demand component that rider are picked up within 30 minutes of requesting a ride.

The MTA is seeking qualified contractors to provide an Enterprise Resource Planning system (ERP) for the MTA's financial and procurement management needs. The MTA's primary financial system has been in place for the past 20 years. MTA is interested in replacing the existing system with a more agile, modern, and integrated one. The MTA is looking to have a new ERP system implemented by no later than April 1, 2024. The product offered shall include the requirements detailed in this RFP as depicted here in the Scope of Work.

2. Scope of Work

2.1 Product Scope and Functions

The Enterprise Resource Planning software (ERP) must include these functions:

Functional Processes Scope		
General and Technical	Payroll	Vendor Management
Interfaces	Garnishments	Project Ledger
Data Conversion	General Ledger and Financial Reporting	Grant Management
Budgeting	Accounts Payable	Fixed Assets Accounting
Internal Audit	Accounts Receivable	Barcoding and Scanning
Reports	Purchasing	Inventory Management
Budgeting	Help Topics	Contract management

2.2 User Classes and Characteristics

User Class	Characteristics
CFO	<i>Tier 1 user – Manages critical business functions. This position has Finance approval level permission.</i>
Accounts Receivable Clerks	<i>Tier 1 user – Manages critical business functions</i>
Accounts Payable Clerks	<i>Tier 1 user – Manages critical business functions</i>
Chief Operating Officer	<i>Tier 1 user – Manages critical business functions. This position has Purchasing approval level permission.</i>
Purchasing Manager	<i>Tier 1 user – manages critical business functions. This position has Purchasing approval level permission.</i>
Purchasing Agents	<i>Tier 1 user – manages critical business functions</i>
Inventory Control Supervisors	<i>Tier 1 user – manages critical business functions</i>
Inventory Control Clerks	<i>Tier 1 user – manages critical business functions</i>
Chief Maintenance Officer	<i>Tier 2 user – Needs access to crucial business data to handle day-to-day needs. This position has Maintenance approval level</i>
Maintenance Director	<i>Tier 2 user – Needs access to crucial business data to handle day-to-day needs. This position has Maintenance approval level</i>
Maintenance Supervisors	<i>Tier 2 user – Needs access to crucial business data to handle day-to-day needs.</i>
Reporting User	<i>Tier 3 user - User that runs and reviews reports including financial reports</i>
IT Admin	<i>Administrative user for the system</i>

2.3 Operating Environment

The solution will be deployed in three environments: Administration (Finance and Purchasing), Shipping & Receiving (Inventory Control), Maintenance (Building & Grounds, Fleet Maintenance).

Domain controlled Windows 10 or latest computer interface with standard color laser printer for all users. Personal computers used to access the application will have a minimum of 4gb of memory and a 2.2ghz processor or better.

2.4 User Documentation & Training

User training and product manual will be produced as part of this software development project.

3. Technical and Functional Requirement

3.1 Software Interfaces

The system should be able to interact or exchange information with other software systems with the ability to import and export CSV or compatible files.

3.2 Browser Based Interface

The agency desires a web-based or cloud base application that is capable of being accessed via Edge, or other industry standard browsers, such as Chrome and Safari.

3.3 Relational Database

The agency desires that the web-based application solution be built upon a relational database, such as Microsoft SQL server, with open architecture and ready access to database features.

3.4 Database Import and Export

The application needs to provide data migration techniques for individual tables or the entire database. The data migration process can include but not limited to any of the following import/export from CSV, import/export from Oracle and SQL Server, import/export from SQL Server. The application should provide a platform for building enterprise-level data integration and data transformations solutions like SQL Server Integration Services.

3.5 User Specific Access Control

The web-based application must provide each user with a unique login ID and password which directly correlates with what areas of the system they are allowed access to. For example, an administrative user may have access to the entire solution (including settings and back-end billing/invoicing functionality) while a reservationist may only need access to essential areas, such as trip reservations.

3.6 Commercial, Open Source Software

The Vendor shall minimize proprietary system customization, in favor of “off the shelf” open source solutions but shall identify any impacts to desired operations that the open source solutions may have on system users. All network, database, and operating system software shall be standard, “off the shelf” products produced by well-established and reputable companies. As such, the agency will only accept a version of software that is released and not in a beta or alpha test. The solution must be deployed at other locations within the United States.

3.7 Software Capacity

Proposals must detail capacity to serve the unique needs of public transit providers, such as shipping and receiving bar code scanner functions, vehicle inventory control management, Federal

Transit Administration (FTA) and State grant administration, building and vehicle asset management, accounts payable, billing, invoicing capabilities as well as National Transit Database (NTD) reporting. The web-based application shall provide users with easy access to functional requirements. The web-based application shall have the capability of opening multiple views at the same time, so that the user may toggle between them. The web-based application shall be provided within the traditional web site paradigm, utilizing drop-down menus, toolbars, mouse clicks, mouse over, etc. Functions shall be available from a menu, list or maps, as appropriate. The web-based application shall support desktop expansion across multiple monitors, so that one user can have multiple instances of the application open across two screens.

3.8 Reports (Standard Reports)

The web-based application should be capable of generating a range of management and service reports necessary to permit sufficient oversight of the paratransit service.

3.9 Ad-Hoc Reports

The web-based application shall be capable of permitting the user to create, format, and print user-defined reports based on any data element contained in the database.

3.10 Reporting Capabilities

The web-based application shall be able to create reports on individual trips or a daily, weekly, monthly, quarterly and annual basis and on a selected days or series of day's performance.

3.11 Report Exporting

All reports shall have the capability to export information into common analysis and text editing office software such as Microsoft Excel and Word.

3.12 Provider Web Portal or cloud base

Vendor shall provide a web-based or cloud base application where partner providers may log in with a unique ID and password. The portal must support the ability for a customer to register with the website and obtain their user ID or reset their password as needed in a "self-service" fashion.

4. System Features and Additional Functions

The system features outlined below are for the main use cases and User interfaces. Additional use cases are implied.

4.1 Finance Features

4.1.1 General Ledger

General Ledger
1. Chart of accounts compatible with current chart of accounts re: number of available segments.
2. Month-end reporting.
3. Balance sheet roll forward.

4. Ability to support full accrual accounting based upon fund.
5. Encumbrance accounting with interface across G/L, AP, AR, Budget, Procurement.
6. Drill down capabilities to source transactions.
7. Support GASB 34 reporting requirements.
8. Ability to import/attach supporting documentation for Journals.
9. Ability to post journal entries or import from Excel.
10. Ability to integrate third party payroll vendors for posting of payroll journal entries (UKG).
11. Ability to inquire and run reports by account and department.
12. During all processing, the system should edit transactions to ensure that each entry to a ledger account is balanced and complete and that each account is maintained with a self-balancing entity.
13. System should have automated year-end closing. Additionally, users should have the ability to post year-end adjustments after year-end closing.
14. Ability to enter Journals and save for later release into workflow.
15. Ability for authorized users to open closed periods.
16. Ability to create recurring journal entries.
17. Ability to create reversing journal entries.
18. Ability to prevents postings to inactive accounts/account-department combinations.
19. Ability to create preliminary financial statements before period close.
20. Ability to generate a journal entry listing that shows all journal entries input to the system by transaction type.

4.1.2 Budget & Forecasting

Budget & Forecasting
1. Annual budget model.
2. Ability to interface with Excel/ upload Excel data.
3. Supports multiple budget versions for fiscal year (i.e. original, amended, final, etc.).
4. Maintain multi-year financial budget.
5. Ability to budget by both account and subaccount/department.
6. Ability to populate general ledger and payroll with adopted budget without re-keying.
7. Allow for comparison of budget to actual for financial reporting purposes.
8. Allow for reporting by account category/department.
9. Reporting tool allow for visual aids such as charts and graphs with the ability to export to Excel.
10. Budget module should allow budget administrator to prevent changes to final budget.
11. Ability to forecast for 3-10 years.
12. Ability to import prior year budgets as basis for current year budget.
13. Ability to extrapolate/annualize current YTD actuals as basis for current year budget.
14. Ability to route budget documents for review and approval.
15. Ability to build in flat percentage increases (or decreases) by budgeted account.
16. Ability to import payroll and hours information from UKG/Kronos for use in budget development.
17. Ability to create a capital budget, based on grant and local funding.
18. Ability to move budgeted amounts between periods during the active budget year.

4.1.3 Accounts Receivable/Miscellaneous Billings

Accounts Receivable/Miscellaneous Billings
1. Supports miscellaneous billing type.
2. Cash receipting with multiple payment formats.
3. Interface with cash receipting system.
4. Collection management tools and reporting.
5. Ability to set up, track, and report on receipts by customer.

6. Ability for system to generate customer ID numbers and link ID to master name.
7. Ability to split or combine customer accounts.
8. Ability to review a customer's billing/transaction history at both summary and detail levels.
9. Ability to prevent transactions from being charged to inactive accounts.
10. Ability to apply overpayment amounts to other invoices for that customer.
11. Create AR aging reports at 30, 60, 90, 120 days and other defined number of days.
12. Systems allows for import of electronic payment files from various sources (bank, credit card merchants, etc.)
13. Ability to report customers that have had no activity as of a user-specific date, so that they may be purged from the system.
14. Ability to support recurring billing functions allowing the user to establish effective date and frequency of recurring billings.
15. Ability to calculate a discount based on bill type and/or customer type.
16. Ability to preview invoices before printing and posting to customer's account.
17. Ability to generate a credit memo/adjustments to specific invoices or to a group of invoices.
18. Ability to establish payment terms based on bill type (i.e. due dates).
19. Ability to have multiple lines for billing entries for 1 invoice (current system allows for 12 lines).
20. Ability to generate one statement for all bill types being billed to same customer.
21. Ability to generate notices for mailing to customer resulting from NSF checks that includes a returned check fee.
22. Ability to support late notice statement processing with configurable language based on the aging results.
23. Ability to print statements with zero balances if there was any or no activity for the month.
24. Printed invoices are maintained in the system for viewing from the customer account and within the transaction drill-down screens.

4.1.4 Financial Dashboard

Financial Dashboard
1. Ability to customize by user information/permissions on dashboard.
2. Ability to drill-down from dashboard to see source documents/information.
3. Ability to easily refresh existing dashboard graphs and information.
4. Ability to export dashboard graphs to Microsoft Word, Excel, PowerPoint.

4.1.5 Non-Financial/Statistical Information

Non-Financial/Statistical Information
1. Ability to track non-financial data, such as ridership by functional area, FTEs, number of employees.
2. Ability to include non-financial data in financial statements.

4.1.6 Accounts Payable

Accounts Payable
1. Vendor information, including insurance, type, W-9 on file, 1099 information, etc.
2. Ability to differentiate between grant and non-grant (operations) vendors.
3. Process invoices without a purchase order.
4. 1099 vendor tracking and reporting.
5. Blank check stock with MICR encoding, and check signing overlay.
6. Ability to flag invoice for separate check or consolidate all to one check for a vendor.
7. Ability to detect possible duplicate invoices based on invoice number or invoice amount.
8. Ability to send positive pay files to bank.

9. Definable check stubs with large description fields.
10. Ability to import invoice/purchase order information from Excel.
11. Ability to flag invoices/line items as capital assets.
12. Unlimited purchase/payment history by vendor.
13. Allow for electronic storage of backup/invoices.
14. Ability to electronically approve payment of invoices.
15. 1099 compliance with any and all changes and updates.
16. Electronic payments (wires, ACH, cash back purchasing payments, etc.).
17. Ability to use workflow approval (multiple levels) for processing invoices, receiving, payments, requisitions and purchase orders.
18. Ability to maintain unique identifiers for individual ACH payments.
19. Ability to specify required fields for invoice processing.
20. Ability to establish a control to avoid vendor profile duplication; but allow multiple physical locations.
21. Ability to notify a requestor when a vendor is set up.
22. Ability to assign vendor numbers both manually and automatically.
23. Ability to accept alpha characters in vendor ID (i.e. 1234-G), or otherwise differentiate Grant-related vendors.
24. Ability to restrict access to designated vendor attributes based on user role.
25. Ability to create foreign address for vendors.
26. Ability to enter all needed vendor bank information for EFT payment (ABA number, routing number, etc.)
27. Ability to restrict invoice processing when a W-9 is not on file.
28. Ability to receive and process invoices electronically from vendors.
29. Ability to enter invoices in batch (or one at a time) providing control totals reconcilable by the user.
30. Ability to attach vendor invoices to a transaction in the system.
31. Ability to process one invoice or multiple invoices from one purchase order and/or for one purchase order line item.
32. Ability to enter credits to invoice and purchase orders.
33. Ability for authorized users to make edits and revisions to unposted invoice transactions prior to posting with appropriate workflow.
34. Ability to delete or modify an invoice record before it is scheduled for payment.
35. Automatically update for PO matching invoice when matched correctly.
36. Ability to determine the remaining budget/appropriation amount on a project, grant, or purchase order.
37. Ability to process available discounts.
38. Ability to process check runs at any time.
39. Ability to select vouchers for check processing based upon various parameters (i.e. grant vs. non-grant).
40. Ability to have check stock control numbers included with check data.
41. Ability to print a duplicate, non-negotiable copy of all checks.
42. Ability to define starting check number.
43. Ability to generate manual checks on demand with digital signatures.
44. Ability to provide full check cancellation, and detail files are reversed in the general ledger.
45. Ability, on cancelled checks, to either issue a replacement check or cancel the check with no replacement with a comment field.
46. Ability to have the option to reopen the PO and delete or correct the invoice when a check is cancelled.
47. Ability to cancel a prior year check.
48. Ability to restart jammed check runs on the printer and REPRINT selected check in the process.
49. Ability to void and replace check by: individual check, block of checks or entire check run.
50. Ability to perform ad hoc reporting.
51. Ability to define specific search criteria while performing an inquiry.
52. Link payments in AP which update other modules (i.e. inventory, fixed assets, grant reporting).

53. Ability to view Check Register based on user specified time frame (daily, monthly, etc.)
54. Ability to view Check Register with full VOID dollar amount not zero as is current.

4.1.7 Financial Report Writer

Financial Report Writer
1. Ability to create, modify, and reuse standard report templates.
2. Ability to create and save reports for continued use.
3. Reports generated are specific to governmental accounting standards (GASB).
4. Ability to create and generate GASB reports either out of the box, or as an add-on.
5. Ability to export to Microsoft products with minimal efforts or re-formatting.
6. Ability to report of both fiscal year and calendar year basis.
7. Ability to email reports directly from software to multiple recipients.
8. All reports should have options of print to file, print to printer, and print preview.
9. Ability to create financial reports for any set of dates, including overlapping fiscal years.
10. Ability to create financial statement report including, but not limited to Net Position, Operating Statement, Statement of Cash Flows.

4.1.8 Bank Reconciliation

Bank Reconciliation
1. Integrates with accounts payable, accounts receivable, and general ledger.
2. Ability to generate bank reconciliation reports, including outstanding checks, deposits in transit, for any time-period. Report should be available after time period is closed.
3. The bank reconciliation process should be automated and be able to process multiple cash and bank accounts.
4. Ability to communicate with online banking module (Huntington) to download cancelled checks and import banking transactions at an interval of the accountants choosing.
5. Ability to use drill-down capabilities to see if a check has cleared, and to retrieve the cancelled check image during drill-down.
6. Ability to separately reconcile credit card deposits.
7. Ability to import clearing transactions to match imported bank items to journal entries.
8. Ability to view/create an outstanding check register report.

4.1.9 Fixed Assets

Fixed Assets
1. Capture asset attributes including tag number, department, fund, acquisition date, voucher number, purchase order number, vendor name/number, serial number, VIN number, account, depreciation method, non-depreciable, replacement rules, warranty information, disposal date, salvage value, net book value, FTA grant number, MDOT grant number.
2. Track asset transfers and retirements.
3. Ability to record and report on annual depreciation by asset, department, account, asset category, etc.
4. RFID or bar code enabled.
5. Integration with general ledger for monthly depreciation journal entry.
6. Ability to calculate and journalize gain/loss on sale of asset.
7. Ability to track assets by the following categories: land, buildings, building improvements, furniture and fixtures, revenue equipment, service vehicles, shop/maintenance equipment, construction in progress (non-depreciable).
8. System identifies potential fixed assets by chart of accounts, dollar amount.
9. Ability for the user to define the activation date based on date purchased, date received, date placed in service, etc.

10. Ability to record cash payment to general ledger for assets sold/scrapped.
11. Ability to accommodate alpha-numeric characters in the tag number, and up to 10 characters.
12. Ability to identify grant-funded assets.
13. Ability to identify locally funded assets.
14. Ability to track and maintain non-owned assets.
15. Ability to store .pdf of vehicle title with a titled (vehicle) asset.
16. Ability to add, transfer, or dispose of assets with retroactive dates, and “catch-up” activity posts in current period.
17. Ability to search for an asset based on just one data element, or multiple elements at a time.
18. Ability to have a complete audit trail of fixed asset activity.
19. Ability to integrate with Accounts Payable and Procurement modules.
20. Ability to generate a capital asset roll-forward report, showing changes in balances due to additions/deletions from one fiscal year to the next.

4.2 Procurement – Requisitions/Purchase Orders

Procurement - Requisitions/Purchase Orders
1. Supports change order and/or corrections in PO
2. Fully electronic requisition/PO process including workflows and approvals.
3. Customizable purchase thresholds based on users/departments.
4. Creating custom purchase order templates and associated database fields/elements.
5. Assigning a unique number to each PO.
6. Creating PO letters, with ability to email POs from the form.
7. Attaching digital signature files.
8. Vendor maintenance, including tracking an unlimited number of vendors and modifying vendor contact info.
9. Tracking purchases against account codes and showing remaining budget balance.
10. Verification of budget status prior to accepting a transaction.
11. Tracking invoice numbers separate from order numbers.
12. Tracking quantity purchased and quantity received on different order numbers.
13. Provides the ability to initiate an electronic purchase requisition and attach supporting documentation (i.e., quotes, bids, contracts, scanned invoices, agreements) and other electronic documents to PO records.
14. Enforces the purchasing policy rules for general purchases.
15. Supports the ability to copy a previous requisition for a new requisition
16. Supports the purchase of recurring services by automatically generating a requisition/PO based on pre-established criteria (e.g., health insurance, cleaning services, and leased vehicles).
17. Supports recurring/routine departmental PO's based on dollar limits.
18. Supports annual, blanket, and multi-department PO types
19. Prevents a PO from being issued to an inactive vendor.
20. Limits which users are authorized to override established PO limits.

21. Provides the ability to issue Purchase Order for Non-Inventory items.
22. Captures internal or external justifications, notes, or comments on POs. internal comments must only be visible to staff.
23. Provides real-time expense tracking on all PO's including blanket PO's.
24. Support electronic approval of requisitions based on levels of authority (dollar amount), type of purchase and has flexible routing that can be administered without Proposer/Vendor assistance.
25. Provides options for distributing the PO (e.g., print-mail, email, etc)
26. Provides the ability to configure alerts (percentage/dollar-based) when an invoice (or combination of invoices) is on the verge of exceeding the approved PO amount.
27. Provides real-time access to PO information related to encumbrances, balances, adjustments, and postings.
28. Provides a report or dashboard alert of POs with no activity for a user defined period.
29. At any point in time, provides the ability to print list of POs with outstanding balances.
30. Quick selection of vendors from a pull-down box, search field, etc.
31. Searching previous purchases based on the item, vendor, date searches and PO numbers.
32. Supporting multiple departments each with their own views and ranges of numbers.
33. Tracking purchased items as assets with a user-defined asset number.
34. Electronic routing of requisitions/POs for approval.
35. Create requisition, route electronically for approval, route electronically to purchasing, send electronically to vendors for quotes and convert selected vendors to purchase orders.
36. Integrate with MS Outlook for notification of appropriate approval level.
37. Includes all vendor information, including insurance, W-9 on file, 1099 information, etc.
38. Integrate with capital asset module to eliminate dual data entry of assets
39. Support procurement card data integration. Import purchasing details from Excel file
40. Bid and quote management

4.3 Inventory Management Module

Inventory Management Module
1. Ability to process Receipts, Issues, Adjustments, Transfers
2. Ability to process physical inventory count, review
3. Ability to create warehouse bin locations, change locations
4. Ability to inquiry Inventory Item lookup, status inquiry, inventory transaction inquiry
5. Barcoding and scanning function with printing capability for labels
6. Ability to receive, issue, count inventory using handheld device (scanner)
7. Ability to generate notifications to designated users when inventory on-hand is below minimum quantity.
8. Inventory counts, Cyclic count, physical count
9. Ability to handle multiple inventory locations
10. Ability to charge parts to job order or account
11. Inventory Maintenance; Inventory Items, Inventory sites, Warehouse bin locations, Product class

12. Ability to print reports, recommended reorder report, inventory level

4.4 Software Requirements

Vendor shall have a detail report by section on each function and/or feature in section 4.1.1 to 4.2.2 that the proposed solution cannot meet.

5. Other Nonfunctional Requirements

5.1 Application Support

Vendor to respond to any critical issues with an issue tracking system. Problem resolution within 24 hours.

5.2 Security Requirements

Security is important. This system may hold data that should be protected as confidential data and therefore shall adhere to the highest security best practices.

User profile information is secure and protected. Only partial information is to be displayed on reports.

Users and administrators must log into the application secure complex passwords that adhere to Financial and Cyber Security best practices.

5.3 Software Quality Attributes

Database quality by validating form input where necessary.

6. Proposal Submission

6.1 Pre-Proposal Meeting

A Pre-Proposal meeting will be held via audio/video if deemed necessary.

Proposers will be given clarification on requirements and instructions for this project. Proposers not in attendance shall be held responsible for any requirements discussed at the Pre-Proposal meeting. However, any changes and/or clarifications discussed will be stated in an Addendum. No allowance or extra compensation concerning any matter about which the Proposer might have fully informed themselves will be allowed.

6.2 Submission of Proposals

Proposals must be submitted to the MTA on or before 1:00 P.M. (EDT), Friday, October 20, 2023, 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. Submitting electronically through Bidnet Direct is preferred. 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. The MTA will not photocopy your proposal documents for the purpose of complying with this provision requiring duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal. 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 Thursday, October 5, 2023, and addressed to:

Voundria Redmon
Purchasing Manager
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.

6.3 Minimum Requirements For Pricing

Proposals shall include pricing for all requested services as indicated in Section 2 through Section 4. The Price Proposal Form shall be generated by the Proposer. The Proposer shall establish the total price for the services and list on Attachment F.

It is understood that all proposed prices shall remain in effect for at least ninety (90) days from the date of the proposal opening to allow for the award and that, if chosen the successful Contractor, the prices will remain firm through the term of the 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 if requested or implemented without prior consent of the MTA Purchasing Department. All prices must be FOB Destination. The Price Proposal shall be signed by a duly authorized representative of the Proposal's company.

6.4 Proposal Contents and Format

The following information shall be presented in a clear, comprehensive, and concise manner and in the prescribed format. Clear and effective presentation of information is preferred. In order for MTA to adequately compare and evaluate qualifications objectively, Proposals shall be submitted in

accordance with the following format in terms of order. Proposals shall be prepared simply and economically, providing straightforward and concise information.

The cover sheet shall clearly present the project title, the Proposer's name, and the RFP number. The Proposal shall be consecutively numbered for a maximum total of 60 pages, excluding the Price Proposal, Certificate Regarding Lobbying, Government-Wide Debarment and Suspension Certification and Certificate of Compliance with FTA Clauses.

Proposers shall not make changes or revisions to their submissions after the submission deadline. It is expected that all of the principals and/or professional staff assigned to the project in the Proposal will perform the work on this Project.

Proposers shall limit their submissions to the following information:

1. Cover Sheet
The cover sheet shall clearly present the project title, the Proposer's name, and the RFP number.
2. Table of Contents
3. A concise Letter of Interest including:
 - a. the name and address of the Proposer and the state in which it is incorporated and chiefly located;
 - b. the name and address of any Subconsultant, and the state in which each entity is incorporated and chiefly located;
 - c. a brief description of the Proposer (Prime and Subconsultants) and its interest in performing the required services;
 - d. the name, address, phone and facsimile numbers and e-mail address of the designated contact for the Proposer;
 - e. acknowledgment of all addenda to the RFP document (each addendum must be identified); and,
 - f. Signature of a duly authorized official of the Proposer.
4. Price Proposal
The Pricing Proposal shall include all information necessary for MTA to evaluate the Proposer's proposed pricing, including any necessary supporting data. Proposers shall provide all costs for a turnkey solution. Proposed prices must include all costs associated with the performance of the services specified, including materials, labor, insurance, transportation, delivery, fuel or other surcharges, demurrage, and related costs.
 - a. The MTA is interested in pricing which provides both a lump sum price for the overall implementation and ongoing expenses as well as pricing based upon implementation phases. Include a breakdown of pricing based upon a phased implementation and /or individual modules of the ERP for annual maintenance and projected costs for implementation for the software system, including any and all required costs like hardware, software, customized training development, installation, travel, training of MTA personnel on use of the system, etc. Provide a detailed breakdown of costs within the offered lump sum price.
 - b. Ongoing support and maintenance identify costs that would be incurred, or could be incurred, the initial purchase of the software system.

- i. List all prices or fees, if any, for ongoing system maintenance and technical support after the initial purchase and installation of the system and after expiration of the warranty period.
 - ii. Identify the price structure or hourly rates for any optional customization or custom that may be required after installation.
 - iii. Describe how frequently system software updates or upgrades will be available or provided and identify whether there is any incremental cost for such software enhancement and/ or updates.
 - iv. Identify any costs for additional licenses or module or training that could be added later that would not be included in the offered lump sum price.
5. Description of the Proposer's understanding of the Scope of Work, Project Objectives, and Project Development Concepts.

Provide a concise explanation of the following:

- a. The Proposer's approach, understanding of the project objectives, and the overall tasks required to accomplish the project, including the Proposer's plan for accomplishing the work and meeting project timelines. The Scope of Work described in sections 2,3,4 and 5 of this RFP generally indicates the work that MTA believes is necessary to be provided by the successful Proposer. Each Proposer is encouraged to present potential modifications and enhancements to the Scope of Work that it believes to be important in executing the project.
 - b. Technical specification of the Proposer's proposed solution and any infrastructure necessities that are required by the MTA.
 - c. The Proposer shall describe the process, outline the methodology and approach for the performance of the tasks identified in the Scope of Work. The project approach shall provide a narrative description for implementing the work tasks as well as any substantive or procedural innovations used by the Proposer on similar projects that are applicable to the services described in this RFP. The description of the process or methodology shall:
 - i. Describe the business process documentation with system configurations
 - ii. Describe the process to support change management practices in support of high-level user adoption
 - d. A description of the provisions for periodic progress reporting, the manner in which the project will be managed, and the locations at which tasks listed in the Scope of Work and proposed modifications to the Scope will be performed.
6. Training
Describe the training to be offered to MTA personnel on the installation and operation of the system, including time and costs involved. Indicate whether you offer a "train the trainer" option and identify and describe whether different types or levels of training is provided to administrators, operators, and support personnel. Also required is a description of any operating and training manuals to be provided including a description of any master manuals and documentation for the system. Describe all warranties that will apply to your software product and services.

Provide a detailed listing of any and all ongoing maintenance and product support recommendations or support/maintenance packages you offer that would be available for purchase after the initial installation of the system.

Include what technical support you provide and your ability to respond to problems, include:

- a. Online availability of support information
 - b. 24-hour or other telephone support
 - c. Expected response times after problems are reported.
7. A description of Proposer's Technical Capabilities, Professional Qualifications and Experience directly related to the Scope of Work of this project. Per section 4.3, the Proposer shall submit a detail report by section on each function and/or feature in section 4.1.1 to 4.2.2 that the proposed solution cannot meet.

Furthermore, the Proposer shall answer the following questions:

- a. Describe your data conversion safeguards and processes utilized to confirm completeness and accuracy.
 - b. Describe your customer support program, including planned/scheduled and unplanned software and hardware changes, customer problem support model, service level agreement, self-service portal availability, etc.
 - c. Describe your software update/patching and notification processes.
 - d. Describe supported user access platforms and technical requirements, including required desktop components. Provide a list of supported browsers and versions for user access.
 - e. Describe your service desk support model, hours of operation, escalation process, response/resolve commitments, and close-out process.
 - f. Describe your hosting landscape, disaster recovery strategy/environment/locations, and testing program.
 - g. Describe your data backup and recovery program. Include frequency and offsite storage locations and retention policies.
 - h. Describe your system update process for statutory and regulatory updates, including:
 - i. Frequency
 - ii. Notification
 - iii. Testing and quality assurance
 - iv. Post-deployment support
 - i. Describe system security and access control, including:
 - i. System administrator access, rights, and functions
 - ii. User password constructs, including elements like complexity, expiration, reuse, etc.
 - iii. Role-based security model
 - iv. Multi-factor Authentication
 - v. SSO support
 - j. Describe your application program interface capabilities.
 - k. Describe the system and data encryption capabilities, depth, and breadth.
 - l. Describe all audit logging capabilities, log access, and reconfigurability.
 - m. Describe your external audit and cyber security program, including testing and verification.
 - n. Describe the program to re-patriot data once the relationship is ended.
 - o. Describe your warranty process and exactly what is covered under said warranty. Provide extended warranty terms.
8. Proposer's Anticipated Schedule

The Proposer's estimate of the time required to complete each of the tasks described the Scope of Work shall be considered in the selection process. The Proposer shall include a chart showing the anticipated schedule with appropriate milestone submittals based on the Scope of Work. The tasks included in the Scope of Work and any other tasks which the Proposer deems necessary or desirable shall be included as well as provisions for staff review.

9. Key Personnel and their Commitment to the Project:
 - a. Team Structure Organizational Chart
 - b. Provide a description and organizational chart showing the structure of the Proposer's team, inter-relationships, names of key personnel assigned to the project along with their areas of responsibility, and specific tasks and anticipated duration on the project.
10. Example Projects and References
Provide at least five (5) Example Projects which best illustrate the Proposer's qualifications for the Project. Transit agency project examples are preferred.
 - a. Include the name and contact information for a person associated with each of the owners or the organizations which contracted for the services who is very familiar with the project and the Proposer's (or Proposers') performance. Alert the reference contact person that MTA staff will be contacting them.
 - b. Indicate the start and completion dates of the referenced project(s)

If a reference cannot be reached or does not respond to MTA's request for information, MTA reserves the right to disqualify the relevant project from consideration in its evaluation. MTA may also consider the Proposer's performance on contracts not submitted by the Proposer that MTA is aware of or becomes aware of as a result of reference questionnaires or other means.

11. Demonstrations
A demonstration of the system may be required by the MTA. The demonstration should the system's capability in sufficient detail and duration and simulate how the system would perform with an equivalent amount of data currently used by MTA. Provide a brief description of how the demonstration would be offered, if requested.
12. Certificate Regarding Lobbying (Attachment B)
13. Government-Wide Debarment and Suspension Certification (Attachment C)
The Proposer shall verify the following:

To the best of its knowledge and belief, that its Principals and Subconsultants are eligible to participate in covered transactions of any Federal department or agency and are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified.
14. Certificate of Compliance with FTA Clauses (Attachment E)

7. Selection Process

7.1 Evaluation Criteria

This proposal is a "Best Value" procurement and 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. **Technical Capabilities and Solution Functionality:** This criterion refers to the Proposer's technical capabilities, the proposed solution functionality, and the ability to best meet the performance specifications outlined in Section 4 – System Features and Additional Functions.
2. **Price Proposal:** This criterion refers to the overall cost of the proposed solution and fee rates of staff.
3. **Work Schedule:** This criterion refers to the time frame in which the Proposer would be prepared to begin work for MTA and the proposed completion of the project. The Selection Committee will review the proposed project schedule of completion. Project schedules that fulfill the requirements with evidence that the schedule can be accomplished may receive higher points for this criterion.
4. **Project Understanding and Approach:** This criterion is a combination of the Proposer's approach to the problem and the quality of the Proposal submission and response.
5. **Key Personnel and Company Experience:** This criterion is a combination of Proposer's prior experience with similar projects 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 or as is determined by review of information available from references and/or other resources.
6. **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.

7.2 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. 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 five (5) 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 five (5) 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.

7.3 Best and Final Offer

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 Selection 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.

MTA reserves the right to make an award to a Proposer whose proposal it judges to be most advantageous to 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 the MTA arising at any stage of the solicitation from any negotiations that take place, or from the fact that the MTA does not select a Proposer for negotiations.

8. General Proposal Conditions

8.1 Notice of Formal Solicitation

Notwithstanding any other provision of this RFP, all Proposers are hereby specifically advised that this RFP is a form of 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. Nor does it obligate MTA to pay any costs incurred in preparation, submission or presentation of proposals, and/ or in anticipation of an awarded contract.

8.2 Method of Response

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

8.3 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 Proposer and the MTA.

8.4 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.

9. Information for the Proposer

9.1 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.

9.2 Addenda

Any changes to this RFP document will be made by written addenda issued by the MTA Purchasing Department. Upon issuance, the addenda will be considered part of the RFP document and will prevail over inconsistent or conflicting provisions contained in earlier versions of the RFP document.

Proposers shall acknowledge their receipt of all addenda in the Letter of Interest submitted with their Proposal submission. As with other required documentation, Proposals that fail to provide a detailed listing of addenda received may be excluded from further consideration for this solicitation.

9.3 Date and Place for Delivering Proposals

Pursuant to the "Request For Proposal" sealed proposals will be received by the Mass Transportation Authority, 1401 South Dort Highway, Flint, Michigan 48503 on or before 1:00 P.M. (EDT), Friday, October 20, 2023. The awarding of the Contract, if awarded, will be made by MTA as soon thereafter as practicable.

9.4 Equal Employment Opportunity

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

9.5 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.

9.6 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.

9.7 Printed Form for Proposals

All Proposals must include the Price Proposal form attached hereto, and should give the price as an annual cost and must be signed and acknowledged by the party, in accordance with the directions in the Proposals. State if any progress payments are to be made in reference to the annual cost.

9.8 Omissions and Discrepancies

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

9.9 Acceptance or Rejection of Proposals

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.

9.10 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 and approved by the MTA Board of Directors.

9.11 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.

9.12 News Releases

Proposers shall not make any statements or disseminate any news releases or materials in any medium whatsoever pertaining to this RFP, or use any logos or marks associated with MTA, without prior express written consent from the MTA.

9.13 Proprietary Information

Any reservations on the use of data contained in the Proposal shall be clearly stated in writing. MTA will attempt to comply with the Proposer's designation of proprietary/confidential information. However, MTA may not be able to withhold a record (data, document, etc.) or deny access to a record requested by an individual (the public) when an obligation is imposed upon MTA under state and/or federal law. MTA's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under state and/or federal law. Records which the Proposer considers trade secrets and privileged or confidential must be identified by the Proposer as indicated above.

9.14 Bid Protest Procedures

Concerned parties may protest the award of contracts by the MTA, using the procedure set out as follows. Concerned parties are those parties who have an economic interest in the decision. Protests shall be filed in writing with the General Manager of the Mass Transportation Authority. The filing shall give the name and address of the protester; identify the solicitation, contract, project or service that is the source of the protest; and state the reasons for protest.

When the protest alleges restrictive specifications or improprieties of any type in an Invitation to Bid, and the basis for protest is apparent prior to bid opening, the protest shall be filed not later than three (3) working days prior to bid opening.

When the protest alleges restrictive specifications or improprieties of any type in a Request for Proposals, and the basis for protest is apparent prior to the closing time for receipt of proposals, the protest shall be filed not less than three (3) working days prior to the closing for receipt of proposals.

In all other cases, protests shall be filed within ten (10) working days of the decision which is being protested.

The General Manager shall respond, in writing, to protests within ten (10) working days. If this response does not provide a resolution of the protest, the protester may request that the protest be considered by the members of the Mass Transportation Authority at their next regular meeting.

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

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 Bidders", the "Invitation to Bid", the "Bidder 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 "Bidders 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. The 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 49(l), 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, safe 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 or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the contractor, 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, market 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 115232, 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 115232, section 889 for additional information.

Attachment “A”- Checklist for Proposal Submission

RFP#2023-13 SUBMITTAL CHECKLIST

Deadline: October 20, 2023, at 1:00 P.M. (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:

- Electronic Copy of the Proposal Package
- Letter of Interest
- Completed Price Proposal Form (Signed)
- Solution Technical Capabilities
- Professional Qualifications and Company Experience
- Understanding of the Scope of Work, Project Objectives, and Project Development Concepts
- Schedule
- Professional Personnel
- Training Program
- Project Organization Chart
- Five (5) references of similar work completed.
- Certification Regarding Lobbying
- Debarment and Suspension Certification for Prospective Contractors
- Certificate of Compliance
- Submittal Checklist

See Section 6 for more detailed information on Proposal submission and format.

**SUBMITTED PROPOSAL CONTAINS ALL COMPLETED
FORMS/CERTIFICATIONS AS LISTED ABOVE**

Authorized Signature _____

Date _____

Attachment “B” - 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 construct, 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 “C” - 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 “D”- 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 and Federal Super Circular 2 CFR Part 200. 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. #2023-13 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 “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# 2023-13. This form should be completed and returned by October 4, 2023. 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	