



REQUEST FOR PROPOSALS
FOR
LEGAL SERVICES

**Macatawa Area Express
Transportation Authority
171 Lincoln Ave., Suite 20
Holland, MI 49423
(616) 928-2476**

Sequence of Events	Date
Request For Proposal issued	March 1, 2010
Clarifications/Questions	March 8, 2010
Response to Clarifications/Questions	March 12, 2010
Proposals received	April 1, 2010 by 11:00 am
Staff review of written proposals	April 15 - 16, 2010
Selection of firms for oral presentation	April 19, 2010
Oral presentations	April 26 - 27, 2010
Recommendation to Board committee	May 17, 2010
Recommendation for Board action	May 24, 2010
Legal services contract takes effect	June 1, 2010

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SECTION 1: PUBLIC NOTICE

Sealed proposals for the provision of legal services will be received at the Macatawa Area Express Transportation Authority, 171 Lincoln Ave., Suite 20, Holland, MI 49423 until April 11, 2010 at 11:00 am, local time.

The MAX Board reserves the right to postpone, accept, or reject any and all bids, in whole or in part, on such basis as the MAX Board deems to be in its interest to do so, subject to the rules and regulations set forth by the Federal Transit Administration (FTA) and the Michigan Department Of Transportation (MDOT).

No bid may be withdrawn for at least sixty (60) days after the scheduled closing time of the bid. One (1) original and three (3) copies of the bid shall be submitted to the MAX Director. For a copy of the Request For Proposal, please contact Ms. Kathie VandenBand at (616) 928-2476 or via e-mail at k.vandenband@catchamax.org.

Macatawa Area Express
Transportation Authority
171 Lincoln Ave., Suite 20
Holland, MI 49423
(616) 928-247

SECTION 2: SCOPE OF SERVICES

2.1 AGENCY INFORMATION

The Macatawa Area Express Transportation Authority operates transportation services within the cities of Holland and Zeeland and Holland Charter Township. MAX is a public corporation chartered under *Act 196 of 1986* of the State of Michigan. MAX is funded by state and federal grants, local property tax revenue, sale of services and fare box receipts. MAX has used management companies in the past contracting out day to day operations. Effective July 1, 2010, MAX will begin running all of its operation directly with a staff of approximately 40 bargaining unit employees and 10 non-bargaining unit employees.

MAX requires general legal services including, trial and appellate advocacy in the prosecution and defense of matters, as well as, legal opinions and counsel on a wide range of topics. This proposal is expected to culminate in the award of one or more non-exclusive contracts for the above referenced services. The contract(s) will be for a five-year term with an additional five, one year extensions possible. Claims currently in litigation would not be reassigned to new counsel. This contract is for new litigation files assigned to counsel on or after contract award.

The areas that services are required are 1) General Corporate and 2) Labor and Employment. MAX reserves the right to award up to two contracts. Proposers may submit proposals for either one or both of the service areas.

2.2 GENERAL SPECIFICATIONS AND PROVISIONS

This is a requirements contract; there is no guarantee of a specific level of legal services required, in either number of cases or dollar amount. Average annual billings for the past two years amount to approximately \$18,300.

All materials generated by this contract shall be the property of MAX, including without limitation, all correspondence, discovery, pleadings, legal opinions, research court filings, books, papers, electronic media, etc.

One attorney must be designated as a liaison to the Authority, and who shall serve as a "lead attorney" who will be responsible for the general and day-to-day functioning of the business transacted.

Only attorneys previously approved by MAX may perform work or appear on behalf of the Authority. Resumes of those attorneys who it is anticipated will work on this account should be included with the proposal. The firm shall notify MAX if an attorney leaves the firm, and advise who will be replacing them.

Each matter must be identified separately on the monthly invoice, and must include the following minimum information: Date work performed, attorney or staff

person performing the work, a brief description of the work performed, and the time and amount.

The Contractor will be responsible for sanctions, fines, interest and any other additional costs imposed by Court Rule or the court in which a matter is pending, which results from negligence, mismanagement and/or delays that are not directly attributable to MAX's employees or agents.

Costs typically described as overhead and other costs of doing business do not constitute allowable billing. Fees not allowed include local parking, mileage for local travel, and subscription fees. Non-local travel is payable for actual mileage not to exceed the Federal Government allowance rate. MAX will reimburse actual costs only if the proposal includes an itemized list of any reimbursable costs and billable fees associated with such items. Any item not included in the proposal will not be considered for future billing. Proposal must contain all associated fees and include consumables.

MAX staff, MAX's independent auditors, as well as state and federal auditors, insurance carriers and/or others may from time to time ask to audit any or all of the matters performed. The Contractor shall honor such requests, if made by the appropriate MAX staff person, and then, in full compliance with applicable law. Familiarity with the FOIA, Open Meetings Act and/or other applicable regulations is required.

2.3 GENERAL CORPORATE LEGAL SERVICES

MAX's needs for General Corporate legal services include a variety of topics. Some of the topics that legal opinions have been sought in the past include, but are not limited to the following:

- ✓ Contract Law: Includes negotiation, interpretation and dispute resolution
- ✓ Environmental Law
- ✓ Administrative Law: Including interpretation of governmental and agency rulings, particularly FTA and MDOT, Act 196 and millage issues.
- ✓ General and Public Liability, insurance protection and liability defense.
- ✓ Corporate and Commercial Law
- ✓ Intellectual Property and Licensing
- ✓ Errors and Omissions
- ✓ Real Estate and bonds
- ✓ Electronic media issues
- ✓ Taxation
- ✓ Federal and State Grants
- ✓ Defense - including defending the Authority officers and employees in all actions arising from the delivery of its transit service and the official duties of the Board and staff.

Provide advice and counsel to the MAX Board and staff in regard to policies, procedures, legislative and regulatory issues, and any other such matters as the Board or Executive Director deem appropriate. Conduct research and prepare written opinions as requested. Attend MAX Board meetings upon request, or as needed, to receive direction and/or provide counsel.

2.4 LABOR AND EMPLOYMENT LEGAL SERVICES

MAX's need for Labor and Employment legal services includes a variety of topics. The Local Teamsters represents the approximately forty-four (44) bus operators. The bargaining unit does not represent 18 administrative employees. Employment policies are administered by MAX's Executive Department. Some of the topics that legal opinions may be sought include, but are not limited to the following:

- Workers Compensation: Includes coordination with MAX staff and third party administrator, to mitigate and defend contested claims.
- Unemployment Compensation: Includes representation at various levels of appeals.
- Discrimination: Includes the investigation of claims, correspondence with governmental agencies, representation in hearings, resolution of disputes.
- Sexual Harassment: Includes investigation of claims, investigative conferences, hearings and resolution of complaints.
- Collective Bargaining: Includes development of strategies, development of contractual language, resolution of disputes, advice and counsel pertaining to legal issues.
- Grievances: Includes identification of issues, development of responses.
- Labor Arbitrations: Includes representation before hearing officers, negotiation of issues and resolutions, etc.
- Labor Law: Includes local, state, and federal laws and regulations.
- Wages and Benefits: Includes advice and counsel on existing and future wages and benefits at MAX and identification and definition of issues. Also personnel and pension issues.
- Advice on contracts: Includes legal requirements pertaining to labor issues
- Transit: Includes areas specific to the transit industry such as Drug Free Workplace, FTA Drug and Alcohol Program, 13-C Requirements, Public Employee Relations Act, ADA, FMLA, CDL, etc.

MAX reserves the right to split this contract awarded and to contract at its discretion with other firms for legal services related to this contract. The contracted services may be for a particular legal matter or for a particular area of legal services. ***For this reason, MAX is asking for prices in two specific categories which correspond to the two categories in the Scope of Services above. Those two categories are General Corporate Services and Labor and Employment Services.***

SECTION 3: REQUIREMENTS FOR PROPOSALS

Proposing firms shall submit, at a minimum, the following information in their proposal.

3.1 COVER LETTER

The proposal must include a cover letter which identifies the proposing firm/organization, mailing address, contact person, and telephone number. The cover letter must acknowledge the receipt of all addenda issued to the RFP, and be signed by the individual who is authorized to negotiate and execute a contract on behalf of the proposing firm.

3.2 FIRM QUALIFICATIONS

The proposal shall include a general description of the firm and its background as it relates to the needed services. Specific information regarding the firm shall be submitted and includes:

- A. Information regarding the firm's previous experience with similar or related services for a public sector client as described in Section 2. It should contain a brief description of these services and responsible staff. Specific experience with public transit agencies is a necessity.
- B. Information demonstrating the firm's capabilities to perform all aspects of these particular services.

3.3 STAFF QUALIFICATIONS

The proposals shall include a general description of the firm's staffing and their background as it relates to these services. Specific information regarding the staff shall be submitted and includes:

- A. Identification and qualification of the person(s) who will provide or coordinate legal affairs for MAX. Specify by category, such as: Labor Relations, General Contract, Real Estate law, Environmental law, etc.
- B. Information regarding the staff's previous experience with similar or related service.
- C. Information regarding the expertise and experience of staff person(s) to be assigned to work on the MAX account in the areas of legal practice listed in Section 2.
- D. Identification of work to be subcontracted to another firm(s). The proposal must include the above firm and staff qualifications information for each subcontractor, a description of the services the firm(s) will be performing and estimated fees for their services.

3.4 FINANCIAL PROPOSAL

The financial proposal shall include a fee schedule of the various services that will be furnished. The schedule should cover a five (5) year period. A format for the fee schedule is suggested below:

**Billing Rate Summary in Fee Per Hour
Contract Period June 1, 2010 through September 30, 2010
(hourly rates)**

	General Corporate	Labor and Employment	Meetings
Partners			
Associates			
Legal Assistants			
Staff			
Clerical			

Contract Period June 1, 2010 through September 30, 2015

**General Corporate Services
(hourly rates by fiscal year)**

	FY'10-11	FY'11-12	FY'12-13	FY'13-14	FY'14-15
Partners					
Associates					
Legal Assistants					

Contract Period April 1, 2010 through September 30, 2015

Labor and Employment Services
(hourly rates by fiscal year)

FY'10-11 FY'11-12 FY'12-13 FY'13-14 FY'14-15

Partners					
Associates					
Legal Assistants					

Proposing firms are free to expand or delete the categories in this form or to use a table of their own design so long as the maximum billing rates for various classifications of professional and support services are disclosed.

Please also provide the following information:

- Incremental Billing Rates after Minimum Time _____
- Minimum time billed _____
- Copy cost per sheet _____
- Fax costs per sheet _____
- Travel time costs _____

3.5 REFERENCES

Representative clients in each area of practice should be listed as references. This information will be kept confidential if so requested.

3.6 POSSIBLE CONFLICTS OF INTEREST

The proposal should state whether or not the firm represents any labor unions or any public employee bargaining agents. Any potential conflicts of interest which the firm may encounter in rendering service should be identified, including but not limited to:

- A) Any general representation of any MAX member governmental unit.
- B) Membership of any partner or associate of the firm on the council or other governing body of any member government.

SECTION 4: EVALUATION OF PROPOSALS

Proposals will be evaluated according to Firm Qualifications, Staff Qualifications, and Budget. The criteria are listed in their relative order of priority (section 4.1 – 4.3) for evaluation purposes.

4.1 FIRM QUALIFICATIONS

The qualifications of each responding firm will be evaluated based on their demonstrated ability to perform the services described in the Scope Of Work. Work performed by any subcontractor will also be evaluated.

4.2 STAFF QUALIFICATIONS

The qualifications of staff and subcontractors assigned to the MAX account will be evaluated based on their expertise and experience in furnishing the service described in the Scope Of Work.

4.3 PROPOSED BUDGET

Proposed price, both initial and over the term of the Agreement, is a consideration that will be weighed in relation to other evaluation criteria. Costs making up the price will be evaluated to determine reasonableness and that all costs are allowable and allocable.

4.4 FIRM CERTIFICATION

Firms must comply with the DBE participation requirements, if any, to be considered for contract award. See section 6, Number 28.

4.5 EVALUATION AND SELECTION PROCESS

The process of evaluating and selecting attorneys will be made in accordance with the following schedule.

Sequence of Events	Date
Request For Proposal issued	March 1, 2010
Clarifications/Questions	March 3, 2010
Response to Clarifications/Questions	March 12, 2010
Proposals received	April 1, 2010 by 11:00 am
Staff review of written proposals	April 5, 2010
Selection of firms for oral presentation	April 19, 2010
Oral presentations	April 26 – 27, 2010
Recommendation to Board Committee	May 17, 2010
Recommendation for Board action	May 24, 2010
Legal services contract takes effect	June 1, 2010

4.6 COMMUNICATIONS AND REQUESTS

A All correspondence and/or contact in regard to any aspect of this solicitation or offers shall be with the MAX Director. Offerors and their representatives shall not make any contact with or communicate with any members of MAX, or its employees and consultants in regard to any aspect of this solicitation or offers.

B At any time during this procurement up to the time specified, Offerors may request in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Such written requests shall be made to the MAX Director. MAX will not respond to oral requests. Any request for a change to any requirement of the Contract documents must be fully supported with pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by MAX in the form of addenda only. Only written responses provided as addenda shall be official and all other forms of communication shall not be binding on MAX.

C If it should appear to a prospective Offeror that the performance of the work under the Contract is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts or with any federal, state, or local law, ordinance, rule, regulation, the Offeror shall submit a written request for clarification to MAX within the time period specified.

Addenda to RFP

A. MAX reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. Notification of the addendum will be mailed or delivered to all such prospective Offerors officially known to have received the RFP and to the address provided by each prospective Offeror. Failure of any prospective Offeror to receive the notification or addendum shall not relieve the Offeror from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Prospective Offerors shall acknowledge the receipt of all addenda in their proposals. It will be MAX's sole option to disqualify a proposal for failure to acknowledge in the proposal the receipt of addendum.

B. If MAX determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that MAX determines will allow Offerors sufficient time to revise their proposals. Any new due date will be included in the addenda.

4.7 EVALUATION PROCEDURES

A. Proposals will be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient. MAX reserves the right to request an Offeror to provide any missing information and to make corrections. Offerors shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Offeror has accepted the whole of the contract documents, except any conditions, exceptions, or deviations.

Any such conditions, exceptions, or deviations which do not result in the rejection of the proposal, are subject to evaluation under the criteria of Proposal Evaluation Criteria.

4.8 EVALUATION OF PROPOSALS

The evaluation committee will review the proposals for the following:

- A. Offeror has followed the instructions of the RFP and included sufficient detail information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by MAX to be either a defect that MAX will waive in accordance with Acceptance/Rejection of Proposals or that the proposal can be sufficiently modified to meet these requirements.
- B. Proposal price will not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible. Any extreme proposal deficiencies, which may render a proposal unacceptable, will be documented.
- C. No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors during the evaluation period.

SECTION 5: PROPOSAL SUBMISSION

MAX will receive sealed proposals Thursday, April 1, 2010 at 11:00 am local time. Proposals shall be submitted to:

Linda LeFebre
MAX Director
Macatawa Area Express
171 Lincoln Ave., Suite 20
Holland, MI 49423

One (1) original and three (3) copies of the proposal are to be submitted. Proposers should complete the enclosed "Sealed Proposal" label and attach it to the outside of the envelope containing the proposal. MAX assumes no responsibility for the premature opening of sealed proposals which do not have this label attached. If no "Sealed Proposal" label is included, please state on the outside of the envelope: "Legal Services RFP".

If the proposal is submitted by mail, it shall be mailed a minimum of three (3) days prior to the submittal date. The proposal envelope shall be postmarked by the U.S. Postal Service or other mail service. Postage meter dates are not acceptable. Proposals mailed less than three (3) days prior to the submittal date and received after the submittal deadline will not be accepted. Proposals must be accompanied by a signed statement acknowledging the receipt of any addenda issued to this RFP.

Additional information regarding the submission of the proposal may be obtained by contacting Linda LeFebre, MAX Director at l.lefebvre@catchamax.org or by fax (616) 928-2467.

SECTION 6: INSTRUCTIONS TO BIDDERS

1) FUNDING

This Project will be funded with the assistance of capital improvement grants from the Federal Government under the Federal Transit Act and the Michigan Department of Transportation (MDOT). The successful bidder will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and MAX. This grant contract is available for examination by prospective bidders at the MAX offices.

2) PROJECT BUDGET

The budget for this Project will be funded through financial assistance grants from the Federal Transit Administration (FTA) and Michigan Department of Transportation (MDOT). The total Project budget will be determined by the final negotiated price between MAX and the successful bidder

3) TYPE OF CONTRACT

The Contract for this Project shall be a firm fixed price type. / fixed price with economic price adjustment type. /cost plus fixed fee type.

4) PROJECT NUMBER(S)

All bidders and Contractors will include the FTA Project Number in all correspondence with MAX and with the FTA. The FTA Project Number for this Project is **2010-01**.

5) USE OF "MACATAWA AREA EXPRESS" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

MAX reserves the right to review and approve any advertising copy related to this Project in any way prior to publication. The successful bidder will not allow such copy to be published in their advertisements or public relations programs until submitting such copy and receiving prior written approval from MAX. The successful bidder agrees that published information relating to this Project will be factual and in no way imply that MAX endorses the successful bidder's firm, service or product.

6) INTENT OF SPECIFICATIONS

It is the intent of these specifications to provide completed Project of substantial and durable construction in all respects, which will be most suitable and advantageous for MAX. Experimental or unproven equipment, materials or design will not be accepted without prior review and written acceptance by MAX.

7) APPROVED EQUALS AND DEVIATIONS

All Proposals must be in strict compliance with the requirements and provisions of these specifications, including the provisions herein regarding "approvals", "approved equals", and "deviations". Where a feature, component or item is specified by brand name in these specifications, the words "or approved equal" will apply. Where the approval of MAX is specifically required by these specifications in connection with a particular feature, or if the bidder proposes to submit a proposal containing "approved equals" or "deviations" from specific requirements of these specifications, the bidder must obtain such approval, confirmed in writing, prior to the date for the receipt of proposals. With respect to "approved equals" or "deviations", the details of same and the reasons and justifications therefore must be submitted to MAX, including a statement whether the bidder has previously furnished or offered to furnish the item in question, is herein specified. Proposals may be submitted containing such "approvals", "approved equals", or "deviations", as are specifically approved by MAX, confirmed in writing, prior to the date for receipt of proposals. Each proposal must be accompanied by documentation regarding any such approvals granted by MAX for the proposal. Notice of any such approvals required by and/or granted to a bidder shall be furnished by MAX to other prospective bidders prior to the date for receipt of proposals. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be cause for its rejection. The decision of MAX, as represented by the Executive Director, shall be final with respect to whether any proposed deviations from the specifications are acceptable. It should be understood that specifying a brand name, components, and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying MAX of any inappropriate brand name, component, and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

8) PROTEST PROCEDURES

The following terms, conditions and appeal procedures will apply:

- (a) MAX reserves the right to postpone the bid opening or receipt of proposals for its own convenience.
- (b) Changes to the specifications will be made by addendum only.

(c) Prime Contractors and subcontractors may make appointments to discuss the Project specifications. This, however, does not relieve them from the written documented requests required by paragraphs (d) and (f), following.

(d) Requests for approved equals, clarification of specifications, and protest of specifications must be received by MAX in writing not less than nine (9) working days before the date of the scheduled bid opening or closing date for receipt of proposals. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

(e) MAX's replies to requests under paragraph (d) above will be postmarked at least four (4) working days before the date scheduled for the bid opening or receipt of proposal.

(f) A protest by any adversely affected person regarding restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the MAX Director two (2) working days before the date scheduled for bid opening or receipt of proposal. The formal written protest shall state the name of the protester, a description of the Project, and the facts and law upon which the protest is based, and a statement as to what relief is requested.

(g) Upon receipt of a protest, MAX shall immediately determine if the date for the bid opening or closing date for receipt of proposals should be postponed. If the bid opening or closing date is postponed, MAX will contact all Contractors and subcontractors who were furnished a copy of the specifications by MAX that an appeal has been filed and that the bid opening or receipt of proposals is postponed until a decision has been issued. Notice of the postponement will be made in writing by addendum.

(h) Representatives of MAX and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such a time as mutually agreed, to discuss all substantive issues raised in the protest. Upon completion of discussion between MAX and the protester, the MAX Executive Director will transmit a final decision in writing to the protester within five (5) working days. The final decision will respond to each substantive issue raised in the protest. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension. Upon issuance of the written decision, MAX will then issue appropriate addendum to reschedule the date for the bid opening or closing date for the receipt of proposal.

(i) Protests by any adversely affected person for reasons other than for restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the MAX Director not more than three (3) working days after the posting of the Notice of Award is made to the participating bidders. Upon receipt of a protest after Contract award, MAX shall immediately determine if work on the protested Project should be suspended until such time as the protest is resolved.

(j) Representatives of MAX and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such time as mutually agreed to by both parties to discuss the protest. Upon completion of discussions between MAX representatives and the protester, MAX will issue a written decision to the protester within five (5) working days. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension.

(k) Except as noted in paragraph (l), MAX will not open bids, receive proposals or award a contract if a formal written protest has been received and no final decision has been issued by the MAX Executive Director. After the issuance of a final decision, MAX will wait a minimum of five (5) working days before opening bids or proposals or before awarding a Contract for a Project.

(l) MAX may open bids, receive proposals and award a Contract for a Project while a protest is pending final disposition when the MAX Executive Director determines that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make an award promptly; or,
- Failure to make prompt award will otherwise cause undue harm to MAX or the Federal Government.

(m) Protester may request a reconsideration after a final decision has been issued by the MAX Executive Director within five (5) working days after the issuance of a final decision if new data or information becomes available that was not previously known, or there has been an error of law or regulation.

(n) The provisions of Chapter V of FTA Circular 4220.1B (5/5/88), are hereby incorporated and made part of the rules of MAX. Protests to the FTA by a protester must be made in accordance with FTA Circular 4220.1B. FTA will only consider a protest that alleges failure of MAX to have a written protest procedure or failure to follow such procedure. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.

Any appeal or protest may be withdrawn at any time.

9) SUBMISSION OF PROPOSALS

Sealed proposals will be accepted until Thursday, April 1, 2010 at 11:00 am, local time. They shall be submitted to:

Linda LeFebre MAX
Director Macatawa Area
Express 171 Lincoln Ave.,
Suite 20 Holland, MI
49423

Proposals submitted to MAX shall include one (1) original **and _3_** copies.

10) SEALED PROPOSAL LABEL

The bidder should complete the enclosed "Sealed Proposal" label and attached it to the envelope containing the bid or proposal. MAX assumes no responsibility for the premature opening of sealed bids or proposals which do not have this label attached to the outside of the envelope. **See Attachment B for a mailing label template.**

11) MAILING BIDS/PROPOSALS

Bids or proposals submitted by mail shall be mailed a minimum of three (3) days prior to the bid opening date or date scheduled for receipt of proposals. Postmarks by the U.S. Postal Service or other mail delivery service is required. Postage meter dates are not acceptable. Bids or proposals which are not mailed in a timely manner and received after the scheduled bid opening or proposal submittal date will not be accepted.

12) DURATION OF OFFER

All bids or proposals shall remain in effect for a minimum of 60 days from the bid opening date or scheduled date for receipt of proposals. Offers that allow less than 60 days for acceptance by MAX will be considered non-responsive and will be rejected.

13) PROPOSAL PRICE

(a) Proposal prices shall be submitted in the prescribed form. Prices submitted in any other form may be considered non-responsive and may be rejected.

(b) Proposal prices shall be based on F.O.B. MAX, Holland, Michigan.

The price stated in any proposal submitted shall include all items of labor, materials, equipment, tools and other costs necessary to fully complete and deliver this Project pursuant to the specifications. It is the intention of these specifications to provide and require a complete Project of the type prescribed. Any item or items omitted from such specifications which are clearly necessary for the completion of such Project and its appurtenances shall be considered a portion of such Project although not directly specified or called for in these specifications.

14) TAX EXEMPTION

The MAX is exempt from payment of all Federal, State, and local taxes in connection with this Project. Said taxes shall not be included in the bid or proposal prices. The MAX will provide necessary tax exemption certificates. This provision does not relieve the Contractor from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.

15) DISCOUNTS

Prompt payment discounts will not be considered in the evaluation of proposals or bids. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the bidder. As an alternative to offering a prompt payment discount in conjunction with the offer, bidders awarded Contracts may include prompt payment discounts on individual invoices.

16) PAYMENT TERMS

MAX will make payment within thirty (30) days after delivery and final acceptance of the project. The Contractor may submit invoices to MAX prior to or upon delivery. Payment will not be made without an invoice.

17) PROJECT COMPLETION DATE (NOT APPLICABLE)

Bidders shall state in the bid or proposal the earliest possible date offered for completion of the Project. The date cannot exceed _____ calendar days from the date of the Notice to Proceed with the Project.

18) LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS

a) Any proposal received at the MAX offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the bidder unopened.

A proposal may be withdrawn in person by the bidder or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

19) DETERMINATION OF SUCCESSFUL PROPOSER

In determining the successful proposer, consideration is given to the proposer's qualification, content of proposal, and financial proposal as described in the evaluation criteria. The Contract award for this Project will be made to the proposer making the best and most advantageous offer to MAX, price considered.

20) BIDDER QUALIFICATIONS

In order to be eligible for award, bidders must be responsive and responsible.

(a) Responsive offers are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Bids or proposals which do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.

(b) Responsible bidders are those prospective Contractors who, at a minimum, must:

- 1) Have adequate financial resources, as required during performance of the Contract.
- 2) Are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

- 3) Have a satisfactory record of past performance.
- 4) Have necessary technical capability to perform.
- 5) Provide evidence satisfactory to MAX that the bidder will comply with the DBE requirements.
- 6) Certify that they are not on the U.S. Comptroller General's list of ineligible Contractors.
- 7) Are qualified as a manufacturer or regular dealer of the items being offered.
- 8) Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

All prospective bidders may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible Contractor. Refusal to provide requested information may cause rejection of the bid or proposal.

21) ACCEPTANCE OF PROPOSAL

Each proposal shall be submitted with the understanding that the acceptance in writing by MAX of the offer to furnish any or all goods or services described therein shall bind the bidder on his part to furnish and deliver at the proposal price, in accordance with the conditions of said accepted proposal and specifications

22) WITHHOLDING AWARD

This solicitation for bids or proposals does not commit MAX to award a contract, pay any costs incurred in preparation of bid or proposals in response to this solicitation, or to procure or contract for good or services. Bidder shall be responsible for all costs incurred as part of their participation in the pre-award process.

23) PROPOSAL ACCEPTANCE, REJECTION, AND POSTPONEMENT

MAX reserves the right to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the MAX Board deems to be in its best interest to do so, subject to the rules and regulations set forth by the U.S. Department of Transportation. Also, MAX reserves the right to accept an original offer or proposal without negotiation or without calling for a "best and final" offer.

24) USDOT/FTA CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project may be subject to review and concurrence by the U.S. Department of Transportation, Federal Transit Administration

25) SINGLE BID RESPONSE

If only one (1) bid is received in response to the Invitation for Bids, a detailed cost proposal may be requested of the single bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

26) DBE PARTICIPATION

In connection with the performance of this Contract, the successful bidder agrees to cooperate with MAX in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises (DBE). The policy and obligations for maximum utilization of DBE's are herein set forth:

- (a) Policy - It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or apart with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.
- (b) DBE Obligation - MAX or its Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, MAX or its Contractors shall take all necessary and reasonable steps in accordance with 49 CF, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. MAX and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

Requirements and goals for Disadvantaged Business Enterprise participation in this Project are as follows:

A minimum of one percent (1%) of the total contract price, as awarded, shall be established as a goal to be made available to certified DBE's. Compliance with the percentage goal may be fulfilled by DBE's performing as either:

- 1) A member of a joint venture as a prime contractor;
- 2) An approved subcontractor;
- 3) An owner-operator of equipment;
- 4) A renter of equipment to a prime contractor;
- 5) A firm manufacturing and supplying goods used in the project;
- 6) A firm supplying goods used in the project (when supplying goods, only sixty percent (60%) will be counted).

Prior to Contract award, the apparent successful bidder shall submit a written assurance of meeting the above goals and shall include names of DBE subcontractors, addresses of contact persons, a description of work to be performed and dollar values of each proposed DBE subcontract. This information shall be submitted on the attached "DBE Participation Form" furnished with this solicitation.

If the goals were not met, the bidder must demonstrate that sufficient good faith efforts were made to meet the DBE contract goals and shall document the steps he has taken to obtain DBE participation.

Failure to provide required documentation of good faith efforts may be reason for disqualification of the Bid / Proposal.

Bidder's good faith efforts will include the following actions:

- Soliciting through all reasonable and available means the interest of all certified DBE's who have the capability to perform work under the contract. This shall include attendance at pre-bid meetings, advertising and/or written notices. The Bidder shall allow sufficient time to allow the DBE's to respond to the solicitation.
- Selecting portions of the work to be performed by DBE's.
- Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiations in good faith with interested DBE's. It will be the responsibility of the bidder to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or materials consistent with the available DBE's. Evidence of negotiations shall include the names, addresses and telephone numbers of DBE's that were considered and a description of the information provided regarding the plans and specifications for the work selected for subcontractors, and evidence as to why additional agreements could not be reached for DBE's to perform the work.
- Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- Efforts to assist interested DBE's in obtaining bonding, lines of credit or insurance as required.
- Efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials or related assistance or services.
- Use of services of available minority/women community organizations; minority/women contractors' groups; local, state and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The prime contractor agrees not to terminate for convenience a DBE subcontractor, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without MAX's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor agrees to find another DBE subcontractor for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated.

27) DEBARMENT AND SUSPENSION

Bidders shall complete and submit as part of their bid, the Certification of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$25,000. The bidder shall also submit a list of subcontracts and subcontractors which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project. A Certification Of Lower-Tier Participants Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the bidder to MAX for each listed subcontractor prior to contract award.

During the term of the Contract the successful bidder will be required to immediately notify MAX of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

28) LOBBYING CERTIFICATION

Bidders shall complete and submit as part of their bid the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractors which will exceed \$100,000. A Certification of Restrictions on Lobbying shall be submitted by the bidder to MAX for each listed subcontractor prior to contract award.

29) PRODUCT DESCRIPTION

Bids or proposals must be accompanied by a comprehensive description of bidder's product. This description shall include drawings, overall dimensions and photographs which show the construction characteristics and explain the operation of the bidder's product. The descriptive literature shall also include information on design details, components, performance characteristics, methods of manufacture and assembly. The descriptive literature is required for the purpose of evaluation and award. Failure of the descriptive literature to show that the product proposed conforms to the specifications and other requirements of this solicitation may result in rejection of the bid or proposal. The quality of standard components not covered by the language of these specifications will be a factor in determining an award. No advantage shall be taken by the bidder or manufacturer in the omission of any part or detail which goes to make the product complete and ready for service, even though such part is not mentioned in this specification. All units or parts not specified shall be Contractor's standard units or parts and shall conform in materials, design and workmanship to the best practices known in the industry. All parts will be new and in no case will used, reconditioned or obsolete parts be accepted without prior review and written acceptance by MAX.

30) DEMONSTRATION

Bidder may be requested to demonstrate to MAX the capability of their proposed product to perform and function as herein called for by this specification. The demonstration shall be at no expense to MAX in compliance with provisions outlined in the technical specifications contained herein.

31) PAYMENT TERMS (NOT APPLICABLE)

MAX will make payment in accordance with the following payment schedule, unless specified elsewhere:

50% within 30 days of delivery
20% within 30 days of installation
30% within 30 day after acceptance

The contractor shall submit invoices to MAX prior to or upon delivery. Payment will not be made without an invoice. Partial payments do not constitute acceptance.

SECTION 7: CONTRACT PROVISIONS

1) DURATION OF CONTRACT

This Contract shall become effective on June 1, 2010 and shall remain in effect through September 30, 2014. This contract may be extended for up to five (5) additional one year extensions with the concurrence of both parties.

2) PROJECT STARTUP

The Contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice to Proceed by MAX.

3) PROJECT COMPLETION (MAX Board)

This Project shall be completed – **not applicable** – days after execution of this Contract by both parties and issuance of a Notice to Proceed by MAX.

4) PROJECT COMPLETION (Notice to Proceed)

This Project shall be completed – **N.A.** – days after Contract award by the MAX Board.

5) CONTRACT AMOUNT AND PAYMENT (Lump Sum)

MAX agrees to pay and the Contractor agrees to accept as payment in full the amount of \$ - **N.A.** - .

6) CONTRACT AMOUNT AND PAYMENT (Payment in Full)

MAX agrees to pay and the Contractor agrees to accept as payment in full the amounts shown in Exhibit – **N.A.** – Payment Schedule.

7) CONTRACT AMOUNT AND PAYMENT (Payment Schedule)

MAX agrees to make payments for this Project in accordance with the Payment Schedule included as Exhibit – **N.A.** –. The Contractor agrees to accept these amounts as payment in full.

8) PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by MAX or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instruction of these Contract requirements and specifications, or are not equal the samples submitted to and approved by MAX will be rejected and shall be replaced by the Contractor without delay.

**9) LIQUIDATED DAMAGES
(NOT APPLICABLE)**

In the event of delay in the completion of deliveries of _____
(Description of item or product)
beyond the dates specified in the Contract and not subject to the Contract's Unavoidable Delay provision, MAX shall assess, as liquidated damages, \$100.00 per calendar day. These damages shall be deducted from any monies due, or which may thereafter become due to the Contractor under this Contract. Further, the Contractor agrees that sums assessed as liquidated damages shall not be considered penalties but reflect the cost to MAX for _____
(state basis for determining damages)

10) AGREEMENT CHANGES

Additions, deletions or modifications to this Agreement may be made only in accordance with a written agreement between the parties, signed on behalf of MAX by its Executive Director of the Project Manager.

11) DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement shall be decided by the MAX Project Manager who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the MAX Project Manager shall be final, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with MAX Project Manager's decision

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

12) PATENT, TRADEMARK, COPYRIGHT, AND TRADE SECRET INFRINGEMENT

The Contractor warrants that the goods and services do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold MAX, its officers, agents, employees, trustees and its successors and assigns harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this Contract. MAX shall promptly notify the Contractor of any such claim. MAX makes no warranty that the production, sale or use of goods or services under this Contract will not give rise to any such claim and MAX shall not be liable to the Contractor for any such claim brought against the Contractor.

13) INDEMNIFICATION

The Contractor agrees to indemnify and hold MAX, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against MAX and from any and all damages, losses, expenses, attorneys' fees, costs and liabilities sustained by MAX arising out of any claimed defect in the goods or services supplied by the Contractor, any claimed improper manufacture, design, design drawings, specifications, materials or repairs provided by the Contractor pursuant to the Contract, and any claim by a third party for patent, trademark, copyright, or trade secret infringement. The Contractor's obligation under this paragraph shall include the obligation to indemnify and hold MAX harmless for its own negligence whether active, passive or concurrent, in the performance of MAX's duties and obligations pursuant to the Contract.

14) PATENT RIGHTS

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor shall notify MAX immediately and provide a detailed report. The right and responsibilities of MAX, the Contractor, and FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulation, policies and any waiver thereof.

15) RIGHTS IN DATA

The Contractor agrees to comply with the following provisions:

- a) The term "subject data" used in this section means recorded information, whether or not copyrighted that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations 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, MAX may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may MAX authorize other 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 CFR Part 18.34, the Government 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 subject data 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 MAX sub-recipient, or a third party contractor purchases ownership with Federal assistance.
 - c) When FTA provides assistance to MAX 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, unless FTA determines otherwise, the recipient of FTA assistance to support planning, research, development, or a demonstration financed under the Federal Transit Act as amended, understands and agrees that, in addition to the rights set forth in paragraph (b) (2) of this Agreement, FTA may make available to any FTA recipient, 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. In the event that the Project, which is the subject of the Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in paragraph (a) of this Agreement and shall be delivered as the Government may direct. Paragraph (a) of the Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for MAX's use which costs are financed with capital funds (Sections 3, 9, 16, 18 or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).
 - d) Unless prohibited by State law, MAX agrees to indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MAX 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. MAX shall not be required to indemnify the Government for any such liability arising out of the wrongful acts of employees or agents of the Government.

e) Nothing contained in this section 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.

Paragraphs (2)b, (2)c), and (2)d) of this Agreement do not apply to material furnished to MAX by the Government and incorporated in the work carried out under the Agreement; provided that such incorporated material is identified by MAX at the time of delivery of such work.

16) COVENANT AGAINST GRATUITIES

The Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of MAX with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of Contract.

17) ASSIGNABILITY

The terms and provisions of the contract documents shall be binding upon MAX and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without MAX's prior written consent. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval by MAX of the subcontractor.

MAX may assign its rights and obligations under the Contract to any successor to the rights and functions of MAX or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent MAX deems necessary or advisable under the circumstances.

18) PRICE WARRANTY AND COMMISSIONS

The price to be paid by MAX shall be that stated in this Contract which the Contractor warrants to be no higher than the Contractor's current prices on orders by others for goods similar to those covered by this Contract for similar quantities under similar conditions and methods of purchase. In the event the Contractor breaches this warranty, the prices of the items shall be reduced to the contractor's current prices on orders by others, or in the alternative at MAX's sole discretion. MAX may cancel this Contract without liability to the Contractor for breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of the warranty, MAX shall have the right in addition to any other rights, to cancel this Contract without liability and to deduct from the Contract price or otherwise recover from the Contractor the full amount of such commission, percentage, brokerage or contingent fee.

19) RECORD RETENTION

During the course of the Project and for three (3) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the Government may require. Reporting and record keeping requirements for governmental recipients are set forth in 49 CFR Part 18. Reporting and record keeping requirements for private nonprofit and for-profit recipients are set forth in OMB Circular A-110. Project close out does not alter these requirements.

20) CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall maintain such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from the Contractor's operations under the Contract, or from any subcontractor or anyone directly or indirectly employed by either of them. This insurance shall be written for not less than the limits specified below. MAX shall be named as additionally insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to MAX prior to termination, cancellation or reduction in coverage in the policy. Certificates of such insurance shall be filed with MAX prior to the start of the Contract.

(a) Worker's compensation insurance shall be in the amount and coverage required by the State of Michigan to protect it from claims under the Worker's Compensation Act and other employee benefit acts.

(b) General comprehensive liability insurance, including bodily injury and death, and property damage insurance in the minimum amount of \$1,000,000 per occurrence. Automobile liability and garage keepers liability, including bodily injury and property damage, insurance in the minimum amount of \$2,000,000 per occurrence.

21) UNAVOIDABLE DELAYS

If delivery of completed Project under this Contract should be unavoidably delayed, the MAX Project Manager will extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance; was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents; was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

22) NOTIFICATION OF DELAY

The Contractor will notify the Project Manager as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay completion of this Project. Within five (5) working days, the Contractor will confirm such notice in writing, furnishing as much detail as is available.

23) REQUEST FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the MAX Project Manager to make a decision on any request for extension. The MAX Project Manager will examine the request and any documents supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. The MAX Project Manager will notify the Contractor of the decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to damages or compensation, and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

24) CONTRACTOR'S REPRESENTATIVE

Prior to the start of Contract performance, the Contractor shall advise MAX in writing of the primary and alternate representatives (including phone numbers) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

25) MACATAWA AREA EXPRESS'S REPRESENTATIVES

Prior to the start of Contract performance, the MAX Project Manager will furnish a letter to the Contractor indicating the personnel who will represent MAX in the administration of this Contract to insure successful performance. Such letter shall include the specific duties of each individual and their limits of authority.

26) TERMINATION OF AGREEMENT

This agreement may be terminated for reasons of convenience or default.

- a) Termination For Convenience: MAX may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to or paid for by MAX, the Contractor will account for same, and dispose of it in the manner MAX directs.
- b) Termination For Default: If the Contractor does not deliver the complete Project in accordance with this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, MAX may terminate, revoke or rescind this Agreement for default. Termination, revocation or rescission shall be effected by

serving notice on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for the portions of the Project furnished, accepted, and found in compliance with the terms and conditions of this Agreement.

If it is later determined by MAX that the Contractor has an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the Contractor, MAX, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Termination, revocation or rescission of this Agreement for default shall not affect or impair any rights or claims of MAX to damages for breach of any covenants of this Agreement by the Contractor. Further, should the Contractor fail to comply with the conditions of the Agreement or fail to complete the specified work or furnish the specified services as stipulated in the Agreement, MAX reserves the right to purchase on the open market, or to complete the required work at the expense of the Contractor and to pursue all other recoveries available to MAX under Michigan law.

In the event of dispute under this agreement, MAX and the Contractor agree that proper venue for purposes of litigation shall be Ottawa County, Michigan.

28) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to receive any benefit therefrom.

29) DBE PARTICIPATION

The contractor, sub recipient or subcontractor shall not discriminate on the basis of 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy as MAX deems appropriate.

A minimum of 0 percent of the total contract price, as awarded, shall be awarded to certified DBE's by the Contractor.

30) DEBARMENT AND SUSPENSION

The Contractor agrees to comply with U. S. Department of Transportation regulations, "Government Debarment and Suspension (Nonprocurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the bidder to submit the Certification Of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matter for all projects when the total aggregate value of the Contract exceeds \$25,000 and to submit a Certification Of Lower Tier Participation Regarding Debarment, Suspension, And Other Ineligibility And Voluntary

Exclusions for each subcontractor which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project.

During the term of the Contract the Contractor agrees to immediately notify MAX of

- 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract,
- 2) any information that its certification or certification of its subcontractors was erroneous when submitted,
- 3) any information that certifications have become erroneous by reason of changed circumstances.

The Contractor shall submit with each request for payment a list of all subcontractors to this contract which have a financial interest in this Project which exceeds \$25,000 or have had a critical influence on or substantive control over the Project and submit evidence that the appropriate certificate has been submitted and that they remain valid.

MAX will not make payment to the Contractor or a subcontractor which

- 1) does not comply with this contract provisions, or,
- 2) is not in compliance with the above-cited federal requirements.

31) ENVIRONMENTAL, RESOURCE CONSERVATION AND ENERGY REQUIREMENTS

Environmental Protection. The Contractor agrees to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq.; section 14 of the Federal Transit Act, as amended, 49 USC app. §§ 1610; Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact And Related Procedures" at 23 CFR Part 771 and 49 CFR Part 622. Air Quality. The Contractor agrees to comply with applicable requirements of EPA regulations, "Conformity To State Or Federal Implementation Plans Of Transportation Plan, Programs, And Project Developed, Funded Or Approved Under Title 23 USC Or The Federal Transit Act", 40 CFR Part 51, Subpart T; and "Determining Conformity Of Federal Actions To State Or Federal Implementation Plans", 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP. EPA also imposes requirements pertaining to the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Contractor should be aware that the following EPA regulations, among others, may apply to its Project; "Control Of Air Pollution From Motor Vehicles And Motor Vehicle Engines", 40 CFR Part 85; "Control Of Air Pollution From New And In-Use Motor Vehicles And New And In-Use Motor Vehicle Engines: Certification And Test Procedures", 40 CFR Part 86; and "Fuel Economy Of Motor Vehicles", 40 CFR Part 600. Use Of Public Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State or local significance may be used for the Project unless specific findings required by 49 USC § 303 are made by U.S.DOT.

Historic Preservation. The Contractor agrees to assist the Government (FTA) to comply with section 106 of the National Historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation by:

- a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic And Cultural Properties", 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register Of Historic Places that may be affected by the Project, and notifying the Government (FTA) of the existence of any such properties; and,
- b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

Energy Conservation. The Contractor 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 USC §§ 6321 et seq.

Mitigation of Adverse Environmental Effects. Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 USC app. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 USC § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Agreement by reference. As soon as the Government and the Contractor reach agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.

32) LABOR PROVISIONS: NON-CONSTRUCTION CONTRACTS

Pursuant to regulations set forth in 29 CFR, Part 5, the Contractor agrees to comply with applicable labor provisions for non-construction contracts. Requirements for compliance are as follows.

- a) Overtime Requirements: No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

