

The logo features the word "MAX" in a large, bold, blue font with a green outline and a slight 3D effect. To its right, the words "Macatawa Area Express" are written in a smaller, blue, sans-serif font, stacked on two lines.

REQUEST FOR PROPOSAL #113
SMALL BUSES

Macatawa Area Express Transportation Authority
171 Lincoln Suite 20
Holland MI 49423
(616) 355-1010
Contact Person: Brian VanderHulst
b.vanderhulst@catchamax.org

Estimated Timeline:

Key Milestone:	Date:
Issue Date	March 20, 2019
Questions Due by 3:00 PM EST	April 3, 2019
Bid Due Date by 11:00 am EST	April 24, 2019
Anticipated Award Date	May 1, 2019

RFP Checklist for Bidder Proposal Contents and Responsiveness

This checklist is provided for your convenience to help remind you of the important requirements of the RFP. The list may not be all inclusive. The bidder is responsible to read the RFP and submit all the required responses. If you have any questions concerning these requirements please contact the Buyer listed on the front page of this RFP document.

Article 1 & Appendices:

_____ Responses have been provided for all items requested in Article 1, Statement of Work, as requested. Technical Proposal Requirements have been met and responses are included within the format designated by the State in Article 3.

_____ The Cost Model, for the project has been included in your proposal, according to the instructions laid out in Article 3 and using the format in Appendix A.

Article 2:

_____ Statement that a Certificate of Insurance will be provided as a condition of award has been included.

_____ Acknowledgment and concurrence with each term and condition listed in Article 2 of the RFP/RFP document has been provided within your proposal, with any comments or issues clearly identified.

Article 3:

_____ The complete proposal was submitted to the appropriate location and on time, with one signed original, the appropriate number of additional copies.

Article 4:

_____ Complete all items contained in Article 4, Certifications and Representations, initialing each paragraph requiring an initialed response, acknowledging each certification & representation, and providing all required information.

Article 5:

_____ Responses have been provided for all items requested in Article 5.

Other:

_____ The last page of this RFP document, titled "**SIGNATURE AUTHORITY**" and a copy of the Certifications & Representations have been signed by an individual authorized to legally bind your company and the original signature copy has been submitted.

_____ **Response to Appendix A - Cost Model/Evaluation Form**

_____ **Response to Federal Contract Clauses located in Appendix C**

_____ **Signed response to Article 1.0714 Affidavit for Driver Delivery**

_____ **Response to Appendix E – Model and Evaluation Form**

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DEFINITIONS

MAX or MAX Transit means Macatawa Area Express

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” has the meaning given in **Section 2.112**.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.244**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders

“Key Personnel” means any Personnel designated in **Section 2.062** as Key Personnel.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

“Recycling” means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

Article 1 – Statement of Work (SOW)

Note to bidders: Proposals must include detailed responses to all tasks as requested in Article 1 and provide all information requested in Article 4. Bidders should provide thorough responses to each task, or, when appropriate, state their agreement that the Bidder will provide the requested services. Bidders are encouraged to provide detailed responses in order to allow the Macatawa Area Express to fully evaluate the Bidder's capabilities.

Any communication by a potential Bidder in regards to this RFP with anyone other than the Buyer during the RFP process may result in disqualification and/or debarment.

Throughout this RFP, language referring to Contract or Contractor(s) refers to any Contract awarded from this RFP. This RFP in itself is not to be construed as a Contract.

1.010 Project Identification

1.011 Project Request

This is a Request for Proposal (RFP) for low floor cutaway buses with various floor plans. A minimum of one (1) bus and a maximum of forty seven (47) buses will be purchased. This is a formal request to prospective bidders to solicit bids or price quotations. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

Any awarded Contract(s) between the MAX and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

1.011-A Assignability

Any public agency (i.e., city, district, public authority, public agency, municipality, Human Service Agency and other political subdivision or any Federal Transit Administration-funded entity) shall have the option of participating in any award made as a result of this proposal at the same prices, and terms and conditions. MAX reserves the right to assign all or any portion of the vehicles awarded under this Contract including option quantities. This assignment, should it occur, shall be agreed to by MAX and the contractor. Once assigned, each agency will enter into its own contract and be solely responsible to contractor for obligations to the buses assigned. MAX's right of assignment will remain in force over the five (5) year period or until completion of the contract to include options, whichever occurs first. MAX shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the Contractor.

1.012 Background

This contract is for the purchase of the following low floor buses by Authorized Local Units of Government, local Public Transit Agencies, and nonprofit Human Service Agencies for the provision of public transportation services.

Wheelbase
26ft, 191"WB
29ft, 210"WB

1.020 Scope of Work and Deliverables

1.21 In Scope

This contract is for 26' and 29' low floor buses with various floor plans. Minimum quantities shall be one (1) bus (pilot model) up to a maximum of 52 buses. The successful Contractor will be required to furnish all such materials and services as may be ordered during the contract period. Quantities specified, are estimates based on prior purchases, and the Macatawa Area Express or any other agency listed in Appendix D are not obligated to purchase in these quantities. Orders for delivery will be issued directly to the Contractor by various authorized Local Units of Government, local Public Transit Agencies and Human Service Agencies.

Appendix D is a listing of these agencies which are authorized to order from this contract. The listing shall not limit participation of additional agencies/locations/States as the need may develop at the same prices, terms and conditions. However, written approval for additional agencies/location/States not on the attached list must be received by the Contractor from the Macatawa Area Express Director or her designee. The agencies listed in Appendix D may assign their quantities to other agencies in writing. A copy of this letter must be sent to the Macatawa Area Express Transportation Authority.

Bidder Response:

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1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

CUSTOMER SERVICE/ORDERING

Bidder shall discuss their ordering/customer service capabilities. This includes having the capacity to receive orders via mail, or e-mail. If mailed, a purchase order is considered “issued” when the order is placed in the mail. Contractors shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals place orders. The contractor shall verify orders that have quantities that appear to be abnormal or excessive.

When an order is placed by a transit authority, the contractor will compare the new order to the most recent previous order and provide the customer a report of any differences to verify. All orders will receive an “Acknowledgement” for final approval to start to build.

It is the preference of the Macatawa Area Express that the Contractor have an accessible customer service department with an individual specifically assigned to MAX accounts. It is the preference of the Macatawa Area Express that the Contractor shall have experienced sales representatives make timely personal visits to procurements under this RFP. The Contractor’s customer service must respond to agency inquiries promptly.

Any supplies and services to be furnished under a contract resulting from this Request for Proposal shall be ordered by issuance of a purchase order, unless otherwise defined within the RFP or contract resulting from this RFP. Orders for delivery will be issued directly to the Contractor by various authorized Local Units of Government, local Public Transit Agencies, or Human Service Agencies.

All purchase orders are subject to the terms and conditions of any contract resulting from this Request for Proposal. In the event of a conflict between a purchase order and the contract, the contract shall control.

Bidder Response:

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1.040 Project Plan

1.041 Project Plan Management

The contractor will carry out this project under the direction and control of authorized local units of government; local public transit agencies and Human Service agencies.

Although there will be continuous liaison with the contractor team, the client agency's project director will meet monthly as a minimum, with the contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the contractor in solving problems that arise.

The contractor will submit brief written quarterly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real and anticipated, which should be brought to the attention of the client agency' project manager; and notification of any significant deviation from previously agreed upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.

Within thirty (30) working days of the award the contract, the contractor will submit to the Macatawa Area Express for final approval a work plan, which must include the following:

- The contractor's project organizational structure.
- The contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposals. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the MAX.
- The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.
- The time-phased plan, in the form of a graphic display, showing each event, task, and decision point in your work plan.

Bidder Response:

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1.042 Reports

The Contractor shall be able to provide various reports, when requested. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, services compliance reports etc.

Bidder Response:

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1.050 Acceptance

1.051 Criteria

The following criteria will be used by the MAX to determine Acceptance of the Services or Deliverables provided under this SOW:

PRODUCTION SCHEDULE

For the delivery of all units that may be released against the contract the following shall apply:

Pre-Pilot Model Review Meeting at the Manufacture Facility, or at a mutually agreed upon location, shall be conducted within thirty (30) calendar days from the date of the Purchase Order/Contract Release Form.

Delivery of Chassis to the Body Contractor, after the Pre-Pilot Model Meeting, shall be within one hundred (120) days.

Pilot Model Inspection Meeting at the Contractors Facility, or a mutually agreed upon location, shall be within sixty (60) calendar days, after the delivery of the Chassis to the Body Contractor.

Pilot Model Inspections and Approvals, shall be completed by the MAX and/or receiving agency within thirty (30) calendar days after delivery of the pilot model by the ordering agency.

Exact Delivery Due Dates, will be determined by the delivery schedule, plus (+) seven (7) calendar days from issue dated indicated on the Purchase Order/Contract Release Form. Delivery shall be at the rate of one (1) unit per week minimum until completion of the Purchase Order/Contract Release Form.

BUS OPERATING INSTRUCTIONS

Instructions, either graphic or audio-visual (DVD), for operating the bus shall be included with the first bus delivered to each agency. The instructions shall clearly identify the controls, switches, gauges, and other instructions that bus drivers and/or operators use while the bus would be in service. Instructions shall also be included for the operation of the Lift Interlock System, entrance door, and vehicle engine compartment fluid level fill and check areas.

PRE-DELIVERY SERVICE AND CONDITIONS

Prior to delivery, each bus shall be serviced and inspected by the dealer or his agent. At a minimum, this pre-delivery service shall cover the specifications listed in the Macatawa Area Express Specifications. A copy of the contractor's inspection and service check, including the contractors and vehicle identification, check off of service and inspection performed and service manager's signature shall be furnished with each bus delivered. The bus's crank case, differential and transmission shall be filled to the manufacture's recommended capacity and fuel tank shall have a minimum of one-half of a tank of fuel when the bus arrives at the delivery destination. The bus shall be clean and free from defects when delivered.

Each unit shall have an initial fill of windshield washer solution with solvent giving winter protection.

The receiving departments and/or agencies have been instructed to make immediate inspection on receipt of units and to process payment documents promptly. Payment documents; however, will be delayed if the bus fails to comply with specification requirements. Therefore, we wish to impress on contract dealers that close pre-delivery inspection in accordance with specifications be made.

Bidder Response:

Bidder shall indicate their agreement with the production schedule listed above.

1.052 Final Acceptance

Final Acceptance is when the project is completed and functions according to the requirements listed above. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance.

The Macatawa Area Express; authorized local units of government; local public transit agencies and Human Service Agencies have the right to refuse bus delivery when the conditions listed above are not met.

1.060 Proposal Pricing

1.061 Proposal Pricing

Bidders shall include all pricing information in Appendix A – Cost Model.

Bidders are encouraged to offer quick payment terms (i.e. 2 % discount off invoice if paid within 10 days). This information can be noted on the bidder's price proposal and/or a separated attachment. This may be a factor considered in our award decision.

Contractor's out-of-pocket expenses are not separately reimbursable by the MAX.

1.062 Price Term

Agency to choose one of the following:

(X) Firm Fixed Price

Prices quoted are firm for the entire length of the Contract.

Prices are the maximum to be charged for the contract period with the following exceptions. The MAX, and other agencies, shall receive the benefit of any decreases in the cost incurred by the Contractor. If changes in the chassis manufacturers OEM standard equipment affect the cost of the buses required during the contract period by more than one hundred dollars (\$100.00), the prime contractor may request a price revision to reflect the actual cost experienced. The request for a cost increase must be accompanied by evidence from the chassis manufacturer that a change actually affected the prime contractor's cost. Additionally, it shall be the prime contractor's responsibility to inform the MAX; authorized local units of government; local public transit agencies; Human Service Agencies; in notify of its qualification for price reductions.

If changes in federal regulations affect the cost of the buses required during the contract period by more than one hundred dollars (\$100.00), the prime contractor may request a price revision to

reflect the actual cost increase experienced. The request must be accompanied by evidence that the change actually affected the prime contractor's cost.

Requests for price changes shall be received in writing at least 30 days prior to their effective date, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the contract may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

1.063 Title Fees

Prices include the cost of the title fees for each bus.

The **Title To** information for all orders will be as follows:

NAME OF AUTHORIZED LOCAL UNITS OF GOVERNMENT AND/OR LOCAL PUBLIC TRANSIT AGENCY

If the State of Michigan modifies the cost of vehicle titles during the contract period, either the state or the contractor may request of price adjustment to reflect the actual change.

1.064 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the MAX, the MAX is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The MAX may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.070 Commodity Requirements and Terms

Product Quality

1.0701 Specifications

Definite Specifications - All buses and/or services to be furnished hereunder shall conform to the specifications as noted in the "Request for Proposal" and/or copies of specifications attached. Descriptive literature that contains complete specifications or the complete specifications must be included with alternate bids.

Bidder Response:

Bidders are to complete all specification information located in Appendix A – Technical Specifications

1.0702 Alternate Bids

Bidders may offer alternate bids which are at variance from the express specifications of the Request for Proposal, and the MAX reserves the right to consider and accept such bids if, in the

judgment of the MAX Director, the alternate bid will produce deliverables and/or services equal to or better than those which would be supplied by following the express specifications of the quotation, and acceptance of the alternate bid is deemed to serve the best interest of the MAX. An alternate bid must clearly describe all variances from the express specifications. The MAX reserves the right to reject alternate bids. The decision of the MAX director is final and is not open to protest by bidders.

Bidder Response:

1.0703 Research and Development

Bidder shall discuss their ability to invest in new product development and research to stay current with ongoing demands.

Bidder Response:

1.0704 Quality Assurance Program

Bidders to provide details regarding any Quality Assurance Program(s) that are currently in place within their organization.

Bidder Response:

1.0705 Warranty for Products or Services

Bidders shall discuss all aspects of their warranty. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. Bidders shall also discuss how they will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process the MAX, authorized local units of government; local public transit agencies, and Human Service Agencies should follow to report warranty issues.

The prime contractor will be responsible for all materials and accessories used in the buses, whether the same is ready made or from an outside source; and this responsibility may not be transferred, conveyed, assigned to any other person, company, corporation or entity without the previous written approval of the Macatawa Area Express.

Extension of warranty and or other policy adjustments will be considered when constant maintenance is required or if replacement parts prove unsound. The MAX shall expect the manufacturer to have adequate stock of replacement parts available to service buses and to make delivery of all replacement parts to their dealers who may service buses. The prime contractor will be required to contact the MAX; authorized local units of government; local public transit agencies, and Human Service Agencies within ten (10) after receipt of contract to arrange procedures concerning the implementation of warranty claims and to designate personnel to handle claims.

The MAX further expects that warranty service and repairs as well as non-warranty service and repairs will be handled without prejudice.

Bidder Response:

--

1.0706 Training

Bidders shall discuss their training capabilities and the training to be included in the Contract. The Contractor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Contractor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor shall also provide agency training jointly with the MAX; local units of government; and local transit agencies as needed during the period covered by the contract at no additional charge.

Bidder Response:

--

1.0707 Special Programs

The MAX is interested in any other special programs that vendor's may have. Please discuss these programs, such as return policies, trade-in programs allowing the return of new product not needed, quantity discounts, etc.

Bidder Response:

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1.0708 Security - Deleted

Bidder Response:

--

1.0709 Delivery Capabilities

Time Frames

It is requested that all orders be delivered within two-hundred and ten (210) calendar days after receipt of order. However, vendors shall discuss in detail the various delivery programs available. The MAX is interested in both a standard delivery program and a quick-ship program. Please discuss the delivery time associated with each program, as well as if there are quantity and other limitations for the quick ship program.

Bidder Response:

--

1.0710 Minimum Order

It is requested that the minimum order is one (1).

Bidder Response:

--

1.0711 Packaging

The bidder is requested to provide packaging that most closely meets these packaging sizes. However, bidders can submit alternates. The MAX reserves the right of final approval on packaging offered by the bidder.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of MAX and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

Bidder Response:

--

1.0712 Palletizing

Deleted – Not Applicable

Bidder Response:

--

1.0713 Delivery Term

Prices shall be quoted "F.O.B. Delivered To Destination" with transportation charges prepaid on all orders of (1) one or more to the MAX, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing (or on second page of the ITB).

Other F.O.B. terms will not be accepted and shall disqualify a bidder from further consideration.

DRIVER DELIVERY

Contractors will be permitted to drive buses to final destinations in compliance with the "Affidavit for Driver Delivery" attached, however, the affidavit must be completed, submitted, and in the contract file within Purchasing Operations to be applicable.

Delivery must be made between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday ONLY, Excluding Holidays.

Bidder Response:

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1.0714 Affidavit for Driver Delivery

Buses may be driven to the final delivery destination if the following conditions are met:

1. The drivers of the buses are correctly licensed and trained in proper vehicle operation.
2. The dealership accepts all responsibility and liability for buses in transit.
3. The requesting contractor must sign the affidavit below and submit this with the bid.

The contractor accepts all responsibility and liability for buses in transit and guarantees the buses shall be transported in a safe, proper, and efficient manner.

I understand that the MAX may cancel approval of this affidavit at any time during the contract if the contractor fails to meet the above obligations.

Signed	Date
Title	
Contractor	

(This signature on this statement applies to this statement only, the RFP form must be signed to be considered for award.)

1.0715 Contract Performance

Indicate if the Bidder has had a contract terminated for default in the last three years. Termination for default is defined as notice to stop performance which was delivered to the Bidder due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and determined that the Bidder was in default. If the Bidder has not had a contract terminated for default, the Bidder must affirmatively state this under "Reason" below.

If no the terminations exist, the Bidder must affirmatively state this.

Note: If the Bidder has had a contract terminated for default in this period, the Bidder must submit full details including the other party's name, address, and phone number Purchasing Operations will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past experience.

Termination: _____

Reason: _____

1.0716 Place of Performance

Bidders, in the performance of any resulting contract, must state if they intend to use one or more plants or facilities located at a different address from the address indicated in section 4.011. The following information must be provided for these plants or facilities:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

1.0717 Environmental Requirements

Energy Efficiency Purchasing Policy – The MAX shall seek wherever possible to purchase energy efficient products. This may include giving preference to U.S. Environmental Protection Agency (EPA) certified ‘Energy Star’ products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable bids.

Environmental Purchasing Policy – The MAX has committed to encourage the use of products and services that impact the environment less than competing products. This can be best accomplished by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that may be considered in Best Value Purchasing evaluation include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bio-accumulative. Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

I. Recycled Content and Recyclability

A. Recycled Packaging. Bidders may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Bidders offer packaging which:

- a. is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard)
- b. minimizes or eliminates the use of polystyrene or other difficult to recycle materials
- c. minimizes or eliminates the use packaging and containers and, in the alternative, minimizes or eliminates the use of non-recyclable packaging and containers
- d. provides for a return program where packaging can be returned to a specific location for recycling
- e. contains materials which are easily recyclable in Michigan.

All Bidders are requested to indicate below an estimate of the percentage of recycled materials, if any, contained in each item bid. Higher percentages of recycled materials are preferred. Product performance is paramount, whether containing recycled material or not; however, preference will be given to products that perform up to specification and are environmentally preferable without compromising quality.

_____ % (Total estimated percentage of recovered material)

_____ % (Estimated percentage of post-consumer material)

_____ % (Estimated percentage of post-industrial waste)

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

_____ (Initial)

II. Materials Identification and Tracking

A. Hazardous Material Identification. 'Hazardous material', as used in this clause, includes any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the contract).

(1) The bidder must list any hazardous material, as defined in §370.20 (a) of 40 CFR, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, enter 'None')	Identification Number

(2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(3) The apparently successful bidder agrees to submit, for each item as required prior to award, a Material Safety Data Sheet for each hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Section 312 of the federal Emergency Planning and Community Right-to-Know Act, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.

B. Mercury Content. It is the clear intent of state agencies to avoid purchasing products that contain intentionally-added mercury whenever possible. Bidders shall offer mercury-free product alternatives whenever available. Should mercury-free alternatives not exist, as presently is the case with a few select products and devices such as fluorescent lamps or where the alternative is not yet cost competitive, such as dental amalgam, bidders shall offer the lowest mercury content available for a given application. Bidders shall disclose whenever products contain added-mercury by using the following format.

() Product contains added-Mercury (attach an explanation that includes: the amount or concentration

of mercury and justification as to why this particular product is essential).

In addition, the Bidder shall also ensure that all products to be purchased containing intentionally added-mercury shall be labeled as: “product contains mercury/recycle or dispose of properly.” For instances where space constraints limit the amount or size of print, the chemical symbol “Hg” followed by a picture of a trash container with a diagonal line through it shall suffice for labeling requirements.

BIDDERS PLEASE NOTE: Michigan Law prohibits the sale of mercury-containing thermostats, thermometers, sphygmomanometers (blood pressure monitors) and other types of medical devices. For specific details visit: http://www.michigan.gov/deq/0,1607,7-135-3307_29693_4175-160230--,00.html

C. Brominated Flame Retardants (BFR). Bidders shall disclose whether the products being offered contain toxic flame retardants. Bidders are encouraged to provide BFR-free alternatives when available.

() Product does not contain BFR’s

() Product does contain BFR’s (attach an explanation)

D. Ozone Depleting Substances

‘Ozone-depleting substance’, as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydro-chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

‘Warning: Contains (or manufactured with, if applicable) _____ (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.’

A. Clean Air and Water

Vendor certifies that any facility to be used in the performance of this contract has all the necessary environmental permits and is in consistent compliance with all applicable environmental requirements and has no outstanding unresolved violations.

The vendor will immediately notify the state, before award, of the receipt of any communication from the Environmental Protection Agency or any state environmental agency, of civil or criminal enforcement for any facility that the vendor proposes to use in the performance of this contract.

_____ (Initial)

B. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the bidder certifies that:

(1) The owner or operator of each facility that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.).

EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.

(2) The owner or operator of each facility that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

_____ (Initial)

1.0718 Subcontractors

Indicate below **ALL** work to be subcontracted under any resulting Contract (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor's name and principal place of business (City and State)

1.0719 Reports and Meetings

[Any Mandatory Reports or Meetings should be included in the Statement of Work]

- (a) Reports.
 - Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the MAX. Such reports may include:
 - (i) Separately address Contractor's performance in each area of the Services;
 - (ii) For each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
 - (iii) Explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
 - (iv) Describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
 - (v) Include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
 - (vi) Provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
 - (vii) Set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
 - (viii) Include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
 - (ix) Set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the MAX and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the MAX desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

1.080 Additional Requirements

The resulting contract(s) will be made available to other Human Service Agencies in addition to transit authorities and other local units of government.

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of five (5) years beginning on the date of the bid award. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.130**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Renewal(s)

This Contract may not be renewed.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the MAX Director. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the MAX assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the MAX Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

As authorized by the Macatawa Area Express, local units of government, local public transit agencies, and Human Service agencies will issue a written Purchase Order to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order apply unless they are also specifically contained in that Purchase Order's accompanying Statement of Work.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one agency and if the Deliverable/Service does not meet the form, function, and utility required by that agency, that agency may, subject to purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Macatawa Area Express Transportation Authority. The Macatawa Area Express Director or her designee is the sole point of contact with regard to all procurement and contractual matters relating to the Contract. The Macatawa Area Express **is the only office authorized to change,**

modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract. The Contractor Administrator within Purchasing Operations for this Contract is:

Elisa Hoekwater, Director
Macatawa Area Express
171 Lincoln Suite 20
Holland MI 49423
e.hoekwater@catchamax.org
616-928-2486

2.022 Contract Compliance Inspector (CCI)

After MAX receives the properly executed Contract, it is anticipated that the Director will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by MAX.** The Contract Compliance Inspector for this Contract is:

Brian VanderHulst
Macatawa Area Express (MAX)
171 Lincoln, Suite 20
Holland MI 49423
b.vanderhulst@catchamax.org
(616) 928-2476

2.023 Project Manager

The following individual will oversee the project:

Brian VanderHulst/Procurement Specialist
Macatawa Area Express
bvanderhulst@catchamax.org
PH: (616) 928-2476

Note to Bidders: Please do not contact the agency during the bid process. Contact with anyone other than the buyer may result in disqualification of the bidder's proposal.

2.024 Change Requests

The MAX reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the MAX to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the MAX would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the MAX, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the MAX must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with

Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a “Contract Change Notice”).

(b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Macatawa Area Express.

(c) If the MAX requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the MAX that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the MAX before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the MAX, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iii) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

MAX:

Macatawa Area Express
Brian VanderHulst
171 Lincoln Suite 20
Holland MI 49423

-

Contractor:
Name TBD
Address TBD

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor’s behalf within the bounds set forth in the table. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the MAX and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the MAX for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the MAX may assign the Contract to any other transit agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The MAX may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the MAX's likelihood of receiving performance on the Contract or the MAX's ability to recover damages.

(b) Contractor may not, without the prior written approval of the MAX, assign its right to receive payments due under the Contract. If the MAX permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the MAX in writing at least 90 days before the assignment. The Contractor also must provide the MAX with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written MAX approval, and then only in accordance with the explicit written instructions from the MAX. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the MAX and then only to persons designated.

2.032 Contract Distribution

MAX retains the sole right of Contract distribution to all local units of government, local transit authorities, and Human Service Agencies unless other arrangements are authorized by Purchasing Operations.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The MAX must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The MAX is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the MAX has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the MAX.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The MAX reserves the right to disqualify any bidder if the MAX determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the MAX recognize that the MAX provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the MAX with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The MAX may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the MAX, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the MAX shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

The contractor shall submit two (2) copies of invoices, one (1) to the "Bill To" address and one (1) the "Ship To" address.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the MAX any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by local units of government, local transit agencies and Human Service agencies to the Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective

or substandard. Contractor's acceptance of final payment by the local units of government, local transit agencies, and Human Service Agencies under this Contract shall constitute a waiver of all claims by Contractor against the local units of government, local transit agencies, and Human Service Agencies for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Section omitted.

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a MAX-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the MAX as if they were employees of Contractor for this Contract only; however, the MAX understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The MAX will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the MAX of the proposed assignment, will introduce the individual to the appropriate MAX representatives, and will provide the MAX with a resume and any other information about the individual reasonably requested by the MAX. The MAX reserves the right to interview the individual before granting written approval. In the event the MAX finds a proposed

individual unacceptable, the MAX will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the MAX. The Contractor's removal of Key Personnel without the prior written consent of the MAX is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the MAX receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the MAX must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the MAX to be a material breach of the Contract, in respect of which the MAX may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the MAX does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the MAX's Request

The MAX reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the MAX, to be unacceptable. The MAX's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the MAX's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the MAX exercises this right, and the Contractor cannot immediately replace the removed personnel, the MAX agrees to an equitable adjustment in schedule or other terms that may be affected by the MAX's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the MAX, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at MAX facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at local units of government, local public transit agencies, and Human Service Agencies facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with MAX personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on MAX property by wearing a MAX-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with MAX personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the MAX and its agents and other contractors. As reasonably requested by the MAX in writing, the Contractor will provide to the MAX's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The MAX acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to

unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the MAX will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The MAX reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the MAX, in writing, prior to such change.

2.068 Contractor Return of State Equipment/Resources

The Contractor must return to the MAX any MAX-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the MAX, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The MAX will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 MAX Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless MAX Director or her designee has given written consent to such delegation. The MAX shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the MAX, to be unacceptable. The MAX's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the MAX's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the MAX exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the MAX will agree to an equitable adjustment in schedule or other terms that may be affected by the MAX's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the MAX, the applicable SLA for the affected Work will not be counted in time agreed upon by the parties.

2.073 Subcontractor bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the MAX. The MAX reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the MAX. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not

subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the MAX and Contractor, the MAX will not be obligated to direct payments for the Services other than to Contractor. The MAX's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the MAX as of the execution of this Contract, together with a copy of the applicable subcontract.

2.074 Flow Down

Except where specifically approved in writing by the MAX on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 MAX Responsibilities

2.081 Equipment

The MAX will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The MAX must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at MAX facilities (collectively, the "MAX Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the MAX Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the MAX, use any MAX Facilities or access any MAX information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the MAX.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the MAX may investigate the Contractor's personnel before they may have access to MAX facilities and systems. The scope of the background check is at the discretion of the MAX and the results will be used to determine Contractor personnel eligibility for working within MAX facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the MAX and will be reasonably related to the type of work requested.

Contractor personnel will be expected to agree to the MAX's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the MAX. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the

individual to the MAX as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the MAX will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the MAX in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements

Deleted – Not Applicable

2.100 Confidentiality

2.101 Confidentiality

Contractor and the MAX each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, “Confidential Information” of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the MAX as defined below) which is marked confidential, restricted, proprietary or with a similar designation. “Confidential Information” of the MAX must mean any information which is retained in confidence by the MAX (or otherwise required to be held in confidence by the MAX under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the MAX under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. “Confidential Information” excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The MAX and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the MAX will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the MAX's request, any employee of Contractor and of any Subcontractor having access or continued access to the MAX's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the MAX that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.080** will not apply to any particular information which the MAX or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.080** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the MAX shall have the right to reject goods or retain the goods and correct the defects. The Contractor shall pay authorized local units of government; local public transit agencies; and Human Service Agencies for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The authorized local units of government; local public transit agencies; and Human Service Agencies have the authority to dispose of goods without further liability to the authorized local units of government; local public transit agencies, and Human Service Agencies in the event the Contractor fails to make arrangements within the specified time period.

The MAX's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the MAX's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the MAX's representatives.

Pilot model and plant inspections, the contractor, shall allow the following:

1. Conductions of a **pre-pilot model review meeting** at the manufacturer’s facility, or a mutually agreed upon location (one (1) per contract period).
2. Conduction of a **pilot model inspection and mid-production inspection** at the manufacturer’s facility, or a mutually agreed upon location (one (1) per contract period).
3. Contract shall allow for **periodic production/plant inspections** by the Macatawa Area Express.

Final inspection will be made at a site(s) as agreed upon by the contractor and the authorized local units of government; local public transit agencies; and Human Service Agencies. The bidder shall be capable of handling final inspection and corrections required by the MAX prior to acceptance of the buses after a contract is awarded. A copy of the dealer agreement between the Bus Manufacturer and the designated dealer will be required as part of the bid.

NOTE: Contractor Responsible for Travel Expenses

The contractor WILL BE responsible for transportation (air fare, rail fare, car rental, taxi, or mileage), lodging, parking expenses, meals, and tips for up to two (2) individuals, as determined by the authorized local units of government, local public transit agencies and Human Service Agencies for involvement in any of the above pilot model review or plant inspections. All travel expenses shall be based on the Michigan Department of Management and Budget, Vehicle and Travel Services travel rates.

https://www.michigan.gov/documents/dtmb/Travel_Rates_FY18-19_002_636169_7.pdf

Bidder Response:

2.112 Examination of Records

All bidders will be subject to the Federal Transportation Administration’s (FTA) 49 DFR Part 663 for Pre-Award and Post Delivery Audits of Rolling Stock Purchases. Prior to final award recommendation of a contract, the MAX will conduct a pre-award audit of the contractor that is being considered to verify that the contractor has successfully met all of the following requirements:

1. Federal Motor Vehicle Safety Requirements
2. Federal Buy American Requirements, and
3. Grantee’s Bid Specifications. Post-Delivery Audits shall include a “Road Test” of each unit.

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the MAX may examine and copy any of Contractor’s books, records, documents and papers pertinent to establishing Contractor’s compliance with the Contract and with applicable laws and rules. The MAX must notify the Contractor 20 days before examining the Contractor's books and records. The MAX does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the MAX will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the MAX must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

- (a) If the audit demonstrates any errors in the documents provided to the MAX, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties and Equipment

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the MAX by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the MAX the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the MAX under this Contract, nor their use by the MAX, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the MAX (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold

by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the MAX or its designees, or afford the MAX the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the MAX under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the MAX about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the MAX would be influenced. Contractor must not attempt to influence any MAX employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the MAX as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the MAX by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the MAX or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the MAX or any of its departments that was terminated by the MAX or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the MAX, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor shall, in providing goods to the MAX, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

- A. Principle Period of Maintenance (PPM) will be the same hours as the MAX's normal working hours (currently Monday through Friday, 8:00 A.M. to 4:00 P.M., excluding a one (1) hour lunch period, excepting MAX observed holidays).
- B. The PPM hours may be changed upon thirty (30) days written notice by mutual agreement, except the Contractor shall make every reasonable effort to change his/her schedule in a shorter period of time.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the authorized local units of government; local public transit agencies, and Human Service Agencies for a period of one year commencing upon the first day following Final Acceptance.

Within five (5) business days of notification from the authorized local units of government; local public transit agencies, and Human Service Agencies, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the authorized local units of government; local public transit agencies; and Human Service Agencies any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

All warranty work must be performed at a mutually agreed upon location between the contractor and authorized local units of government, local public transit agencies, and Human Service Agencies.

2.126 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the MAX.

2.127 Equipment Installation

Non-Factory Installed Equipment

All bidders should provide a listing of equipment to be furnished that is not installed at the point of bus manufacture. The list of non-factory installed equipment should identify the item number(s) to which it applies and list the description of equipment involved. This information should be returned with the bid document to Purchasing Operations on the bid opening due date and time. However, if returned separately, it must be received by the Purchasing Operations on or before the bid opening due date and time, and must comply with the sealed bid instructions as outlined on the cover page of the RFP.

Optional Equipment and Accessories

Factory equipment not specifically listed in the contract and/or bus specifications may be added in accordance with the current Kelley Blue Book in effect at the time of order, using the Dealer Cost Column. Authorized local units of government, local public transit agencies, and Human Service Agencies may implement such changes on a direct basis with the contractor.

2.128 Prohibited Products

The MAX will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any MAX agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the MAX. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change order pursuant to **Section 2.024**.

2.129 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the MAX from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the Macatawa Area Express, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the MAX.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the MAX, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the MAX must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked below:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit

The Contractor must list the Macatawa Area Express, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the Macatawa Area Express, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured

authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- 4. Employers liability insurance with the following minimum limits:
 - \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

- 5. Employee Fidelity, including Computer Crimes, insurance naming the MAX as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the MAX has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to MAX, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must

be on the standard “accord” form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the MAX Director or her designee. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the MAX and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the MAX approves the representation of the State by the insurer’s attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the MAX’s written consent, then the MAX may, after the MAX has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The MAX may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the MAX.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the MAX from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys’ fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the MAX from any claim, loss, or expense arising from Contractor’s breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the MAX, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker’s disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the MAX from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the MAX to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the MAX's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the MAX the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the MAX's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the MAX with appropriate credits to the MAX against the Contractor's charges and reimburse the MAX for any losses or costs incurred as a consequence of the MAX ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the MAX for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the MAX; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the MAX; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the MAX receives notice of the action or proceeding involving a claim for which it will seek indemnification, the MAX must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the MAX relating to any claim, the Contractor must notify the MAX in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the MAX receiving Contractor's Notice of Election, the MAX is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the MAX in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the MAX is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the MAX about the status and progress of the defense; (ii) the

Contractor must, at the request of the MAX, demonstrate to the reasonable satisfaction of the MAX, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the MAX about the status and progress of the defense and must obtain the prior written approval of the MAX before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the MAX has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the MAX may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the MAX's receipt of Contractor's information requested by the MAX under clause (ii) of this paragraph if the MAX determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the MAX the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the MAX, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the MAX under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the MAX as provided above, the MAX may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the MAX, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the contract, and the MAX in its sole discretion determines that the breach is curable, then the MAX will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the MAX determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The MAX may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the MAX

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the MAX in terminating this Contract, including but not limited to, MAX administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the MAX may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the MAX chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the MAX must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the

termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the MAX terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The MAX may terminate this Contract for its convenience, in whole or part, if the MAX determines that a termination is in the MAX's best interest. Reasons for the termination must be left to the sole discretion of the MAX and may include, but not necessarily be limited to (a) the MAX no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the MAX, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the MAX. The MAX may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the MAX chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the MAX to effect continued payment under this Contract are not appropriated or otherwise made available, the MAX must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The MAX must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the MAX receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the MAX may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the MAX may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the MAX terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the MAX must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the MAX, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the MAX in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The MAX may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The MAX may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the MAX will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the MAX terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the MAX may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the MAX, (d) transfer title in, and deliver to, the MAX, unless otherwise directed, all Deliverables intended to be transferred to the MAX at the termination of the Contract and which are resulting from the Contract (which must be provided to the MAX on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the MAX terminates this Contract before its expiration for its own convenience, the MAX must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the MAX, becomes the MAX's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the MAX is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the MAX.

(c) Upon a good faith termination, the MAX may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the MAX may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor- Deleted – Not Applicable

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the MAX terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the MAX to assist in the orderly transition of equipment, services, software, leases, etc. to the MAX or a third party designated by the MAX. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 120 days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

The Contractor must work with the MAX, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the MAX, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the MAX requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the MAX to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the MAX, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the MAX with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the MAX. The Contractor will deliver to the MAX any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the MAX.

2.174 Contractor Software Transition

The Contractor must reasonably assist the MAX in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the MAX transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the MAX at their current revision level. Upon notification by the MAX, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the MAX. The Contractor will prepare an accurate accounting from which the MAX and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the MAX agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the MAX and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The MAX may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.150**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the MAX must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the MAX cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the MAX decides the facts justify the action, the MAX may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.130**, and the MAX will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the MAX is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.150**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the MAX and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the MAX is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

- (a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the MAX Director or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the MAX must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated MAX and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within 60 calendar days, the Director or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the MAX's final action and the exhaustion of administrative remedies.
- (b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.163**.
- (c) The MAX will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the MAX and Contractor will not be subject to the provisions of **Section 2.162** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976

PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the MAX must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the MAX, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the MAX may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the MAX, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ottawa County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non-conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.214 Applicable Statutes

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

All applicable Federal Motor Vehicle Safety Standards

All applicable Michigan Motor Carrier Vehicle Codes

Michigan Consumer Protection Act MCL §§ 445.901-445.922

Michigan Uniform Commercial Code (MIUCC) MCL 440 (All section unless otherwise altered by agreement)

Michigan OSHA MCL §§ 408.1001 – 408.1094

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551-408.558, 408.471-408.490, 1965 PA 390.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.
Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
The Civil Rights Act of 1964, USCS Chapter 42
Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
Department of Civil Service rules and regulations
Persons with disabilities Civil Rights Act MCL §§ 37.11.01, et seq.
The Americans with Disabilities Act (ADA), 43 USCS §§ 12101 et seq.
Business Opportunity Act for Persons with Disabilities MCL §§ 450.791-450.795
The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
The Fair Labor Standards Act (FLSA), 29 USC §§ 651 et seq.
Title VII, 42 USCS §§ 2000e et seq.
MCL §§ 423.321, et seq.
MCL § 18.1264 (law regarding debarment)
Internal Revenue Code
Rules and regulations of the Environmental Protection Agency
Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
Pollution Prevention Act of 1990 (PPA) 42 USC § 13106
Sherman Act, 15 USCS § 1 et seq.
Robinson-Patman Act, 15 USCS § 13 et seq.
Clayton Act, 15 USCS § 14 et seq.
Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
Davis-Bacon Act (DBA) 40 USC § 37276(a), et seq.
FTA Clauses (Rolling Stock), 49 U.S.C. 5323(j) and 49 CFR Part 661 (COPY ATTACHED – SEE APPENDIX C).

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the MAX is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The MAX's liability for damages to the Contractor is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a

governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the MAX under this Section, or of which the MAX otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(i) The ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or

(ii) Whether Contractor (or a Subcontractor) in performing Services for the MAX is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the MAX all reasonable assurances requested by the MAX to demonstrate that:

(a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify the MAX Director or designee.

(2) Contractor must also notify the MAX Director or designee within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify MAX Director or designee within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Deleted – Not Applicable

2.233 Bankruptcy

The MAX may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

(a) The Contractor files for protection under the bankruptcy laws;

(b) An involuntary petition is filed against the Contractor and not removed within 30 days;

(c) The Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) The Contractor makes a general assignment for the benefit of creditors; or

(e) The Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the MAX.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.211(a)**, Contractor must notify the MAX in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the MAX of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the MAX in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the MAX's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the MAX.

2.242 Service Level Agreements (SLAs)

Deleted – Not Applicable

2.243 Liquidated Damages

- A. The Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, Human Service Agencies and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies and Human Service Agencies actual damages to the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, Human Service Agencies and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies as a result thereof. Accordingly, in the event of such damages, at the written direction of the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies states the indicated amount as liquidated damages, and not as a penalty. Amounts due the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies from any money payable to the Contractor pursuant to this Contract. The Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies will notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies deducts such sums from money payable to the Contractor. No delay by the Macatawa Area Express; Authorized Local Units of

Government, local Public Transit Agencies, and Human Service Agencies in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

- B. The Contractor shall not be liable for liquidated damages when, in the opinion of the Macatawa Area Express; Authorized Local Units of Government, local Public Transit Agencies, and Human Service Agencies for incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.
- C. Liquidated damages will be assessed as follows:

If the contractor does not deliver the vehicle/s, ready for use on or before the scheduled delivery date, the contractor shall pay to the Macatawa Area Express, Human Service Agencies, local public transit authority and/or Local Unit of Government, as fixed and agreed, liquidated damages, for each calendar day between the delivery date specified and the date of final delivery, but not more than 30 calendar days in lieu of all other damages due to such non-delivery, an amount of 1/10th of 1% of the Purchase Order/Departmental Contract Release Form unit cost per vehicle.

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the Macatawa Area Express; authorized local units of government; local public transit agencies, and Human Service Agencies determines that performance is not likely to be resumed within a period of time that is satisfactory to the Macatawa Area Express; authorized local units of government; local public transit agencies, and Human Service Agencies in its reasonable discretion, then at the MAX's option: (a) the MAX may procure the affected Services/Deliverables from an alternate source, and the MAX, authorized local units of government, local public transit agencies, and Human Service Agencies are not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the MAX may terminate any portion of the Contract so affected and

the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the MAX may terminate the affected Statement of Work without liability to Contractor as of a date specified by the MAX in a written notice of termination to the Contractor, except to the extent that the MAX must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the MAX, authorized local units of government, local public transit agencies, and Human Service Agencies as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the Macatawa Area Express; authorized local units of government; local public transit agencies, and Human Service Agencies within an individual order, the following must be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every authorized local units of government, local public transit agencies, or Human Service Agencies unless otherwise stated in the SOW. Specific locations will be provided by upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to local units of government, local public transit agencies, State, or Human Service Agency locations, the local units of government, local public transit agencies, or Human Service Agencies must examine all packages. The quantity of buses delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a local unit of government, local public transit agency, MAX Location, or Human Service Agency must be opened by the local units of government, local public transit agencies, or Human Service Agencies and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection.

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the MAX-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

- (a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the Macatawa Area Express the Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its

specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the Macatawa Area Express; local units of government; local public transit agencies, and Human Service Agencies, the Contractor must certify to the Macatawa Area Express; authorized local units of government; local public transit agencies, and Human Service Agencies that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the MAX's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a local unit of government, local public transit agency, State Location, or Human Service Agency then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the MAX that the Deliverable is in a suitable state of readiness for the MAX's review and approval. To the extent that testing occurs at local unit of government, local public transit agency, MAX and Human Service Agency locations, the Macatawa Area Express; authorized local units of government; local public transit agencies and Human Service Agencies are entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the MAX, according to the following procedures. Formal approval by the MAX requires the MAX to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the MAX with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The MAX's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the MAX may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the MAX determines that the Deliverable/Service has material deficiencies, the MAX may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the MAX receives the Deliverable or the Service begins, and the MAX and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certified by the Contractor.

(d) The MAX will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The MAX may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the MAX elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of MAX approval.

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the MAX may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the MAX's general expenses provided the MAX can furnish proof of the general expenses; or (iii) terminate the

particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the MAX cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior MAX Review Period.

(f) The MAX, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the MAX may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process for Approval of Written Deliverables

The MAX Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the MAX Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the Review Periods will be doubled if the MAX has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the MAX. The MAX agrees to notify Contractor in writing by the end of the Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the MAX's election, after approval of the Deliverable). If the MAX notifies the Contractor about deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the MAX. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the MAX will have a reasonable additional period of time, not to exceed the length of the original Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The MAX agrees to notify the Contractor in writing by the end of the Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the MAX's election, after approval of the Service). If the MAX delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the MAX. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the MAX will have a reasonable additional period of time, not to exceed the length of the original Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The MAX agrees to notify the Contractor in writing by the end of the Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the MAX's election, after approval of the Deliverable). If the MAX delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the MAX. The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected

Deliverable from the Contractor, the MAX will have a reasonable additional period of time, not to exceed the length of the original Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, “Final Acceptance” of each Deliverable must occur when each Deliverable/Service has been approved by the MAX following the Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the MAX will pay for all Services provided during the Review Period that conformed to the acceptance criteria.

2.260 Ownership

Deleted – Not Applicable

2.270 State Standards

2.271 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State of Michigan’s existing technology standards at:

https://www.michigan.gov/documents/dtmb/180000001284_636092_7.pdf

2.272 Acceptable Use Policy

Deleted

2.273 Systems Changes

Deleted

2.280 Extended Purchasing

2.281 MiDEAL

Deleted

2.282 State Employee Purchases

Deleted – Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy – The MAX seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified ‘Energy Star’ products for any category of products for which EPA has established Energy Star certification. For other purchases, the MAX may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The Macatawa Area Express is committed to encouraging the use of products and services that impact the environment less than competing products. The MAX is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those

toxic chemicals which are persistent and bio-accumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The MAX must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the MAX must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the MAX is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the MAX in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the MAX will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The MAX must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the MAX must terminate the affected Work for the MAX's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the MAX, the Contractor must resume Work as directed in writing by the MAX. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the MAX and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the MAX, the applicable SLAs for the affected Work will not be counted in time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-

Refrigeration and Air Conditioning:

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

Environmental Performance:

Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

Article 3 – Bid Process and Evaluation Criteria

3.010 Introduction

3.011 Pre Bid Meetings

Deleted – Not Applicable

3.012 Communications

The MAX will not respond to telephone inquiries or visitation by Bidders or their representatives. Bidder's sole point of contact concerning the RFP is the MAX Director or designee. Any communication outside of this process may result in disqualification or debarment or both.

3.013 Questions

Questions and/or requests for approved equals concerning the RFP are to be submitted, in writing, no later than **11:00 a.m. EST. April 3, 2019, Macatawa Area Express, 171 Lincoln, Suite 20. Holland MI 49423. b.vanderhulst@catchamax.org**

All questions must be submitted in writing and sent as an attachment in Microsoft Word or Rich Text Format (RTF). Changes to the RFP and answers to questions will be prepared as an addendum and posted on the MAX's web site under the corresponding bid number: catchamax.org. The posted addendum officially revises and supersedes the original RFP.

3.020 Award Process

3.021 Method of Evaluation

Macatawa Area Express Bid Evaluation

In awarding this Contract, proposals will be evaluated by the Macatawa Area Express.

3.022 Evaluation Criteria

The following chart represents the scoring of the particular factors:

		<i>Weight</i>
1.	Product Specifications (Appendix A)	60
2.	Prior Experience (Section 5.012)	20
3.	Roles and Responsibilities (Sections 1.030, 1.041, 1.042, 1.051, 1.0705, 1.0706)	10
4.	Company Information/Capabilities (Sections 5.011, 5.013, 5.015, 5.016, 5.017)	5

5.	Delivery Capabilities (Sections 1.0709, 1.0714)	5
	TOTAL	100

Oral Presentation

Bidders who submit proposals may be required to make oral presentations of their proposals to the MAX. These presentations provide an opportunity for the Bidders to clarify the proposals through mutual understanding. MAX will schedule these presentations, if required.

Site Visit

The MAX may conduct a site visit to tour and inspect the Bidder’s facilities. MAX will schedule these visits if required.

3.023 Price Evaluation

(a) Only those proposals receiving a score of **80** points or more of the total maximum possible score will be considered for award.

(b) All price proposals will be opened. However, prices will only be evaluated from those Bidders meeting the minimum point threshold.

Award Recommendation

The award recommendation will be made to the responsive and responsible Bidder who offers the best value to the MAX. Best value will be determined by the Bidder meeting the minimum point threshold and offering the *best price*, as demonstrated by its proposal.

All bidders will be subject to the Federal Transportation Administration’s (FTA) 49 DFR Part 663 for Pre-Award and Post Delivery Audits of Rolling Stock Purchases. Prior to final award recommendation of a contract, the Macatawa Area Express will conduct a pre-award audit of the contractor that is being considered to verify that the contractor has successfully met all of the following requirements:

1. Federal Motor Vehicle Safety Requirements
2. Federal Buy American Requirements and
3. Grantee’s Bid Specifications.

3.025 Reservations

(a) The MAX reserves the right to consider total cost of ownership factors in the final award recommendation (i.e. transition costs, training costs, etc.).

(b) The MAX reserves the right to award by item, part or portion of an item, group of items or total proposal, to reject any and all proposals in whole or in part, if, in the MAX Director’s judgment, the best interest of the MAX will be so served.

(c) The MAX reserves the right to award multiple, optional use contracts. In addition to the other factors listed, offers will be evaluated on the basis of advantages and disadvantages to the MAX that may result from making more than one award.

3.026 Award Decision

Deleted

3.027 Protests

Written Protest Procedures

A contractor who wishes to protest the FTA related procurement decisions or process must follow these procedures:

1. All protests must be provided in writing to the Macatawa Area Express Transportation Authority, 171 Lincoln, Suite 20, Holland MI 49423. The written protest must clearly define the procedure and/or decision being protested and the reason(s) for the protest. All protests must be filed within 10 business days of the MAX Authority Board decision.
2. The MAX Director or designee will review the written protest and provide a written decision to the protestor.
3. The protestor can appeal the MAX Directors of his designee's decision to the MAX Authority Board provided that the appeal is filed with the MAX Director or his designee within ten (10) business days of the MAX Director's or his designee's decision.
4. In the event of an appeal, the MAX Authority Board will make the final decision on the protest.
5. All protests will be forwarded to the Federal Transit Administration for its information.

Deleted

3.030 Laws Applicable to Award

3.031 Reciprocal Preference - Deleted per FTA

3.032 Qualified Disabled Veteran Preference

Deleted

3.033 Independent Price Determination

- (a) By submission of a proposal, the Bidder certifies, and in the case of a joint proposal, each party certifies as to its own organization, that in connection with this proposal:
- (i) The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to the prices with any other bidder or with any competitor; and
 - (ii) Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder before award directly or indirectly to any other bidder or to any competitor; and
 - (iii) No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
- (b) Each person signing the proposal certifies that the person:
- (i) Is responsible for the prices offered in the proposal and has not participated (and will not participate) in any action contrary to l. a., b., and c. above; or
 - (ii) Is not the person in the Bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for the decision in certifying that the persons have not participated (and will not participate) in any action contrary to (a), (i), (ii), and (iii). above.

3.034 Taxes

The MAX may refuse to award a contract to any Bidder who has failed to pay any applicable State and local taxes. The State may refuse to accept Bidder's bid, if Bidder has any outstanding debt with the State or local government.

3.040 Possible Additional Considerations/Processes

3.041 Clarifications

The MAX may request clarifications from one or all Bidders. The MAX will document, in writing, clarifications being requested and forward to the Bidders affected. This process does not allow for changes. Instead, it provides an opportunity to clarify the proposal submitted.

If it is determined that a Bidder purposely or willfully submitted false information, the Bidder will not be considered for award, the MAX will pursue debarment of the Bidder, and any resulting Contract that may have been established will be terminated.

3.042 Past Performance

The MAX may evaluate the Bidder's prior performance with the MAX, and the prior performance information may be a factor in the award decision.

3.043 Financial Stability

In making an award decision, the MAX may evaluate the financial stability of any Bidder. The MAX may seek financial information from the Bidder and from third parties. If the MAX determines in its sole discretion that contracting with a Bidder presents an unacceptable risk to the MAX, the MAX reserves the right to not award a contract to that Bidder.

3.044 Energy Efficiency/Environmental Purchasing Policy

The MAX seeks wherever possible to purchase energy efficient products. This may include giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the MAX will include energy efficiency as one of the priority factors to consider when choosing among comparable bids.

The Macatawa Area Express is committed to encouraging the use of products and services that impact the environment less than competing products. This can be best accomplished by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that may be considered in Best Value Purchasing evaluation include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bio-accumulative. Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

3.045 Pricing Negotiations

The MAX may enter into negotiations with Bidders on price or technical clarifications. No modification to the RFP technical requirements or specifications will be allowed. If technical requirement or specification

changes are required, which cannot be resolved via technical clarification, the BAFO process as described below may be used.

3.046 Best and Final Offer (BAFO)

If the selection process described in the RFP does not lead to a viable award recommendation, or significant deficiencies are identified, the Buyer or the JEC (Joint Evaluation Committee) or both at its discretion may prepare a Deficiency Report and Clarification Request (DR/CR) for each proposal determined to be in the competitive range. Bidders will be allowed to respond in writing to the (DR/CR) with a Best and Final Offer (BAFO). The BAFO may include any changes to the original proposal to address the listed deficiencies, including alterations to the original cost proposal to address correction of the deficiencies. The BAFO's must be submitted by the deadline established by Purchasing Operations.

After reviewing the Best and Final Offers, the JEC will re-evaluate the proposals using the original evaluation method. If an alteration to the originally published evaluation criteria is to be made, the changes in the criteria will be published to all Bidders as part of the issuance of the DR/CR's.

Bidders are cautioned to propose the best possible offer at the outset of the process, as there is no guarantee that any Bidder will be allowed an opportunity to submit a Best and Final Offer.

3.050 Proposal Details

3.051 Complete Proposal

To be considered, each Bidder must submit a COMPLETE proposal in response to this RFP, using the format specified. No other distribution of proposals is to be made by the Bidder

3.052 Efficient Proposal

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Bidder's ability to meet the requirements of the RFP. Emphasis should be on completeness and clarity of content in the format specified.

3.053 Price and Notations – Deleted, Not Applicable

3.054 Double Sided on Recycled Paper – Deleted, Not Applicable

3.055 Proposal Format

The following information must be included in all proposals. Bidders must respond to all sections of the RFP. Failure to respond to every section in each Article could result in disqualification from the bidding process. Proposals should be formatted to include each of the following sections, which should be clearly identified using the same format as the RFP is written in and with the appropriate headings:

Article 1 – Statement of Work – Bidder must respond to each section. **Proposal must include detailed responses to all tasks as requested in Article 1. Bidders must copy these sections, and provide Bidder's response in the area specified for "Bidder Response to Task". This area has been designed to expand as necessary. A Microsoft version of this document is available by emailing a request to the Buyer listed on the cover page of this document.**

Article 2 – Terms and Conditions – Bidder must include a statement agreeing to the Terms and Conditions contained in this Article

Article 4 – Certifications and Representations – Bidder must respond to each section

Article 5 – Evaluation Information – Bidder must respond to each section

3.060 Submitting Bids and Proposals

3.061 Sealed Bid Receipt

Deleted

3.62 Proposal Submission

An original proposal and three (3) copies should be submitted by April 24, 2019 11:00 a.m. EST to:

Macatawa Area Express
Bus RFP
171 Lincoln Suite 20
Holland MI 49423

3.063 Responses

3.070 Possible Bond Requirements

3.071 Bid Bond

Deleted – Not Applicable

3.072 Performance Bond

Deleted – Not Applicable

3.073 Payment Bond

Deleted – Not Applicable

3.74 Maintenance Bond

Deleted – Not Applicable

Article 4 – Deleted.

Article 5 – Required Bidder Information

Bidders must provide the following required information. Failure to respond to each requirement may disqualify the Bidder from further participation in this RFP.

5.010 Bidder Information

5.011 Company Information

State the full name and address of your organization and, if applicable, the branch office or other subordinate elements that will perform, or assist in performing, the work. Indicate whether it operates as an individual, partnership, or corporation; if as a corporation, include the State in which it is incorporated. If applicable, state whether it is licensed or registered to operate in the State of Michigan.

Bidder Response:

Name:	
Address:	
City, State, Zip:	
Phone:	()
Web Page:	
Legal Status:	
Business Structure:	
How long in business:	
Sales volumes for the last five years:	
Location of facilities that will be involved in servicing the Contract:	

Name, title, address, email, phone and fax numbers for Bidder's RFP Contact.

Bidder Response:

Name:	_____
Address:	_____
City, State, Zip	_____
Phone:	()
Fax:	()
E-Mail	_____

Note: Person named above will be sole contact for your company to receive the Contract. Include the name and telephone number of person(s) in your company authorized to expedite any proposed contract with the State.

5.012 Prior Experience

Indicate the prior experience of your firm, which you consider relevant to your ability to successfully manage a contract for the services defined by this RFP. Include sufficient detail to demonstrate the relevance of this experience. Proposals submitted should include, in this section, descriptions of a

minimum of three qualifying relevant experiences to include project/client descriptions, costs, and starting and completion dates of projects/contracts successfully completed. Also, include the name, address, and phone number of the responsible official of the customer organization who may be contacted.

Bidder Response:

5.013 Staffing

Bidder must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

Bidder Response:

5.014 Past Performance

Please list any contracts that you have had in the last three years.

Bidder Response:

5.015 Contract Performance

Indicate if the Bidder has had a contract terminated for default in the last three years. Termination for default is defined as notice to stop performance which was delivered to the Bidder due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and determined that the Bidder was in default. If the Bidder has not had a contract terminated for default, the Bidder must affirmatively state this under "Reason" below.

If no the terminations exist, the Bidder must affirmatively state this.

Note: If the Bidder has had a contract terminated for default in this period, the Bidder must submit full details including the other party's name, address, and phone number Purchasing Operations will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past experience.

Termination:

Reason:

5.016 Place of Performance

Bidders, in the performance of any resulting contract, must state if they intend to use one or more plants or facilities located at a different address from the address indicated in section 4.011. The following information must be provided for these plants or facilities:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

5.017 Disclosure of Litigation

Bidder must disclose any material criminal litigation, investigations or proceedings involving the Bidder (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Bidder (and each Subcontractor) must disclose to the State any material civil litigation, arbitration or proceeding to which Bidder (or, to the extent Bidder is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Bidder or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Bidder or, to the extent Bidder is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement in Bidder's bid response. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as the. Information provided to the State from Bidder's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

Bidder Response:

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FEDERAL TRANSIT ADMINISTRATION
BEST PRACTICES PROCUREMENT MANUAL
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A.1 - Federally Required and Other Model Contract Clauses

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1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

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

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

4. CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 1241
46 CFR Part 381**

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

ENERGY CONSERVATION REQUIREMENTS

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

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has

been developed by FTA:

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.

7. CLEAN WATER REQUIREMENTS
33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$150,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

8. BUS TESTING
49 U.S.C. 5323(c)
49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to

subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

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

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

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

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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 subgrantee 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 is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. 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 subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall

make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. 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.

6. 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).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES **49 CFR Part 18**

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

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.

13. BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

- (a) **Safety**. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
- (b) **Recipient Size**. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
- (c) **Extension of Provision**. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

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

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

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

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If

required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$150,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by

a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

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

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

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

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*]

may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

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

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

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

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

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

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

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

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

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour

Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

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

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

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

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

(1) **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 workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (*write in the name of the grantee*) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. SAFE OPERATION OF MOTOR VEHICLES **23 U.S.C. & 402 NOTE, (62 FED. REG. 19217)**

- a. **Seat Belt Use.** The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. &402 note, (62 Fed. Red. 19217), by:
- (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and
 - (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

- b. **Distracted Driving, Including Text Messaging While Drive.** The Recipient agrees to comply with:
- (3) The following U.S. DOT Special Provision pertaining to Distracted Driving:
- (a) **Safety.** The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the award,
- (b) **Recipient Size.** The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
- (c) **Extension of Provision.** The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a)-(b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

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 subcontractor who will be subject to its provisions.

**20. 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**

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

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 subcontractor who will be subject to the provisions.

21. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. 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.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had 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, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. 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.

d. Waiver of Remedies for any Breach In the event that (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.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. 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.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery 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 default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, 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. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

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

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.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract

or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

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 **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, 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.

23. PRIVACY ACT **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their

contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. 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.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

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.

25. BREACHES AND DISPUTE RESOLUTION
49 CFR Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$150,000 shall contain provisions or conditions, which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

**37 CFR Part 401
49 CFR Parts 18 and 19**

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

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

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal 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," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies

that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE) **49 CFR Part 26**

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

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 .22 %. A separate contract goal [of __ % DBE participation has] [has not] been established for this procurement.

b. The contractor 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 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 **Macatawa Area Express** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. *{If a separate contract goal has been established, use the following}* Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **Macatawa Area Express**, 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 **Macatawa Area Express**.

29. ADA ACCESS REQUIREMENTS
49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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 4220.1E, 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.

SIGNATURE AUTHORITY

I/We certify that the undersigned is authorized to submit bids/quotations on behalf of _____ . The information provided about _____ ability to provide the goods and/or services outlined in this solicitation document is true and accurate. I/We understand that our product and/or service offerings must be in compliance with all requirements of this solicitation document.

Name of Bidder/Contractor/Supplier

Address of Contractor/Supplier

Telephone and Fax No. of Contractor/Supplier

E-mail Address of Contractor/Supplier

Signature of Contractor/Supplier's Authorized Representative

Title of Supplier Representative _____

Date _____

Appendix A-Technical Specifications

THIS RFP IS FOR A 7-YEAR / 200,000 MILE ALTOONA TESTED BUS. A full copy of the Altoona report must be sent to each agency electronically after the receipt of a purchase order.

1.0 Scope: Medium Duty Low Floor Bus

This specification describes a steel cage, low floor, commercial bus designed for use in Shuttle and Transit applications that meets all the requirements of ADA and the FMVSS Safety Standards in effect at the time of manufacture.

The proposed bus must have been tested at the Federal Bus Testing Center at Altoona, PA in the 7-year/ 200,000 mile category.

The bus must meet all the chassis specifications listed in the chassis section.

2.0 Purpose

The purpose of these specifications is to describe a light duty low floor bus suitable for transporting both ambulatory and non-ambulatory passengers in both rural and urban areas.

The bus will be of a “Steel Cage” type construction with FRP Composite Skin laminated to a moisture resistant (less than 1%) substrate (not Luan) attached to the steel cage with urethane adhesive. The roof will consist of a single piece FRP skin laminated to the substrate and roof steel with urethane adhesive. The bus body is constructed of welded walls, sub floor, roof framing, and rear steel structure which are bonded and bolted together, forming an integrated steel cage around the passenger area.

3.0 Classification: Mid Size Low Floor Bus

This specification is for a Mid-Size Low Floor Commercial bus of the “Body-on-Chassis” type.

The bus shall have a standard power ramp to facilitate entry by passengers including those in a wheelchair.

The bus shall meet all requirements of the Americans with Disabilities Act even though the specific items may not be listed in detail in this specification.

The bus shall be of the Low Floor type with one step to enter main floor of bus.

The bus shall have a kneeling feature to lower the bus so that the first step is lower than 12”.

4.0 Exceptions to Specifications

Manufacturers of similar equipment of the type specified may submit requests for approved equals provided that the bus is built on the identical chassis specified and that they have produced this model in commercial quantities. Manufacturers of similar buses must be able to provide a list of current users of the proposed bus as references.

Manufacturers requesting any deviation from these specifications must provide actual test results supporting their claim.

This specification reflects the specific needs of this organization/agency. In order to standardize certain components, therefore, we have named specific brands of equipment. This has been done to establish a certain standard of quality and to standardize inventory of replacement parts.

Other brands will not be considered, as the brands specified are readily available and have been proven in Transit/Shuttle service.

Any exceptions approved will be in writing and will be distributed to all prospective bidders and other interested parties. The approval, if granted, shall extend to all bidders and not just to the bidder who made the request.

5.0 Materials

All materials used in conversion of the bus shall be new. Unused, returned or reconditioned components will not be accepted. Brand names and part/model numbers of the major components will be listed and must comply with the brands and models specified in these specifications.

Major components include but are not limited to Seats, Windows, W/C Ramps, W/C Tie downs, Air Conditioning/ Heat, Flooring, Floor Covering, Entry Door, and Chassis.

6.0 Warranty

The manufacturer of this vehicle will provide a warranty of 3 years or 36,000 miles parts and labor. The body structure shall be warranted for a period of five (5) years and 100,000 miles.

The major subcomponents, including but not limited to, the Wheelchair Ramp, the Wheelchair Tie Downs, and the optional rear Air Conditioning Systems are warranted by the manufacturer of that component. Detailed warranty coverage shall be provided with each bus.

7.0 Chassis Specifications

A copy of the chassis order showing the equipment on the chassis shall be submitted with the bid.

In the event that the bidder incurs cost increases for the chassis, the contract price of the bus shall be increased to reimburse the bidder for the additional expense.

This increase must be documented by a copy of the chassis invoice reflecting the increase.

8.0 Chassis Requirements

- 8.01 The bus provided shall be built on a General Motors "G Van" Cut-Away (GMT 610) Chassis or approved equal of the current model year with a driver position only and be rear wheel drive.
- 8.02 The engine shall be a Vortec or approved equal 6.0 liter V8 gasoline engine or (6.6L Duramax Diesel engine as an option) or approved equal.
- 8.03 The alternator shall be sized to meet the electrical load requirements and maintain a charged battery system.
- 8.04 Dual battery system with main battery located in the factory location in the engine compartment and the auxiliary battery in a Stainless steel pull out tray in a separate compartment is required. All added battery cables shall be built and fastened in a manner equal to the method used by the OEM. Separate battery box will be vented and the door will be sealed to prevent moisture and road dirt from entering.
- 8.05 The wheelbase/GVWR shall be: 191" Wheelbase, 14,200# GVWR
OPTIONAL : 139", 159," 165" and 210" Wheelbase, 14,200# GVWR
- 8.06 The single 57 gal fuel tank shall be: OEM mounted between the rails aft of rear axle.
- 8.07 OEM service brakes shall be heavy-duty disc brakes, with four-wheel anti-lock system. The parking brake shall be internal rear cap and hat rotor type.
- 8.08 The OEM cooling system shall be the highest capacity available for the specified chassis.
- 8.09 The OEM air cleaner shall be a heavy-duty dry type with a replaceable element.
- 8.10 The OEM oil filter shall be a full-flow, disposable type.

- 8.11 The OEM transmission shall be an automatic with auxiliary transmission cooler.
- 8.12 The OEM power steering shall be standard.
- 8.13 The exhaust pipe shall be stainless steel in front of the muffler and a minimum of aluminized steel aft of the muffler and exit at the rear of the body.
- 8.14 Seven 16" x 6" WHITE steel OEM wheels, shall be provided. The tires shall be all-season steel belted radials, LT225/75RX16D or E load range. Spare tire and wheel rim will be delivered loose inside the bus.
- 8.15 All lighting to be LED.
- 8.16 Turn signals lens to be amber.
- 8.17 Bike rack, by Byk Rak three position or approved equal, anti-glare stainless steel, and will be mounted on the front of the bus.
- 8.18 Cab Equipment:
 - 8.18.1 The driver seat shall be an **Evolution G2ELP Driver Seat** by USSC or approved equal. The seat shall accommodate operators from the 5th percentile female to 95th percentile male, and include the following:
 - a. **Back Recline:** Backrest shall have manual dual recline gears. Operators shall be able to adjust the backrest recline from a knob located on the right-hand side of the seat when seated. Recline shall be adjustable from 45 to 110 degrees.
 - b. **Mechanical Lumbar:** A two-way mechanical lumbar shall be located in the lumbar region. The lumbar will be operated by a rotational knob located on the right-hand side of the seat when seated.
 - c. **Upholstery:** Seat shall be upholstered with black fabric inserts and vinyl boxing material. Seat shall be upholstered with customer specified material. A level 5 fabric must be used. If a lower level fabric is chosen, the agency will be issued a credit.
 - d. **Armrests:** The seat shall have right-hand molded, front adjustable armrests that adjust relative to the backrest and can be flipped out of the way.
 - e. **Headrest:** Seat shall be equipped with an adjustable headrest.
 - f. **Protective Back shell:** Seat shall be provided with an upper protective back shell that will prevent the seat upholstery from becoming damaged should it come in contact with anything behind the seat (i.e. barrier, wall). The back shell shall be a molded design that fits securely on the backrest and covers the entire rear and side edges of the upper backrest.

- 8.18.2 AM/FM/CD with Clock, Audio System with Four Speakers for the passenger area and one in the drivers door with fading capability.
- 8.18.3 Driver OEM Door
- 8.18.4 Black finish mirrors mounted on the left driver cab door and forward of right front fender with convex feature. Mirrors shall be VELVAC or approved equal, heated and remote.
- 8.18.5 Two 12 Volt Power Ports.
- 8.18.6 OEM Chrome Grille.
- 8.18.7 Drivers side Heavy Duty Running Board
- 8.18.8 OEM Chrome Front Bumper
- 8.18.9 Rear bumper to be energy absorbing, anti-ride
- 8.18.10 Front and rear mud flaps
- 8.18.11 OEM Dual Note Horn
- 8.18.12 OEM Daytime Running Lights
- 8.18.13 OEM Interior Opal Grey Vinyl Color Scheme
- 8.18.14 Vinyl Cab Floor Mats with Insulation
- 8.18.15 OEM Tilt Steering Wheel
- 8.18.16 OEM Cruise Control
- 8.18.17 OEM Factory Dash A/C, Defroster and Heat
- 8.18.18 Passenger area roof top heat/cool combo unit. Minimum 70K BTU A/C and 45K heat. Thermo King SLR75-1000 with TM31 compressor or approved equal.

- 8.18.19 OEM Low Oil Pressure Light
- 8.18.20 OEM High Engine Coolant Temperature
- 8.18.21 OEM Cab to be mounted Rubber Isolators/Bus Body
Structure on Rubber Isolators, (if different, explanation and drawings must be submitted with Approved Equal request).

Tow haul module to activate tow haul mode upon start up.
- 8.19 Interior
 - 8.19.1 The passenger compartment lighting shall provide sufficient light for safety and security. LED lights will be standard.
 - 8.19.2 Interior 6 x 9 Convex Mirror.
 - 8.19.3 A separate switch from the chassis lights shall operate the passenger compartment, with bright and dim capability. The dim position will be a minimum of two lights on the street side staying on. Interior lights shall also be door activated.
 - 8.19.4 A dome light shall be provided in the operator's area to provide sufficient light read a map.
 - 8.19.5 A light shall be provided in the ramp area to illuminate the step area.
 - 8.19.6 Diamond fare box model # XV 000 with 2 vaults mounted on grab rail stanchion with vault lever towards driver. (may require lever reversed from normal position).
 - 8.19.7 Stainless Steel Entry Assist Rails on both Side of Entry.
 - 8.19.8 Stainless Grab Handles on Ceiling.
 - 8.19.9 Stainless Grab Handles on both Entry Door
 - 8.19.10 Safety Package w/5# Fire Extinguisher, first aid kit and roadside reflector
 - 8.19.11 Vehicle Kneeling Over Ride Toggle Switch.

8.19.12 White Standee Line w/Sign

8.20 Exterior

8.20.1 The headlights and turn signals provided by the OEM chassis manufacturer are acceptable and should not be replaced.

8.20.2 Exterior lights added by the body manufacturer are to be LED type.

8.20.3 LED lights mounted over passenger door standard.

8.20.4 Round LED lights, four inches in diameter are to be mounted on the rear of the bus. LED Red stop and taillights, amber turn, and white backup lights are provided and mounted in compliance with FMVSS 108. In addition to the normal stop lights a “third brake light” will be provided. This light shall be mounted on the centerline of the vehicle above the rear window and shall be wired to operate in conjunction with the normal stop lights.

8.20.5 Clearance and marker LED lights, amber front and red rear, are to be provided and mounted in compliance with FMVSS 108.

8.21 Twin Vision Destination Sign or approved equal

8.21.1 Electronic Twin Vision destination sign with front and side signs.

8.21.2 Front sign will be 14 rows X 108 columns LED display. The side sign will be 14 rows X 72 columns LED display.

8.21.3 The operators control unit (O.C.U.) shall be mounted above the drivers area.

8.21.4 The side sign will be mounted at the top of the first window rear of the passengers door on the curb side of the bus.

9.0 Axles and Suspension:

9.1 Front axle capacity 4,600 #GAWR for 14,200 GVW vehicles. Stock front suspension supplied by the OEM.

9.2 OEM DANA HD70 rear axle for 14,200 GVWR. Limited slip rear differential.

- 9.3 Kneeling feature. 3” minimum kneel from ride height, 11.0” from ground to the top of the entry floor when kneeled. Air ride with compressors and air bags will not be accepted.
- 9.4 Vehicle must be able to be moved in full kneeling position in case of failure.

10.0 Body Construction and Specifications:

Side Wall and Rear Wall Construction:

- 10.1 There is one 1 ½” X 1 ½” horizontal 16 gauge steel tube below the window line and one 1 ½” X 2 ½” 14 gauge tube at the floor level, or approved equal.
- 10.2 There is one 1 ½” X 1 ½” horizontal 16 gauge steel tube at the top sidewall forming the top edge of the wall, or approved equal.
- 10.3 Steel structure must extend to or below the floor level to the lowest point in the sidewall, or approved equal.
- 10.4 Vertical steel 16 gauge square tubing nominal dimensions 1 ½” X 1 ½”.
- 10.5 Vertical steel ribs consist of one (1) 1 ½” X 2” 16 gauge steel spaced at the sides of each window opening, or approved equal.
- 10.6 Two (2) 1½” X 1½” 16 gauge steel tubes are required at the front of the sidewall to form the front & rear of the door opening. One (1) 1 ½” X 1 ½” 16 gauge steel tube is welded vertically at the midpoint of each window with a width greater than 24 inches connecting the horizontal tube welded below the window line and the horizontal tube that is welded at the floor line, or approved equal.
- 10.7 Horizontal steel tubes are welded to the vertical steel tubes. The entire steel structure must be bonded and bolted together with Sikaflex 252 or Loctite H8600 adhesive and have a full E-Coat corrosion protection to prevent rust/corrosion.
- 10.8 Exterior skin is FRP composite skin laminated to a moisture resistant (less than 1% absorption) substrate (not Luan) attached to the steel cage with urethane adhesive.
- 10.9 No wood or Luan is permitted in the sidewalls or rear end wall of the bus.

Laminated constructions with Luan or other wood materials are not allowed as they can lead to corrosion of the skin due to the wicking of moisture into the wood material.

- 10.10 Rear of the bus shall have vacuum formed caps bonded to a FRP Composite Skin laminated to a moisture resistant (less than 1% absorption) substrate (not Luan) attached to the steel cage with urethane adhesive or a full fiberglass panel. The LED lights shall be mounted to the vacuum formed or fiberglass caps.

11.0 Floor & Roof Construction:

Floor:

- 11.1 Steel sub floor cross members shall be 2" X 2", 14 Gauge steel tubing and coated to prevent rust and corrosion.
- 11.2 Body is mounted directly over the chassis frame to provide an integrated body chassis mounting, or approved equal.
- 11.3 Flooring shall be 5/8" thick single piece, engineered wood with moisture barrier laminated to upper surface, with moisture sealed edges. The underside of the flooring shall be sprayed with a coating to seal flooring from moisture.
- 11.4 A sealant shall be installed in body to floor corners to provide a water tight seal as an aid in floor cleaning.
- 11.5 Interior floor/lower side wall covering shall be grey Ultra Flooring or approved equal.
- 11.6 The floor will also cover the area around the ramp (but not the ramp platform itself). The cab floor shall be the General Motors OEM or approved equal insulated floor covering.
- 11.65 Floor will have a removable fuel tank access panel with stainless steel fasteners for easy access to fuel pump and fuel gauge sending unit.

Roof:

- 11.7 Steel 1 1/2" x 1 1/2", 18 gauge, (minimum) square tubing bent to the radius of the roof is required, or approved equal.
- 11.8 Roof bows must be bent square steel tubing.
- 11.9 All roof cross members shall be a minimum 18 gauge steel,(minimum) spaced no more than 24" apart or two (2) 1 1/2" X 1 1/2" tubing welded together.
- 11.10 One (1) 1 1/2" X 1 1/2" tube installed to form the center longitudinal

members front to rear of roof structure.

- 11.11 The outer edge of the roof structure shall consist of one (1) 1 ½" X 1 ½", 18 gauge (minimum) steel tube running the length of the roof welded to the roof bow steel tubes and bonded with Sikaflex® 252 or Loctite H8600 and four (4) weld studs to the 1 ½" X 1 ½" steel tube that forms the top of the sidewall structure.
- 11.12 Exterior roof surface shall be Fiberglas, in a single piece that extends across the roof from rain gutter to rain gutter. The roof surface base material is Azdel with FRP and will be attached to the roof bows using urethane adhesive.
- 11.13 Seams are allowed only at the junction of the front cap and the junction of the rear cap. Any other seams on the exterior of the roof are not permitted.

12.0 Dimensions

- 12.1 Exterior width: 96" maximum excluding mirrors.
- 12.2 Interior width: 91.5" minimum
- 12.3 Interior Height: 76 " minimum at the rear of the bus; 86" at the front of the bus when measured at the center of the aisle. (Rear interior height may vary with bus length.)
- 12.4 Exterior Height: 110" maximum, excluding roof hatch or roof mounted A/C units.
- 12.5 Wheelbase: 130" to 210"
- 12.6 Rear Overhang: Less than 33% of the overall bus length.
- 12.7 Rear Tow Hooks.
- 12.8 Step Height from Ground: 11" at kneel height (MAXIMUM)
15" at ride height (MAXIMUM)

13.0 Passenger Seats and Capacity

All seating installed in this vehicle shall be in compliance with FMVSS 207 (Seating System) and any associated seat belt assemblies shall be in compliance with FMVSS 209, 210 (Seat Belt Assembly, Seat Belt Assembly Anchorage's). Testing of the seats must have been performed in the bus. A level 5 fabric must be used.

- 13.1 Citi Seats w/Inserts (15)
- 13.2 Single Flip Citi Seats (2)
- 13.3 Citi Seat Back Grab Rails (14)
- 13.4 USR Double (Under Seatbelts) (9)
- 13.5 USR Single (Under Seat Belts) (1)
- 13.6 Citi Seat Level 4 Inserts (19)
- 13.7 Minimum Aisle: 18” Standard; (Optional wider seats will decrease aisle width).
- 13.8 Seating quantity shall be determined by the floorplan selected.
- 13.9 Stop request system will have a pull cord type activation and a large “Stop Request“ display with an adjustable audible Chime. The display will need to be easily seen by the passengers and driver or have a second dash light in the drivers area. Display will be reset to off with the opening of the passenger doors. The system will need a switch to reset false trip of pull cord other than the opening and closing of the doors. Activation strips or pull cords will need to be at an appropriate level for activation by riders in wheelchairs in the paratransit locations.

14.0 Passenger Entry Requirements

- 14.1 Entry Door shall be a dual door, electric “swing out” type with two glass windows. Door opening shall be 40” minimum.
- 14.2 The door windows shall have the following minimum dimensions: 15” wide and 47” to 72” in height.

- 14.3 Steps are not allowed; all passengers shall enter by way of a passenger door.
- 14.4 The ramp shall be a Braun power ramp that is designed to let wheelchair passengers enter the bus unassisted once the ramp is deployed. Ramps shall be rated at 800# minimum and have 34 inches clear width. Ramp length shall be 62 inches minimum. When installed, the ramp shall have the least slope practicable and shall not exceed 1:4 when deployed to ground level.
- 14.5 Clear entry door dimensions shall be 39" wide by 75" high.

15.0 Electrical System

- 15.1 Electrical box for the bus body shall be located inside above the driver in a compartment with a door. Fuse, relay and component location will be labeled on the inside of this door.
- 15.2 Automotive type fuses are required.
- 15.3 Wiring needs to be color coded, and labeled for function every 12" and meet all the requirements of the Society of Automotive Engineers (SAE Standards).
- 15.4 All body component circuits shall be protected in convoluted split loom tubing for protection and tied/anchored a minimum every 16".
- 15.5 The bus will be equipped and labeled with extra fuse protected circuits for the use of the customer.(minimum of 4 extra circuits). Fuses to be located in electrical box described in section 15.1
- 15.6 All exterior loomed wire harnesses shall have waterproof connectors and sprayed with corrosion resistance spray.
- 15.7 Rotary disconnect switch located near the driver.
- 15.8 Pre-wired for 2 way radio with a minimum 6"X6" metal ground plane for the antenna. Wiring for radio will be designed for center console mounting.

- 15.9 A wiring diagram, “As Built” is required. The wiring diagram should indicate schematics and wire color, gauge, and location. There should be separate diagrams for each system ie; Doors, heaters, lights etc. A master wiring diagram will also be included of the complete wiring system added to the chassis. An example of the wiring diagrams will need to be included with the bid.

16.0 Windows and Roof Hatch

- 16.1 One Double T – Slider window on each side of the bus will be standard. Option of all T slider windows.
- 16.2 Passenger windows shall be a minimum 18 ½”, 36” or 45” wide and 36” high (body length will dictate sizes).
- 16.3 Egress windows shall be provided in sufficient numbers and labeled to meet FMVSS and state requirements. (23 ½” x 60”) minimum. A minimum of one on each side and the rear is required.
- 16.4 Low profile combination ventilation/escape hatch is required. Trans Spec or approved equal.

17.0 Interior Décor and Finish

- 17.1 Insulation: Two pound Polystyrene Foam insulation in sidewalls, roof, and rear wall.
- 17.2 Front cap shall be insulated to minimize heat gain in the front evaporator area.
- 17.3 Modesty panel at entry.
- 17.4 Interior walls/ceiling are fiberglass over Azdel (Luan not permitted) to provide washable surfaces.
- 17.5 Automotive style light duty headliner material is not allowed.

18.0 Exterior Finish and Paint

- 18.1 All sections of the steel body cage are to be Electro-coated (Cathodic E-coating to 1500 hour salt spray test) after fabrication, prior to final assembly. Galvanized steel with “Gatorshield” is acceptable.
- 18.2 Custom painting and/or graphics are available and will be quoted separately. This includes optional paint schemes for the cab as well as the body.

19.0 Exterior and Interior Lighting

- 19.1 Exterior lights are LED with 7 year supplier warranty for parts and labor. This includes marker, clearance, LED rear stop and turn but does not include the OEM lights furnished on the chassis.
- 19.2 LED interior lights are required with 7 year supplier warranty for parts and labor.

20.0 ADA Paratransit Requirements

- 20.1 Power W/C Ramp meeting the requirements of FMVSS 403 and installed in accordance with FMVSS 404 (34” X 62”).
- 20.2 Power Ramp shall have a standard exterior weatherproof toggle and an interior stow/deploy switch.
- 20.3 Four (4) ratchet type wheelchair restraints are required per wheelchair position.
- 20.4 ADA decals and signage including priority seating.
- 20.5 All ADA lighting is required.
- 20.6 ADA interlock required.
- 20.7 **Securement:**

Rear securement shall be 2 integrated rear securement retractors housed in a single case. This securement case shall be anchored to the floor by Slide-N-Click or approved equal single point Securement System anchorages and/or mounted to the base of the supplied Freedman seating or equivalent. Location of the anchorage of the rear tie down shall be between the seat legs of the seating maximizing securement length. (This shall be noted and approved before the build). This rear securement shall have J-hooks for easy attachment. Shall have an

approximate 15 second non-electric mechanical delay. These retractors shall be fully automatic, self-tensioning and self-locking, QUBE or equivalent.

Front securements shall consist of 2 fully automatic self-tensioning self-locking retractors with cast tensioning knobs and J-hooks. Floor anchorages for these front retractors shall be circular in design and allow attachment of the retractor from any direction, Slide-N-Click or equivalent, QRT Deluxe or equivalent.

Occupant Restraint:

The occupant restraint shall consist of 3 independent retractors. 2 retractable lap belts shall be mounted to the top of the rear securement case or the side Freedman seating base. The shoulder belt shall be installed on horizontal or vertical wall mounted L-Track that allows the flexibility to position the shoulder belt well behind the securement area as to adjust shoulder belt height. Wall stowage for the wall side occupant restraint shall be wall mounted on the forward wall area in each securement area. This application will hold the wall side occupant restraint in place as to allow the driver to easily reach it when it is intended to be used.

Floor spacing shall be maximized by the rear securement location below the Freedman seat structure and supply a minimum of 55 inches of clear floor space from front to back without obstruction of any anchorage points including the QUBE or ARM if in use.

Stowage:

Stainless steel wall mounted stowage shall be supplied for any loose front securement retractors as to be easy to reach and stowed.

One (1) belt cutter per bus.

21. Digital Surveillance System

- 21.1 The bus shall be equipped with a digital surveillance system that is compatible with the MAX system (an REI BUS-WATCH Surveillance system model R4001 or approved equal).The system shall be installed with three camera heads. Main unit with hard drive will be mounted in an easily accessible area to allow for hard drive removal. (behind drivers seat on floor)
- 21.2 Three Day/Night High Resolution cameras model # 710267 or approved equal will be mounted inside the bus, with one forward facing out the front and one rearward facing toward the passengers. A third camera will be dedicated toward the driver.
- 21.3 The camera system will be integrated into the bus electrical harness to monitor turn signals, brake lights, and door activation.

- 21.4 The system will also have an alarm/panic button. The panic button will be located in the drivers left side front panel that slopes under the dash close to the knee area, out of sight.

22. Maintenance Manuals and Training

- 22.1 Maintenance manuals for chassis and conversion are required.
- 22.2 Manuals for Air Conditioning and other options required. A complete set of Factory service Manuals shall be provided for the chassis IE Chassis, Engine, Electrical, Drivability etc.
- 22.3 Drivers training to be done by “factory trainer”.
- 22.4 Mechanic training to be done by “factory trainer”, option training to be by “option trainer “ ie: AC, Restraint System, CNG Conversion, Propane Conversion, and others upon request of purchasing transit.

Appendix B

MACATAWA AREA EXPRESS TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSAL

Type of Vehicle	Price
21 Foot Gasoline	\$
23 Foot Gasoline	\$
26 Foot Gasoline	\$
28 Foot Gasoline	\$
21 Foot Diesel	\$
23 Foot Diesel	\$
26 Foot Diesel	\$
28 Foot Diesel	\$

The following is a list of options/deletions that must be priced individually from the base price:
Please place deletions in price in ().

Item	Price
Deletion of Power Ramp	\$
Rear Access Door	\$
Back Up Camera	\$
Stainless Wheel Covers	\$
Deletion of Bike Rack	\$
Deletion of Video Surveillance System	\$
On-Spot Tire Chains	\$
Paint Vehicle two colors	\$
Luggage Rack Cost per side	\$
Deletion of Fare Box	\$
15 pocket on Board Literature Rack National Transit Products or equivalent Model OBICT15P-7004	\$
Freedman Feather Lite Mid Back Seats or equivalent: Per Double	\$
Per Single	\$
Double Flip Seat	\$
Double Flip and Fold	\$
Fabric Level from Level 5 to Level 1 (per seat credit)	\$
Citi Level 4 Insert (per insert credit)	\$
Double T-Slider Windows	\$
Rear Door with Side Windows includes Ajar Alarm	\$
Deletion of Twin Vision Digital, Front and Sides Destination Sign to include software	\$
Treasury Box T-1 with 2 vaults	\$

Stainless Steel Window Covers	\$
Echo Vision	\$
Rear Window Fresnal Lens	\$
Extra Egress Window ILO Stand	\$
Side Turn/Marker lites (Narrow)	\$
Passenger Entry Toggle Switch	\$
Exterior Ramp Toggle Switch	\$
Penn Tex 200 Amp Alternator	\$
Walker Rack	\$
PA System Microphone hand held tie In	\$
Additional Speakers (each)	\$
Roof Mount 70K BTU Trans Air TA 733	\$
Skirt Mount 70KBTU Trans Air (6.01 Gas) TM 73 Evaporator with CM3 Condensor	\$
Roof Mount TA 75K BTU A733R	\$
Grab Rails Yellow (2)	\$
RH Grab Rail Parallel to Entrance Step 1 ¼” Yellow	\$
LH Entry Grab Rail Yellow	\$
Driver Stanchion with Modesty Panel and plexiglass	\$
Sport Seat Driver with 6 way power base	\$
Grab Handles at top of Seat back black (per seat)	
US arm rest (per seat on aisle only)	\$
Back up camera REI	\$
Q Straint Pod Restraint System	\$
Q Straint Q-8300-SC3 Slide –N- Click (per seat)	\$
Storage Pouch	\$
Paint Bus one (Special Color) includes Roof	\$
Black out windows	\$
Paint Skirt	\$
Custom Stripe 6”	\$
Custom Graphics	\$
VTM Electric Hybrid	\$
Propane Conversion	\$
IMPCO CNG (3 tank conversion)	\$
Add 4 th tank to IMPCO CNG 3 Tank System	\$
Velvac Pod Camera System and Clamps or equivalent	\$
Velvac Monitor (2) Two camera system with mirrors or equivalent	\$
Velvac Back up camera system or equivalent	\$
Bike Rack for three (3) bikes	\$

Macatawa Area Express Transportation Authority
Request For Proposals

Bidder Read and Complete

The undersigned certifies that he/she offers to furnish materials in strict accordance with the requirements of this bid including the specification, RFP Proposal Form, and Terms and Conditions that are attached, that prices quoted are correct; and that this bid may not be withdrawn for a period of sixty (60) days from the due date noted above.

Signature

Date

Federal ID No. _____

DUNS Number _____

Delivery Date: _____

Appendix D – List of Participating Transit Agencies

Agency	Number of Busses
Macatawa Area Transit Authority	25
Harbor Transit	20
Northwestern Indiana Planning Commission	2

APPENDIX E MODEL AND EVALUATION FORM

Please provide at least 3 references who have owned your proposed vehicle type for at least 7 years, that we may contact for information on reliability, and expenses of the bus you are proposing.

APPENDIX E MODEL AND EVALUATION FORM				
NAME OF COMPANY BIDDING	ADDRESS	CITY, STATE, ZIP	CONTACT PERSON	CONTACT PERSON EMAIL
1				
2				
3				
4				
5				
6				