

Request for Proposals Vending Service

RFP # 23-18

February 24, 2023

Metropolitan Tulsa Transit Authority
510 South Rockford Avenue
Tulsa, Oklahoma 74120

Request for Proposals

Vending Services

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1.0 INTRODUCTION

Sealed proposals shall be received by the Metropolitan Tulsa Transit Authority (MTTA), Attention Procurement Specialist, at 510 S. Rockford, Tulsa, Oklahoma at or before **Friday, March 31st, 2023, 4:30PM Central Standard Time**, as described in the Request for Proposal document. Proposals received after the date and time specified above shall be considered late proposals and shall not be considered. MTTA is requesting proposals from qualified firms to perform Vending Services for the Administrative and Maintenance building located at 510 S Rockford Ave, The MTTA Call Center located at 1403 E. 5th Court, and the Denver Avenue Station (DAS) located at 319 S Denver Avenue.

MTTA is seeking a “best value” proposal. In doing so MTTA may not award to the lowest priced firm but will weigh other factors as listed in 4.1 Evaluation Criteria. MTTA reserves the right, in its sole and exclusive discretion to accept or to reject any and all proposals, in whole or in part. All proposals shall be subject to all applicable state and federal laws. The award to be let under this solicitation is subject to financial assistance contracts between MTTA, the Federal Transit Administration, and the State of Oklahoma. Proposal documents shall be clearly marked with the RFP number and may be e-mailed, mailed, or delivered to:

Metropolitan Tulsa Transit Authority
ATTN: Jack Van Hooser
Procurement Specialist
510 S. Rockford Avenue
Tulsa, Oklahoma 74120
Fax: 918-699-0257

The anticipated schedule for selection of a Proposer is as follows:

Request for Proposal Released	February 24 th , 2023
Advertisement	February 26 th and March 5 th 2023
Deadline for Questions Regarding the RFP	March 10 th , 2023 @ 4:30PM
Response to questions	March 17 th , 2023, EOD
Proposals Due	March 31 st 2023@ 4:30PM
Contract Award (tentative)	April 25 th , 2023 NOON

2.0 INSTRUCTIONS TO PROPOSERS

1. PROPOSAL FORMAT

MTTA requires an electronic copy of the original proposal through email, on a CD, or on a jump drive.

2. TERMS AND CONDITIONS

All proposals are subject to the provisions specified in this RFP, including federal clauses. Terms and conditions included as a part of published price lists, catalogs, and/or other documents submitted as a part of the proposal are waived and will have no effect either on the proposal, or any contract which may be awarded because of the proposal. The attachment of any other terms and conditions may be grounds for rejection.

3. DUE DATE

Sealed proposals must be received by MTTA no later than **4:30PM Central Standard Time on March 31st, 2023.**

4. CONTACT INFORMATION

For questions or additional information, contact the buyer via email: Jack Van Hooser, Procurement Specialist, jvanhooser@tulsatransit.org. Include the RFP number on the subject line of all email correspondence.

Proposers are encouraged to contact the Procurement Specialist if there were anything in the specifications that would prevent them from submitting a proposal. Electronic submissions are the preferred method of answering questions, although written submissions via mail or fax will be accepted and must be received no later than **March 10th, 2023 @ 4:30PM.**

5. BIDDER'S NOTICE OF INTENT TO SUBMIT A PROPOSAL

Email the Procurement Specialist indicating your intent to submit a proposal. Include the RFP number on the subject line of the email. You will receive an email response indicating your notice was received. The same procedure will be followed to request clarification in writing of any point in the RFP. Responses to questions are considered official only when answered in writing in an addendum.

6. AMENDMENTS TO THE REQUEST FOR PROPOSALS

Any amendments to the solicitation will be posted on the MTTA web site at <https://www.tulsatransit.org/rfps/openbids/>. In addition, any bidder that has submitted a Notice of Intent to Submit a Proposal via email will be notified of any amendment by email. The bidder will be required to acknowledge the receipt of all amendments as part of the proposal package.

7. ACCEPTANCE AND REJECTION

MTTA reserves the right to reject any and all proposals, to waive any informality in proposals, and unless otherwise specified by the offer, to accept any item in the proposal. If either a unit

price or extended price is obviously in error or the other price is obviously correct, the incorrect price will be disregarded. MTTA reserves the right to make partial, progressive, or multiple awards where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas, or other factors deemed by MTTA to be pertinent or peculiar to the purchase in question.

8. TIME FOR CONSIDERATION

The offer shall be valid for a minimum of 90 days from the date of proposal opening.

9. PAYMENT TERMS

Payment terms are Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. An invoice shall be rendered to ap@tulsatransit.org, by the 3rd of each month for services provided for the previous month.

10. CONDITION OF GOODS

Unless otherwise indicated in the proposal, it is understood and agreed that any item offered or shipped pursuant to this RFP or resulting contract shall be new.

11. DEVIATIONS FROM SPECIFICATIONS

Any deviation from specifications indicated herein must be clearly stated by the proposer in writing; otherwise, all items offered by proposer shall be deemed to be in strict compliance with these specifications, and the successful proposer will be held responsible thereto. Deviations must be explained in detail by proposer on an attached sheet(s). This paragraph shall not be construed as inviting or permitting any deviation whatsoever by proposer from the stated specifications or implying that any such deviation will be acceptable to MTTA.

12. INFORMATION AND DESCRIPTIVE LITERATURE

Proposers are to furnish all information requested in the spaces provided on the proposal form. Further, as may be specified elsewhere, each proposer must submit with its proposal descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal does not satisfy this provision.

13. CONFIDENTIALITY OF PROPOSALS

Access to records received by or generated by MTTA is governed by Oklahoma law. Any information the proposer judges to be proprietary data should be submitted in a separate sealed envelope and clearly marked as proprietary information.

14. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will not be held.

15. PRICING / QUANTITY

Pricing information is required in accordance with the firms Price Proposal Sheet to be submitted by proposer. Base quantities and priced option quantities should be defined on the

price proposal sheet. The term of this contract is for three years with the option for an additional two-year term.

16. SIGNATURE REQUIREMENTS FOR PROPOSAL DOCUMENTS

All documents submitted, as part of a proposal package must be signed by the person having the legal authority to bind the corporation or firm, and that signature must be attested / notarized. Failure to comply with the signature requirements may result in the proposal being rejected as non-responsive.

17. PROPOSAL EVALUATION

MTTA shall evaluate all proposals using the factors listed below and shall select the proposal that represents the "best value." Pursuant to Federal Transit Administration purchasing guidelines, an award will be made to the responsible proposer whose proposal is most advantageous to MTTA with price and other factors considered. See (Section 4.1 EVALUATION CRITERIA) on page 9 of this RFP document.

18. PROOF OF INSURANCE

Proposals must include proof of insurance at the minimal required levels.

19. CONFLICTS OF INTEREST

Proposer must identify any conflicts of interest that exist related to past, present, or planned activities or interests, financial or otherwise, regarding MTTA or organizations that may be substantially affected by MTTA activities. In the absence of any known conflict of interest, the proposer shall submit in its proposal a statement that no conflicts of interest exist.

20. POST AWARD

A post-award debriefing is provided to un-successful proposers upon written request. MTTA shall provide the following information, if applicable:

- The agency's evaluation of the proposer's proposal or bid, including any noted deficiencies or weaknesses.
- The overall evaluation summary, including rating for each evaluation criteria for the debriefed proposer.
- The overall ranking of all offers, when any ranking was developed by the agency during source selection.
- A summary of rationale for award.
- For acquisitions of commercial items, the make and model of the item to be delivered by the successful proposer.

21. PROTEST PROCEDURES

MTTA has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting MTTA's Procurement Specialist. Any protest filed by a proposer in connection with the RFP must be submitted in accordance with MTTA's written procedures.

3.0 SCOPE OF WORK

Introduction

MTTA is requesting proposals from qualified firms to provide Vending Services at the administrative and maintenance facilities at 510 S. Rockford, The Call Center & Lift building at 1403 E. 5th Court, and the Denver Avenue Station, located downtown at 319 S. Denver Avenue, and. MTTA maintains the locations listed with approximately 211 MTTA employees and 65 lift vehicle employees. The bus station would include an unknown amount of customers that flow through the stations throughout the day and week.

Scope of Work

This specification describes the requirements to provide Vending Services on a scheduled basis at the location of various locations as specified in the RFP. MTTA fully expects a high level of customer service to be provided by the contractor in the area of responsiveness,, cleanliness of machines, the appearance of the machines, and the products offered. Proposer shall provide a listing of all products offered, with a corresponding price list. In addition, Proposer may provide any description of incentive programs that Proposer has used and provide recommendations that fit MTTA's situation.

During the past year commissions, based on the gross sales from existing vending machines, were received by the current vending contractor at most MTTA locations. These commissions were received from machines at all locations except for the Administration Complex. The decision has been made that commissions will only be received from the machines located at the DAS. The prices charged for products at the machines in DAS will be different from those charged at the Administration Complex, the Maintenance Facility and the Call Center/Lift Complex. All commission machines should have similar prices as should non-commission machines. It is also desired that a mix of products be offered.

Locations

The different locations to be serviced are listed below.

1. Administration & Maintenance Complex 510 S Rockford Ave., Tulsa, OK 74120
2. Call Center & Lift Complex 1403 E 5th Court Tulsa, OK 74120
3. Denver Avenue Station (DAS) 300 S. Denver Ave. Tulsa, OK 74103

Please note that the Administration Complex includes the Administration Building and the Maintenance Facility, each containing an employee break room where vending machines will be located. The Call Center & Lift Complex has one shared break room. These machines are utilized by employees only, so the prices should be as inexpensive as possible for their benefit.

The DAS station is a high-volume facility and is where MTTA expects to see a revenue sharing with our vendor. Gross Receipts for calendar year 2022 was \$90,664. This is lower than previous years, but that is due in part to the fact MTTA, like other entities, is recuperating from the Covid-19 pandemic of the last couple of years. We expect those numbers to increase with time back to pre-pandemic levels.

Current Setup of Vending Machines by Location

1. Denver Avenue Station (DAS)

- a. Two soda machines
- b. One assorted juice and other type of drink machine
- c. One snack machine
- d. One change maker

2. Call Center/Lift Facility

- a. One soda machine
- b. One snack machine

3. Administrative Offices

- a. One marketplace soda machine
- b. One marketplace snack area
- c. One sandwich/cold food marketplace cooler
- d. One payment kiosk

4. Maintenance Facility

- a. One soda machine
- b. One snack machine

Basis of Award

Any contract resulting from this RFP will be awarded to that firm whose proposal is deemed by MTTA to be qualified considering the evaluation criteria stated above and provides MTTA with the **best value** among those considered technically acceptable.

“Best Value” will be determined solely by MTTA.

MTTA reserves the right to meet or communicate with any proposer to clarify the responsiveness of its proposal and the responsibility of the proposer’s organization and its sub-proposers, to ascertain technical acceptability.

Contractors that submit proposals in response to this “Request for Proposals” must have the capability of providing the services listed. MTTA assumes no obligation of any kind for expenses incurred by any respondent to this solicitation. All submittals become the property of MTTA and will not be returned. The submittal shall meet the following requirements or will be deemed non-responsive and will not be eligible for consideration of this project:

- Proposals shall be signed by an officer authorized to bind the proposer and shall contain a statement to the effect that the proposal constitutes a firm offer for at least 90 days from the last day of receipt of proposals set forth herein.
- Each criterion for selection must be addressed.
- There is a minimum twelve (12)-point font requirement for the basic text of the entire submittal. Any charts, graphs, table of organizations, etc., must be of readable size.
- Maximum length of proposal is 60 pages excluding required forms and Pricing sheet, cover letter, resumes and proposal tabs/dividers.
- One (1) original and one (1) electronic copies of the submittals are due no later than **4:30PM, March 31st, 2023** to Jack Van Hooser, Procurement Specialist 510 S. Rockford Avenue, Tulsa, OK 74120.
- Submittals shall be in a sealed, opaque envelope, clearly marked RFP # 23-18 Vending Services.
- The proposed fee shall be provided in a separate, sealed envelope.
- Late submittals will be deemed non-responsive and will not be considered for the project.

MTTA has an overall Disadvantaged Business Enterprise (DBE) Goal of 1%. There is no specific goal for this project. MTTA highly encourages disadvantaged, minority, and women-owned consultant firms to respond.

From the date of this RFP until **4:30PM March 10th, 2023**, all questions and inquiries should be submitted in writing by mail, fax or E-mail to the following: Mr. Jack Van Hooser, jvanhooser@tulsatransit.org or by fax at 918-582-5209 or by mail at MTTA, 510 South Rockford Avenue, Tulsa, OK 74120.

All prospective offerors will be notified of questions and responses by addendum by the close of business on **March 17th, 2023, EOD**.

Prices shall not be made public until the contract is awarded. Proposals may not be withdrawn after the submission date.

This solicitation does not obligate MTTA to pay for costs incurred in the preparation of proposals or to award a contract. MTTA reserves the right to accept or reject any or all proposals, or to cancel in part or in whole, this solicitation.

PROPOSAL FORMAT

COVER LETTER

Include a Letter of Transmittal signed by the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the submitted proposal. Include the following information:

- Firm name, address, telephone number
- Email of proposal contact
- Contact Name & Title
- Year Business Established
- Type of Organization indicate whether a sole proprietor, partnership, or corporation and whether or not a disadvantaged business enterprise (DBE).
- List of subcontractors, their role on the team and whether a DBE

The cover letter should not exceed three pages.

4.0 FIRM SELECTION PROCEDURE

Selection of the successful proposal shall be generally based on the information provided by the proposer in response to the Request for Proposals and any subsequent interviews that may be conducted. Interviews will be held solely at the option and discretion of the MTTA. The process for selection shall occur in the following sequence:

- Review and ranking of proposals.
- Establish a "short list."
- Interview "short-listed" firms (at the option and discretion of the MTTA)
- Identify best qualified firm(s)
- Award contract

A project selection committee will be formed to evaluate the proposals and to make recommendation to the MTTA Board of Trustees. This committee may consist of representatives from various departments within the MTTA and/or representatives from other stakeholders including the City of Tulsa. Composition of this committee is at the sole discretion of MTTA. Names of the committee members will not be released prior to the time of interviews.

The committee will review the proposals for format to ensure conformance with the requirements of the RFP and may select finalists to interview with the Committee as a part of the

Committee’s evaluation process. MTTA does not guarantee that an interview will take place, thus reserving the right to select a firm based solely on the information provided in the proposals received in response to the RFP.

The MTTA General Manager will review the committee recommendation and decide whether to accept, reject, or modify the recommendation before presenting to the Board of Trustees. The Board of Trustees is charged with making a contract award.

4.1 EVALUATION CRITERIA

MTTA is following a “Best Value” approach to selecting a developer for this RFP. In doing so MTTA may not award to the lowest priced firm but will weigh other factors as listed below in making a selection.

The following information and criteria, in order of importance, will be used to evaluate and rank responses and the presentation, should the MTTA choose to conduct interviews with short-listed firms:

1. Project Understanding and Approach: This criterion is a combination of the Proposer’s approach to the problem and the quality of the RFP submission and response. (20 points)
2. Technical Capabilities and Solution Functionality: This criterion refers to the Proposer’s technical capabilities, the proposed solution functionality, and the ability to best meet the performance specifications outlined in the RFP and Scope of Work. (20 points)
3. Quality, Experience of Proposed Key Project Personnel (20 points)
4. Vendor Past Project-Related Experience and Client References (20 points)
5. Price - Evaluated Separately (20 points)
6. Disadvantaged Business Enterprises, proposers or subcontractor are Oklahoma-registered – evaluated separately (5 points)

5.0 PROPOSAL FORMS

In addition to the federal certifications and representations that are required to be submitted with the proposal. The following additional forms shall be included.

1.0 Price Proposal Form

2.0 DBE Qualification Form

2.0 Statement of Bidder's / Proposer's Qualifications

3.0 Authorization for Information

4.0 Customer Reference Listing

1.0 PRICE PROPOSAL FORM

The undersigned Proposer hereby submits to MTTA this proposal for Vending Services at the Administration, Maintenance, Call Center and Denver Avenue Station

PRICING & COMMISSIONS

(A) Public Vending: Denver Avenue Station

All equipment at the stations should be equipped with state of the art Debit and Credit Card readers.

TYPE OF MACHINE	COMMISSION
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

(B) Call Center & Lift Facility

TYPE OF MACHINE	
_____	_____ N/A
_____	_____ N/A

(C) Maintenance Facility

<u>TYPE OF MACHINE</u>	
_____	_____ N/A
_____	_____ N/A
_____	_____ N/A

(D) Administration Building

<u>TYPE OF MACHINE</u>	
_____	_____ N/A
_____	_____ N/A
_____	_____ N/A
_____	_____ N/A

2.0 DBE QUALIFICATION FORM

___ Is your firm certified as a DBE with the Oklahoma Department of Transportation (ODOT)?

Does your firm meet the following requirements to qualify as a DBE under the DOT DBE program?

___ Disadvantaged owners are U. S. citizens or legal permanent residents.

___ Firm's annual gross income does NOT exceed \$17,20 million (averaged over 3 years).

___ Firm is at least 51% owned and controlled by socially and economically disadvantaged individuals.

___ Firm meets SBA small business size in the primary industry group (13 CFR part 121).

___ Firms owned by ANC's Indian Tribes, and Native Hawaiian Organizations, meet the small business size requirements and are controlled by socially and economically disadvantaged individuals.

___ Firms and owners meet the requirements of part 26 concerning licenses and credentials.

___ Firms must be for profit.

___ Please check here if this does not apply to your company.

Contact Chase Phillips at cphillips@tulsatransit.org should you need information regarding DBE Certification.

Please print the following information:

Firm Name _____

Authorized Signature _____

Title _____

Date _____

3.0 STATEMENT OF BIDDER'S/ PROPOSER'S QUALIFICATIONS (PAGE 1 OF 2)

All questions must be answered, and the data given must be clear and comprehensive. This statement must be notarized. Should this page not be part of the bid/proposal packet, you're bid will be classified as not in compliance and may be disqualified. The questions may be answered on separate attached sheets. Bidder/Proposer may submit additional information he/she desires.

1. Name of Bid/Proposer _____

2. Permanent Main Office Address _____

3. Office Phone _____ Cell Phone _____

4. Fax Number _____ E-mail Address _____

5. When Organized _____

6. If a Corporation, where Incorporated _____

7. How many years have you been engaged in business under your present firm or trade name? _____

8. List previous business names, if any _____

9. Have you ever failed to complete any work awarded to you? _____

10. Have you ever defaulted on a Contract Agreement? _____

11. If you answered yes to 9 or 10 above attach explanation.

12. Attach background and experience of the principal members of your organization, including the officers.

13. DUNS # _____ Provide D&B report or other statement of credit.

Bidder/Proposer may submit any additional information he/she desires.

Dated this _____ day of _____, 20__

Being duly sworn deposes and says that he/she is _____ (Title)
and that the answers to the foregoing questions and all statements therein contained are true
and correct.

By: _____

Name of Corporation or Firm: _____

Authorized Signature: _____

State of _____

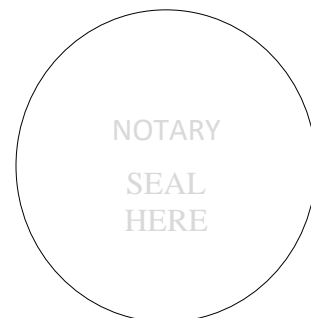
County of _____

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public _____

Notary Number _____

My Commission Expires _____



4.0 AUTHORIZATION FOR INFORMATION

The undersigned hereby authorized and requests any person, firm, or corporation to furnish any information requested by MTTA in verification of the recitals comprising this Statement of Proposer's Qualifications that I, being duly sworn deposes and says that the answers to the foregoing questions and all statements contained and true and correct.

Dated this _____ day of _____, 20__

By: _____

Name of Corporation or Firm: _____

Authorized Signature: _____

State of _____

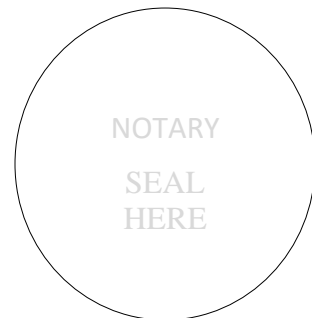
County of _____

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public _____

Notary Number _____

My Commission Expires _____



5.0 CUSTOMER REFERENCE LISTING

Vendor shall furnish the names, addresses, agreement, telephone numbers, and length of services and size of property of a minimum of five (5) firms or government organizations for which the vendor is currently furnishing or has in the past furnished service for.

1. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

2. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

3. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

4. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

5. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

A. GENERAL TERMS

The following clauses will be incorporated in any contract awarded pursuant to this RFP.

1. ASSIGNMENT

A. The successful proposer may not assign or subcontract its rights or obligations under the contract without prior written permission of MTTA, and no such assignment or subcontract will be effective until approved in writing by MTTA.

B. MTTA reserves the right to assign all or a portion of this contract to any other agency and/or governmental entity, or a Contractor of MTTA.

2. ADVERTISING

Proposer agrees not to use the existence of this contract or the name of MTTA as a part of any commercial advertising without the prior written approval of MTTA's General Manager or designee.

B. FEDERAL TERMS AND CONDITIONS

The following terms and conditions apply to this procurement:

1. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq. 49 CFR Part 18

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

2. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17

Access to Records - The following access to records requirements apply to this contract:

(1) Where the Purchaser is not a state but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Proposer agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Proposer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

3. FEDERAL CHANGES

49 CFR Part 18

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 Master Agreement 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.

4. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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 or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from 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 FTA. It is further agreed that the clause shall not be modified, except to identify the Sub-Contractor who will be subject to its provisions.

**5. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS**

31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. 5307

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)(1) 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 Sub-Contractor who will be subject to the provisions.

6. TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1F

(1) Termination for Convenience (General Provision): The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government'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 (Recipient) to be paid the Contractor. If the Contractor

has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

(2) Termination for Default (Supplies and Service): If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract, or any extension, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

(3) Opportunity to Cure (General Provision): The Recipient, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

(4) Waiver of Remedies for any breach if (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

7. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at

49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by MTTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MTTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act,

as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

9. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

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 4%. A separate contract goal has not been established for this procurement.

b. The Contractor shall not discriminate based on race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 MTTA deems appropriate. Each subcontract the Contractor signs with a Sub-Contractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The successful bidder/proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from MTTA. The prime contractor agrees further to return any retainage payments to each subcontractor within 20 days after the subcontractor's work is satisfactorily completed. Should payment not be rendered in a timely manner, MTTA shall hold an informal hearing, where the contractor and subcontractor, meet with representatives from MTTA. After hearing from both parties, a decision will be rendered within five days, detailing the consequences/sanctions, which shall be consistent with the non-compliant issue, which could, if warranted, include termination for default or convenience. The contractor officer shall work with the DBELO and Administrator of Grants and Procurement, and other representatives as necessary. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTTA. This clause applies to both DBE and non-DBE subcontracts.

e. The contractor must promptly notify MTTA, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTTA.

10. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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, 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

11. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

To the extent required by Federal law, the State agrees that, in administering any Federal Assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.

C. CERTIFICATIONS AND REPRESENTATIONS

The following certifications and representations are required to be submitted as part of the proposal package.

1. Program Fraud and False or Fraudulent Statements and Related Acts
2. Contractor Debarment Certification
3. Contractor Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transaction

1. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(1) The Proposer 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 proposal, the Proposer 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 Proposer 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 Proposer to the extent the Federal Government deems appropriate.

(2) The Proposer 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 MTTA of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 16 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Proposer, to the extent the Federal Government deems appropriate.

(3) The Proposer 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 Sub-Contractor who will be subject to the provisions.

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 the above regulations and apply to this certification and disclosure, if any.

Company Name

Signature

Title

Date

CERTIFICATION LOBBYING - APPENDIX A, 49 CFR PART 20 (Page 2 of 2)

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 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Company Name

Signature

Title

Date

2. CONTRACTOR DEBARMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$25,000.)

The certification in this clause is a material representation of fact relied upon by MTTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MTTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

Signature

Title

Company

Date

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public _____

Notary Number _____

My Commission Expires _____

3. CONTRACTOR REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R § 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 lower tier participant (Bidder/Contractor) is unable to certify to the statements in this certification, such prospective participant (Bidder/Contractor) shall attach an explanation to this bid/proposal.

Check if applicable.

The lower tier participant (Bidder/Contractor, _____), certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

Signature

Title

Company

Date

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public _____

Notary Number _____

My Commission Expires _____

