



MASS TRANSPORTATION AUTHORITY

REQUEST FOR PROPOSAL

Purchase of Transit Tires

RFP# 2019-18

Issue date:

Tuesday December 17, 2019

Proposal due date and time:

Tuesday, January 14, 2020 1:00 P.M. (EDT)

Contact Information:

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SECTION 1. INTRODUCTION

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

SECTION 2. SCOPE OF WORK

2.1 SCOPE

The MTA is soliciting proposals from qualified suppliers to provide tires for our Para-Transit, Peak Route, Rides To Wellness and support vehicle fleet. Annual usage is estimated and is not guaranteed. MTA intends to award a one (1) year award contract with four (4) additional one year options (for a maximum of five years). The one year options may be exercised by mutual consent of both parties.

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

2.2 GENERAL

All tires furnished under this Agreement shall be of current design and manufacture. They shall conform to all standards of the Tire and Rim Association of America, and the Federal Motor Vehicle Safety Standards for design, operation, and safety. All tires to be supplied must be of a size and type approved by the bus and auto manufacturer for each model of bus/car operated by MTA. MTA reserves the right to add or delete any tire and the right to add additional shipping locations during the contract period at the unit prices proposed herein.

2.3 TECHNICAL SPECIFICATIONS

The Supplier shall provide a detailed description and technical specifications for all tire products proposed, including mileage rating, load rating, and origin of tire manufacturing location. The successful Proposer shall supply tires identical to the make/model as stated in the proposal submissions. If a temporary stock shortage occurs and the shortage is due to circumstances beyond the control of the supplier, substitutions may be made only upon approval of the Operations Director and the Purchasing Manager, or their designee(s). When practical, such approval shall be in writing. In no case, however, shall the unit price for the substitute tire be higher than your proposal price for the out of stock tire.

2.1 FEDERAL REQUIREMENTS

These vehicles will be purchased with grant funds administered by the Federal Transit Administration (FTA) and therefore must meet Buy America provisions. If the total bid amount is more than \$150,000, the Bidder must certify per the Buy America requirements. However, if the Bid is \$150,000 or less, no certification will be necessary.

Please include the following Pre-Delivery requirements with your bid submission:

- Signed Buy America certification form

- A letter from the Manufacturer confirming that the tires as built will meet the Buy America Requirements. **This must also include 1. Component, 2. Manufacturer, 3 State of origin, percentage of total cost of components.**

Bidders may refer to the FTA Buy America Handbook for guidance.
<https://www.transit.dot.gov/regulations-and-guidance/buy-america-handbook>

2.4 USE OF BRAND OR TRADE NAMES

The use of brand names, trade names, types, styles, model numbers and serial numbers are intended to be descriptive only and not intended to restrict competition. Specific brand names will be used as a comparative measure of the safety, quality and performance against all fleet tire proposals. This inclusion is not to be construed as advocating or prescribing the use of any particular brand or item or product. Wherever such names appear, the term "OR EQUAL" is deemed to follow. The decision whether a proposed Product is an approved equal will be rendered by the Agency. The Agency must be able to determine whether the Proposer's offered product is or is not equal to the product described in the specifications from information (technical data, test results, and the like) contained in the Proposal. All detailed descriptions and specifications provided in the proposal must match the product offered for use in this RFP. The Specification of any brand name of any product in this RFP shall not relieve the Contractor, or any Subcontractor or Supplier from its responsibility to design, produce and use Items that fully meet the Specifications, and all other Contractual requirements, including without limitation the Warranty requirements. The Contractor shall provide written notice to the Agency of any incorrect or inappropriate Item that is listed or referred to in this RFP and shall propose a suitable substitute for the Agency's consideration and approval.

2.5 PRODUCT DESCRIPTION

GOODYEAR, BRIDGESTONE/FIRESTONE AND MICHELIN OR EQUAL

FLEET TIRES SHALL MEET OR EXCEED THE QUALITY SPECIFICATIONS OF GOODYEAR, BRIDGESTONE/FIRESTONE AND MICHELIN OR EQUAL USING AT A MINIMUM THE FOLLOWING SALIENT QUALITIES/CHARACTERISTICS:

- A. Ford E-450 Truck Chassis
 Tire Size: LT225/R75-16
 Load Rating: E
 All Season
 Approximate Annual Tire Miles: 50,000
 Estimated Annual Tire Usage: **750**

- B. Chevy Impala (Earlier model years)
 Tire Size: P235/50R18
 Load Rating: S
 All Season
 Approximate Annual Tire Miles: 35,000:
 Estimated Annual Tire Usage: **15**

- C. Bluebird - New
 Tire Size: 11R22.5 (steers & drives)
 Load Rating: H
 All Season
 Approximate Annual Tire Miles: 10,000
 Estimated Annual Tire Usage: **20**

- D. Ford C-Max
Tire Size: P225/50R17
Load Rating: S
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **75**

- E. Dodge Caravan
Tire Size: P225/65R17
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **15**

- F. Chevy Cruze
Tire Size: P205/55R16
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **15**

- G. Chevy Impala
Tire Size: P225/55R17
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **15**

- H. Chevy Equinox
Tire Size: P255/65R18
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **50**

- I. Chevy Traverse
Tire Size: P255/65R18
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **25**

- J. Ford Explorer
Tire Size: P255/65R18
Load Rating: SL
All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **30**

- K. Ford Transit
Tire Size: P235/60R16C
Load Rating: SL

All Season
Approximate Annual Tire Miles: 35,000
Estimated Annual Tire Usage: **75**

2.6 ORIGIN OF TIRE PRODUCT

Proposer shall include documentation of the manufacturing origin of all tire products proposed on the Price Proposal Form (Attachment E).

2.7 WARRANTY

The Proposer must provide details of its warranty policies and procedures. At a minimum, any new replacement tire removed from service due to defects and/or poor workmanship condition during the first 2/32" of usable treadwear, or 12 months from date of purchase, whichever comes first, will be replaced with a comparable new tire at no additional cost to MTA, including mounting and balancing. The Proposer shall replace any tires/parts within the warranty period that fail due to defect in material or workmanship resulting from normal use. Supplier shall indicate on Price Proposal Form if the warranty differs from this RFP request.

2.8 PRODUCT QUALITY

MTA is committed to the principal of zero defects and will insist on that same commitment on the part of the supplier. The Supplier shall make adequate provisions to ensure that the parts, materials and workmanship meets or exceeds the Product Description or Brand Name of this RFP. The Supplier shall establish and maintain quality control procedures throughout the entire project.

2.9 CUSTOMER SERVICE

The successful Proposer shall respond to MTA's inquiries within one business day of receipt of contact.

2.10 DELIVERY

Supplier shall maintain sufficient inventory to deliver within two (2) days from receipt of order. Delivery shall be F.O.B. destination and at no additional charge to MTA. Proposer shall indicate on Price Proposal Form if the delivery time frame differs from this RFP request.

2.11 FREIGHT DAMAGE, ERROR IN SHIPMENT, AND DEFECTIVE ITEMS

Successful Proposer shall pay and arrange for all shipping and handling charges on tires returned because of freight damage, error in shipment, or because the item is defective.

2.12 MINIMUM REQUIREMENTS FOR PRICING

Proposals shall include all requested deliverables as indicated in Section 2.0 – "Scope of Work" on the Price Proposal Form (Attachment E). Partial proposals or No proposals shall not be accepted. MTA intends to award the entire contract to one vendor, but reserves the right to award to more than one vendor if it deems in its best interests.

Proposer shall list part number, manufacturer, origin, load and mileage rating, delivery lead time and tire warranty information on the Price Proposal Form. Prices quoted shall be a **firm fixed price** for twelve (12) months from date of contract. Any contract or price revisions shall be based on industry price changes and supported by adequate detail to document same. Any cost revisions shall not be allowed or implemented without prior consent of the MTA Purchasing Department.

SECTION 3. PROPOSAL SUBMISSION

3.1 SUBMISSION OF PROPOSALS

Sealed proposals must be received by the Flint Mass Transportation Authority, 1401 South Dort Highway, Flint, Michigan on or before 1:00 P.M. (EDT), Tuesday, January 14, 2020. Proposals submitted by facsimile or email will not be accepted. Sealed envelopes containing the proposal response must be labeled with the proposal name, number, due date and your firm's name.

Submit one (1) original and three (3) additional copies of the proposal, and one Adobe PDF or Word electronic version of your proposal on CD, DVD or USB Flash Drive. The original proposal must be marked "**ORIGINAL**". Any electronic altering of this proposal document shall be grounds for rejection of your proposal 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, and proposals will not be opened publicly.**

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

No proposal may be withdrawn for a period of ninety (90) days after submission. Any questions or request for clarification regarding this Request For Proposal must be presented by **Friday, January 3, 2020** and addressed to:

Voundria Redmon
Purchasing Agent
E-mail: vredmon@mtaflint.org

MTA will consider no telephone inquiries regarding the RFP, and will consider no in-person inquiries. In the event that a firm attempts to contact any official, employee or representative of MTA in any manner contrary to the above requirements, said firm may be disqualified for further consideration.

3.2 EQUAL EMPLOYMENT OPPORTUNITY

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

3.3 DISADVANTAGED BUSINESS ENTERPRISES

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

3.4 **INELIGIBLE PROPOSERS**

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

SECTION 4. PROPOSAL FORMAT

4.1 **PROPOSAL CONTENT/FORMAT**

To enable consistent proposal evaluation, the following Proposal Contents/Format has been developed. **FAILURE TO SUBMIT THE REQUESTED DOCUMENTS COULD RESULT IN DETERMINING THE SUBMISSION AS NON-RESPONSIVE AND REJECTED.**

Proposals shall be submitted in the following format:

- Technical Specifications – detailed product specifications, (Detailed in Section 2.3)
- Proposer statement of certification that materials meet or exceed the specifications as provided in this RFP.
- Documentation for Origin of Tire Product
- Warranty Documentation
- Information Required from the Contractor – (Detailed in Section 4.2)
- Signed and completed Price Proposal Form (Attachment E)
- Certificate Regarding Lobbying
- Certificate Regarding Debarment and Suspension
- Buy America Certificate
- Submittal Checklist (Attachment G)

4.2 **INFORMATION REQUIRED FROM THE CONTRACTOR**

Business Organization: State the full name and address of your organization, and if applicable, the branch office or other subordinate element that will perform or assist in performing the work. Indicate whether you are a certified Disadvantaged Business Enterprise (DBE).

Prior Experience: Proposals submitted shall include three (3) references of similar Contracts that your firm has performed in the past 5 years. Include awards and accolades based upon similar past and current projects. Failure to provide these references of past and current projects could deem your proposal “**non-responsible**” and cause for rejection.

SECTION 5. SELECTION CRITERIA

5.1 **CRITERIA**

All proposals received shall be subject to an evaluation by a selection committee for the purpose of selecting the most qualified proposal for the services required. The following factors will be considered in making the selection. The selection criteria listed below, are in Relative Order of Importance.

- **Technical Specifications:** This criterion refers to the detailed description on how the proposed

tires will best meet the salient qualities and performance characteristics of the specifications outlined in Section 2.5 – Product Descriptions.

- Price
- Prior Experience: This refers to the nature and extent of prior experience with similar projects preferably in public transportation, including the years that the organization has been in business.
- Deliver: How many days for tire to be shipped to location upon receipt of order
- Ability: This criterion is a combination of the stability and ability of the supplier to meet the terms of the RFP. Emphasis will also be placed on the warranty policy.

5.2 **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.

The MTA reserves the right to make an award to a Proposer whose Proposal it judges to be most advantageous to the MTA based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs. No Proposer shall have any rights against MTA arising at any stage of the solicitation from any negotiations that take place, or from the fact that MTA does not select a Proposer for negotiations.

5.3 PRESENTATION AND INTERVIEWS (IF NECESSARY)

Proposers whose evaluation scores are in the competitive range for this project may be invited to present a demonstration to and be interviewed by the Selection Committee. In the event of inclement weather, MTA may reschedule presentations and interviews. Proposers shall follow the guidelines set forth below when preparing for their interviews.

1. The Proposer's presentation shall last a maximum of one hour, and the Selection Committee will use additional time for the interview.
2. 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. Work Schedule:

Based on the Scope of Work and expanding upon the approach to the project provided in the RFP submission, the presentation shall include a detailed review of the project completion schedule.
 - c. Previous Experience:

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

SECTION 6. GENERAL PROPOSAL CONDITIONS

6.1 NOTICE OF FORMAL SOLICITATION

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

6.2 METHOD OF RESPONSE

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

6.3 ACCEPTANCE OF TERMS AND CONDITIONS

Proposers understand and agree that submission of a proposal will constitute acknowledgment

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

6.4 FALSE, INCOMPLETE OR UNRESPONSIVE STATEMENTS

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

6.5 CLEAR AND CONCISE SUBMISSION

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

SECTION 7. INFORMATION FOR THE CONTRACTOR

7.1 CONTRACT DOCUMENTS

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

7.2 DATE AND PLACE FOR DELIVERING PROPOSALS

Pursuant to the "Request For Proposal" 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), Tuesday, January 14, 2020. The awarding of the Contract, if awarded, will be made by MTA as soon thereafter as practicable.

7.3 PRINTED FORM FOR PROPOSALS

All proposals must be made upon the specifications attached hereto, and should give the cost for each item and aggregate amount, and must be signed and acknowledged by the Proposer, in accordance with the directions in the proposal.

7.4 OMISSIONS AND DISCREPANCIES

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

7.5 ACCEPTANCE OR REJECTION OF PROPOSALS

The MTA reserves the right to reject any or all proposals without limiting the generality of the foregoing. Any proposal which is incomplete, obscure or irregular may be rejected and one or more items in the price schedule may be rejected. Any proposal in which prices are omitted, or in which prices are obviously unbalanced, may be rejected.

7.6 ACCEPTANCE OF PROPOSAL AND THE EFFECT

Within ninety (90) days after the opening of the proposals, MTA will act upon them. The

acceptance of a proposal will be a notice in writing signed by a duly authorized representative of the MTA, and no other act of the MTA shall constitute the acceptance of a proposal. The acceptance of a proposal shall bind the successful Proposer to receive the Contract. The rights and obligations provided for in the Contract shall become effective and binding upon the parties only with its formal execution by the General Manager.

7.7 TIME FOR EXECUTING CONTRACT AND DAMAGES FOR FAILURE TO EXECUTE

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

7.8 PRIME CONTRACTOR RESPONSIBILITIES

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from MTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTA. The clause applies to both DBE and non-DBE subcontracts.

Retainage:

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

MASS TRANSPORTATION AUTHORITY

CONTRACT AGREEMENT

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

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

1. The Contract Documents:
The Contract Documents consist of this Agreement, the "Information for 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

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 Seller except upon prior written approval of the Buyer.

2. *WARRANTY:*

Seller 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. Seller expressly warrants that all the material covered by an order which is product of Seller, or is in accordance with Seller'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:*

Seller 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:*

Buyer reserves the right to cancel all or any part of the work covered by the agreement and/or purchase order, 1) if Seller 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) if Seller breaches any of the terms hereof, including the warrants of Seller. Should cancellation be made for cause, Buyer reserves the right to purchase elsewhere and if additional costs are incurred, such costs are to be at Seller's expense. Seller shall be liable for any other damages suffered by the Buyer as result of any breach by the Seller in the performance of an Agreement.

5. *TERMINATION FOR CONVENIENCE:*

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

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 Seller's instructions and at Seller's expense. Payment for material on an order prior to inspection shall not constitute an acceptance thereof, nor will acceptance remove Seller'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, Seller 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 Seller, its servants, employees, agents or representatives. Seller 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 Seller 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 Seller's liability thereunder or in any way modify Seller's indemnification of Buyer.

10. *ADVERTISING:*

Seller shall not, without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact the Seller 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, Seller certifies it has or will obtain an approval for their sale and/or use from the appropriate agency of the State. Seller 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, Seller 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.

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 Seller may not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, disability, or national origin. The Seller 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 Seller shall insert this same clause in all subcontracts.

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 10%.

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 result in the termination of this Contract 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.

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.

E. 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:*

The Seller 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.

20. *ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES:*

The Seller agrees to comply with and assure that any subcontractor under this Contract complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. 1612; and the following regulations and any amendments thereto:

(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) FTA regulations, "*Transportation for Elderly and Handicapped Persons*", 49 C.F.R. Part 609.

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 Seller shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

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

(v)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the

Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(v)(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

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

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

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv)

that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

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

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

(4)(ii) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to

work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this

Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

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

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

22. *RIGHTS IN DATA:*

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

- B. The following restrictions apply to all subject data first produced in the performance of this Agreement:
 - 1. Except for its own internal use, the MTA may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the MTA authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
 - 2. As authorized by 49 C.F.R. Part 18.34, the Government (FTA) reserves a

royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
 - (b) Any rights of copyright to which a Recipient, sub-recipient, or a third party contractor purchases ownership with Federal assistance.

- C. When FTA provides assistance to a Recipient for a Project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, the Recipient of FTA assistance to support planning, research, development, or a demonstration financed under Section 49I), 6, 8, 9, 18, 18(h), or 20 of the Urban Mass Transportation Act of 1964, as amended, understands and agrees that, in addition to the rights set forth in Subsection 119.b.(2) of Part II of this Agreement, FTA may make available to any FTA recipient, sub-grantee, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement.

- D. The Recipient shall indemnify, 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.

24. *DEBARMENT AND SUSPENSION:*

Third party contractors, sub-grantees, sub-recipients and subcontractors must submit certifications as required by Department of Transportation regulations, "*Government Guide Debarment and Suspension (Non-procurement)*", 49 C.F.R. Part 29, and otherwise comply with the requirements of those regulations.

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, marked with appropriate identification of the project.
- (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

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

The Seller 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 Seller 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 Seller agrees to adhere to, and impose on its sub-contractors, any such Federal requirements, as the Government may now or in the future promulgate.

28. *ENERGY CONSERVATION:*

The Seller 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 Section 107 of the Contract Work Hours and Safety Standards Act, 40 U. S.C. Section 3704, and its implementing DOL regulations, “*Safety and Health Regulations for Construction*”, 29 C.F.R. Part 1926. Notably, Section 4104(c) of the Federal Acquisition.

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.

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.

Attachment “A”- Bid Protest Procedures

BID PROTEST PROCEDURES

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

A. PROTEST POLICY AND PROCEDURES

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

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

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

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

B. APPLICABILITY

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

C. DEFINITIONS

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

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

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

4) **“Protester”** means a person, group, or organization that files a formal declaration of disapproval or

objection. A protester must qualify as an “interested party”.

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

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

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

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

D. STANDARDS

All Protests must be filed in writing to:
Mass Transportation Authority
Edgar H. Benning, General Manager/CEO
1401 S. Dort Highway
Flint, Michigan 45803

1. A Protest must be in writing and set forth the specific grounds of the dispute and shall be fully supported with technical data, test results, or other pertinent information related to the subject being protested. The Protest shall include the name and contact information of the Protester, solicitation/contract number or description, and what remedy the Protester is seeking.

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

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

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

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

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

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

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

E. MTA RESPONSIBILITIES TO FTA

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

MTA will provide the following information to FTA:

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

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

2)Details: The following information about each Protest:

- A brief description of the Protest,
- The basis of disagreement, and
- If open, how far the Protest has proceeded, or
- If resolved, the agreement or decision reached, and
- Whether an appeal has been taken or is likely to be taken.

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

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

F. Officials to Notify

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

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

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

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

Attachment “B”- Price Proposal Form

PRICE PROPOSAL FORM

(This form must accompany your bid)

RFP 2019-18 Purchase of Transit Tires

ITEM	Tire Size	Manufacturer and Description	P/N	Load Rating	Speed Rating	Mileage Rating	Origin	Cost Per Tire
1	LT225/R7516							
2	P235/50R18							
3	11R22.5 (Steer)							
4	11R22.5 (Drive)							
5	P225/50R17							
7	P225/65R17							
8	P205/55R16							
9	P225/55R17							
10	P255/65R18							
11	P235/60R16C							

Delivery time from receipt of order: _____

Warranty Policy:

PROPOSER INFORMATION

Company Name: _____

Address: _____

Phone Number: _____

Printed Name of Authorized Representative: _____

Title: _____

Signature: _____

Federal Certifications

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 Administration's Third Party Contracting Guideline, Circular 4220.1F. The undersigned also acknowledges the receipt of a copy of these clauses from Mass Transportation Authority in the General Terms and Conditions.

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

By execution below by a duly authorized representative(s) of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to Mass Transportation Authority in response to Request for Proposal No. #2019-07 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

Buy America Certification

This form is to be submitted with an offer exceeding the small purchase threshold for federal assistance programs, currently set at \$150,000.

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000). The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless 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 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 60 percent domestic content.

The Proposer shall obtain and submit to the Agency, copies of all signed Buy America certifications, including Buy America certifications that may be required of its subcontractors if the dollar thresholds established by FTA are exceeded. These completed certifications if applicable, shall be included in the bid Proposal submitted to the Agency. Bids or Proposals that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

Certification requirement for procurement of steel, iron, or manufactured products.

– Certificate of Compliance

The Proposer hereby certifies that it will comply with the requirements of 49 USC Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11:

Name and title:

Company:

Authorized signature

Date

Certificate of Non-Compliance

The Proposer hereby certifies that it cannot comply with the requirements of 49 USC Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Name and title:

Company:

Authorized signature

Date

Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: _____

THE PROPOSER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

Name and title of the Proposer's authorized official:

Authorized signature

Date

Lobbying Certification

This form is to be submitted with an offer exceeding \$100,000.

The Proposer certifies, to the best its 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 a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
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, 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 undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 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.

THE PROPOSER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the Bidder or Proposer's authorized official:

Title:

Signature

Date

Per paragraph 2 of the included form Lobbying Certification, add Standard Form–LLL, "Disclosure Form to Report Lobbying," if applicable.

Non-Collusion Affidavit

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

State of _____, County of _____	
I, _____, being first duly sworn, do hereby state that (Name of Affiant)	
I am _____ of _____ (Capacity) (Name of Firm, Partnership or Corporation)	
whose business is _____	
and who resides at _____	
and that _____ (Give names of all persons, firms, or corporations interested in the bid)	
is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, to any competitors, or employee therein, or any employee of the Authority, is directly or indirectly interested therein. This Proposal is genuine and not collusive or sham and that the Proposer has not in any manner, directly or indirectly, agreed or colluded with any other firm or association to submit a sham Proposal or to refrain from proposing or in any way fix this Proposal or that of any other Proposer or to secure any advantage against the MTA.	
The Proposer certifies that this Proposal is submitted without collusion, fraud or misrepresentation as to the other Proposers, so that all Proposals for this project will result from free, open and competitive proposing among all vendors.	
_____ Signature of Affiant	_____ Date
Sworn to before me this _____ day of _____, 20____.	
_____ Notary public	_____ My commission expires
Seal	

Attachment “C”- Checklist for Proposal Submission

RFP#2019-18 SUBMITTAL CHECKLIST

Deadline: January 14, 2020 at 1:00pm *(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:

- One (1) Original and three (3) copies with One (1) Electronic Copy of the Proposal Package
- Completed Price Proposal Page(s) (Signed)
- Business Organization Information
- Warranty Documentation
- Documentation for Origin of Tire Product
- Three (3) references of similar work completed in the past 5 years
- Addendum(s) (as issued)
- Certification Regarding Lobbying
- Debarment and Suspension Certification for Prospective Contractors
- Certification of Buy America
- Submittal Checklist

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

SUBMITTED PROPOSAL CONTAINS ALL COMPLETED FORMS/CERTIFICATIONS AS LISTED ABOVE

Authorized Signature _____

Date _____