

REQUEST FOR PROPOSAL
FOR
PROJECT
CONSTRUCTION MANAGER/GENERAL CONTRACTOR

Issued by:

M-1 RAIL
Date: April 17, 2013

Proposals must be submitted
No later than 4:00 PM EST
May 17, 2013

LATE PROPOSALS WILL BE REJECTED

(This RFP contains 27 pages excluding Appendices)

TABLE OF CONTENTS

Introduction	1
Project Information.....	1
Background.....	1
Project Goals.....	6
M-1 RAIL Project Manager	6
Project Schedule.....	6
Project Budget.....	7
Summary of CM/GC Expected Role.....	3
Project Website.....	5
NEPA/ROD Status	5
Advanced Preliminary Engineering Work.....	5
RFP Schedule	6
Submittal Instructions	24
Project Scope of Work	8
Pre-Construction Services	8
Construction Services	9
Pre-Construction Services Fee Derivation.....	10
Guaranteed Maximum Price (GMP).....	11
Conditions of Submittal	14
M-1 RAIL Conditions.....	3
Federal Requirements	20
Proposal Requirements.....	21
Evaluation Process	24
Appendix A – Preliminary Engineering Task 30% Plan Deliverable.....	
Appendix B – M-1 RAIL Project Delivery Approach	
Appendix C – Insurance Requirements.....	
Appendix D – Required Forms	
Appendix E – Sample Score Sheet.....	

Introduction

This Request for Proposal (the “RFP”) requests proposals to serve as the Construction Manager/General Contractor (the “CM/GC”) on Bid Package A of the M-1 RAIL street railway and street reconstruction project. As more specifically described below, an award will be made on a Qualifications-Based Selection basis. The project, as well as the specific role and responsibilities of the CM/GC and the elements included in Bid Package A, are detailed in the following provisions of the RFP.

Project Information

Background

M-1 RAIL (“M-1 RAIL” or the “Owner”) is a Michigan nonprofit corporation formed in 2007 to own, plan, design, build and operate a public rail system in the public right-of-way within the City of Detroit, Michigan. M-1 RAIL has been approved as a 501(c)(3) organization by the U.S. Internal Revenue Service. M-1 RAIL has raised funds from foundations, institutions and state and federal sources to sponsor this rail initiative through all phases of the Project, including design, construction and operations for up to ten (10) years. This information is discussed in detail in the M-1 RAIL Business Plan attached to M-1 RAIL’s web-site (www.m-1rail.com).

M-1 RAIL is working in cooperation with the State of Michigan, the City of Detroit and the U.S. Department of Transportation, including the Federal Transit Administration (“FTA”) and the Federal Highway Administration (“FHWA”), to move forward with the M-1 RAIL Project. In addition to the transit scope, the reconstruction of the M-1 highway (Woodward Avenue) from Sibley Street to Chandler Street will be integrated into the Project design. This will include bridgework representing the partial replacement of the bridge of Woodward Avenue over the I-75 expressway and a complete replacement of the bridge of Woodward Avenue over the I-94 expressway. The Project will extend approximately 3.4 miles on Woodward Avenue from Larned Street in Downtown Detroit to Chandler Street, just north of Grand Boulevard in the New Center area of Detroit. Eleven (11) stations are proposed along the route, with a twelfth station to be constructed after completion of a new Amtrak station. The map in *Figure 1*¹ depicts the route and tentative station locations. Rail vehicles will primarily run in the second to outside lanes, with passenger boarding typically at stations in the outside lanes. Vehicles will run in the center lane at both the northern and southern termini. All operations will be at grade level.

M-1 RAIL envisions a hybrid alternative project delivery approach that seeks to provide increased opportunities for project cost savings and/or accelerated project delivery, and anticipates using a CM/GC approach to deliver the mainline track, road reconstruction, bridgework, underground work, stations and OCS elements.

Specifically, M-1 RAIL has created the following four packages which, together, represent the work necessary for the project to be designed, constructed and operated:

¹ The M-1 RAIL Project is depicted on Figure 1 by the solid red line, with the stations being depicted at solid red circles. The solid blue line depicts the existing location of the Detroit People Mover, with the dotted red lines denote possible future extensions or additions of the M-1 RAIL Project.

- “Package A” – The design and construction of all necessary site, track, roadwork, bridgework, drainage, survey, utility relocation, catenary, traction power control (“TPC”) and traction power substations (“TPSS”), site work for the Vehicle Storage and Maintenance Facility (“VSMF”) at Bethune Street, and station scope elements along the entire length of the overall project using a CM/GC project delivery approach. *Note: property acquisition services for the TPSS and the VSMF are not envisioned to be included within Package A and will be provided by others.*
- “Package B” - Development of final design documents and construction activities for the VSMF using a Design-Build project delivery approach.
- “Package C” - Vehicle acquisition services, including the development of all necessary documents and specifications required to secure a fully Buy America compliant vehicle procurement.
- “Package D” - System Operations and Maintenance (“O&M”) to operate and maintain the fixed rail system for an envisioned period of up to 10 years.

The overall project (i.e., Packages A through D) is generally referred to in this document as the “Project.” This RFP pertains to a party to serve as the Construction Manager/General Contractor (“CM/GC”) for Package A. Some of the services and activities called for in this RFP must be closely coordinated with, and mutually supportive of, services and activities on Packages B, C and D.

The party selected as the CM/GC for Package A shall not have any preemptive right or other preference for selection for Packages B, C and/or D.

The selected CM/GC will deliver the site, mainline track, road reconstruction, bridgework, drainage, survey staking, public and/or private utility relocations, OCS and station elements that comprise Package A. While M-1 RAIL intends to use the methodologies summarized above for other Packages, it reserves the right to combine or split the packages referred to in this RFP depending on the preferred project delivery approach, or combination of approaches, selected by M-1 RAIL in consultation with other project participants.

Figure 1 – Proposed Streetcar Route



M-1 RAIL will use the services of an Owner's Representative (the "OR") to assist in administering Package A. While project elements being designed in Package A will be constructed by the CM/GC; the VSMF (Package B) is expected to be constructed using the design-build delivery approach. The CM/GC, will be required to establish and maintain a working relationship with the Consultant selected by the Owner to perform final design services for Package A (the "Design Consultant") to address constructability and maintenance of traffic in the design plans, and provide suggestions and recommendations for the Consultant to include in the plan deliverables. In fact, it is anticipated that the CM/GC will work primarily with the Design Consultant after the CM/GC contract has been awarded in order to maximize value engineering, constructability and similar opportunities, subject to oversight and coordination by the Owner and the OR. The Design Consultant also will be able to obtain input and recommendations from the selected or potential O&M vendor and shall coordinate this information with the CM/GC, to ensure that the final design will be efficient and cost effective from an operational perspective. The OR will coordinate between all design and construction parties.

Package A will have two distinct segments. "Segment 1" will be composed of all work required to complete the construction from Larned Street to Adams Avenue. The current schedule anticipates this Segment will achieve 100% design completion by July 2013, with mobilization and demolition/removal work authorized to begin in July or August 2013 after a Notice to Proceed is issued by the Owner. "Segment 2" will cover the remaining portion of the corridor, from Adams Avenue to Chandler Street, and is expected to achieve 100% design completion by October 2013, with construction starting as soon thereafter as weather permits. The CM/GC is expected to support and coordinate with the Design Consultant through all design phases associated with Package A.

Segment 1 is under the jurisdiction of the City of Detroit, while Segment 2 is under the jurisdiction of MDOT.

Package A includes the reconstruction of Woodward Avenue between Sibley Street and Chandler Street, a public street owned by the State, the partial reconstruction of the bridge over the I-75 expressway and the complete reconstruction of the bridge over the I-94 expressway, as well as other elements that will be owned by the State or will impact existing improvements (e.g., bridges or drainage improvements) that are owned by the State (collectively, the "MDOT Elements"). All MDOT Elements must conform to the requirements of the Michigan Department of Transportation ("MDOT") and FHWA. It is anticipated that pursuant to a separate Memorandum of Understanding between M-1 RAIL and MDOT, MDOT will have approval rights with respect to MDOT Elements and the CM/GC's responsibilities will include coordination with MDOT as well as obtaining appropriate approvals from MDOT.

Summary of the CM/GC's Responsibilities

The CM/GC is a contracting method that involves the CM/GC in the design process, working in concert with M-1 RAIL, the Design Consultant and the OR, collectively referred to in this RFP as the "Project Team." The focus of the collaboration is to minimize budget and schedule risks. The main role of the CM/GC during pre-construction phase is to provide suggestions and feedback to the Design Consultant and MDOT during the design phase to help reduce errors in design and improve the Project's constructability, as well as maintain budget and schedule. The CM/GC's suggestions during design are expected to reduce schedule delays and support budget goals during construction.

The CM/GC is expected to bring the following expertise to the Project during the design phase:

- The skills and knowledge to estimate the quantities of materials, labor and equipment needed to construct the elements of Package A.
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete the Project and estimate the costs, duration and sequence of these tasks.
- An understanding of the availability, cost and capacities of materials, labor and equipment.
- The skills and knowledge to identify potential budget and schedule risks and methods to mitigate them during the design process.
- The skills and knowledge to ensure a high quality completion of the work in accordance with applicable plans and specification.
- The skills and knowledge to maintain the schedule as outlined.

M-1 RAIL will, under separate contracts, utilize the services of the Design Consultant and the OR on this Project, with whom the CM/GC shall collaborate throughout the Project. The CM/GC also shall collaborate with MDOT relative to the design and construction of the MDOT Elements. Final design of Package A, to be completed by the Design Consultant, is expected to begin in April 2013. The CM/GC will provide constructability; cost and schedule input to the Consultant throughout the entire design phase and will participate in all required coordination meetings and Value Engineering workshops.

The Project's accelerated construction schedule will likely require early procurement of critical materials. It is the responsibility of the CM/GC to apprise the Owner, OR and Design Consultant of early procurement needs in order to maintain the Project budget and schedule. The Owner may authorize the CM/GC to procure specific materials in advance of the anticipated construction start date and shall compensate the CM/GC for this effort accordingly. Such authorization does not entitle the CM/GC to additional advance compensation and in no way should be considered as a Notice to Proceed ("NTP") on the contract work. Specific information related to work start and the NTP is detailed in this RFP.

The selected CM/GC is expected to develop a guaranteed maximum price and related terms ("GMP") for each Segment. Each GMP will include all labor, materials, equipment and incidentals to construct the applicable Segment in its entirety as defined by the pricing plans and in accordance with the established schedule. When a GMP is negotiated, contingency items may be identified that will be paid for outside of the GMP using an Owner's Management Reserve Fund. The negotiations on the GMP for Segment 1 will be commenced when design of the Segment has reached approximately 70% completion and will be finalized at 100% completion. The finalized GMP for Segment 1 will adjust the GMP set at 70% completion upward or downward to reflect additional information or clarifications between the two points of design completion. The final GMP for Segment 2 will be commenced when design of the Segment is between 70% and 100% and will be finalized when the design of Segment 2 has reached 100% completion.

If the GMPs developed by the CM/GC are acceptable to M-1 RAIL, the CM/GC will be awarded the construction of the Segments. If an acceptable GMP cannot be agreed upon for either or both Segments, M-1 RAIL may, at its sole discretion, either re-advertise and rebid the construction work on the Segment(s) and select an alternate party to serve as the CM/GC for construction work on such Segment(s), or utilize a different project delivery approach. For example, if an acceptable GMP is agreed upon for Segment 1, the CM/GC will be awarded the construction of Segment 1, but will only be awarded the construction of Segment 2 if the CM/GC and the Owner agree upon a separate GMP for Segment 2. Conversely, if an acceptable GMP is not agreed upon for Segment 1, the CM/GC will not be awarded the construction of Segment 1, and M-1 RAIL reserves the right to terminate the Contract as to

both Segment 1 and Segment 2 (although M-1 RAIL may permit the CM/GC to submit a GMP or bid on the construction of Segment 2). Any Segment not awarded to the CM/GC may be awarded by the Owner to another party or may be constructed utilizing a different project delivery approach.

Because the CM/GC project delivery approach requires close coordination between the designer and builder during all phases, the total Project construction cost is expected to be lower than what would be expected using the Design-Bid-Build delivery method.

The remaining portion of this RFP provides additional background information on the Project, a description of the Project phases, the anticipated scope of work, and requirements for the CM/GC's team makeup. The CM/GC is responsible for ensuring key staff meet the required qualifications to perform the anticipated construction and related services for the Project.

The Project will be partially funded with federal-aid highway dollars from the FHWA and a federal TIGER I (Transportation Investment Generating Economic Recovery, Phase I) discretionary grant from the FTA, so all applicable local, state and federal requirements and statutes must be adhered to by the Proposer.

ADDITIONAL INFORMATION

Project Website

Information related to this RFP, including questions and addenda, will be made available at the following website: www.m-1rail.com

NEPA/ROD Status

Environmental clearance activities are currently underway. A Supplemental Environmental Assessment ("EA") with a revised Record of Decision ("ROD") is anticipated to be issued by the Federal Transit Administration in April 2013. Information related to the EA is available at <http://www.mi.gov/woodwardstreetcar>. Any new information resulting from the EA Process will be provided as an addendum within one week after it becomes available.

Advanced Preliminary Engineering Work

M-1 RAIL has had significant preliminary engineering work and analyses performed, principally by HNTB Corporation, on certain aspects of the overall Project. This preliminary design work is approximately at the 30-40% complete level for the elements reflected in Package A, and is included in this RFP as **Appendix A**, without warranty or representation as to the correctness or completeness thereof.

Design Criteria

Design Criteria have been developed for the Project as part of the Advanced Preliminary Engineering task. These Design Criteria encompass minimum and maximum requirements for the design of Project components, including the following elements:

- Roadway horizontal and vertical geometry
- Track horizontal and vertical geometry
- Station platform geometric and clearance requirements
- Americans with Disability Act ("ADA") site requirements
- Vehicle dimensions and operating heights

M-1 RAIL or MDOT, as to the MDOT Elements, reserve the right to modify the Design Criteria during the design phase. Any constructability suggestions and other enhancements to the Project provided by the CM/GC during the design phase must meet the minimum Design Criteria. During construction, the Design Criteria should be referenced when proposing field changes; field changes that violate any minimum Design Criteria may be summarily rejected. Design Criteria for the Project are included in **Appendix A**.

RFP Schedule

Issue RFP	April 17, 2013
Mandatory Pre Bid Meeting	May 9, 2013
Deadline for Questions and Clarifications	May 13, 2013
Response to Questions and Clarifications Posted	May 14, 2013
CM/GC Proposals Due	May 17, 2013
Selection of CM/GC	May 24, 2013
Begin Pre-Construction Services Fee Negotiation	May 25, 2013
Award Pre-Construction Services Contract	June 1, 2013
Development of Plans and Specifications (by Design Consultant)	April 2013 – January 2014
GMP Segment 1	June 19, 2013
Segment 1 Negotiation*	July 3, 2013
Issue Notice to Proceed for Segment 1	July 8, 2013
GMP Segment 2	October 1, 2013
Segment 2 Negotiation*	October 15, 2013
Issue Notice to Proceed for Segment 2	November 1, 2013

* - As noted above, design is expected to be at between 70% to 100% completion when GMP negotiations begin for each Segment.

ADDITIONAL BACKGROUND

Project Goals

M-1 RAIL’s goals for the Project and the Contract are as follows:

- Provide a modern streetcar system and stations along Woodward Avenue,
- Achieve initial system operations in the fourth quarter of 2015,
- Deliver a federally-compliant project safely and efficiently within M-1 RAIL’s available \$77.5 million capital budget for Package A,
- Achieve substantial completion of construction activities for Segment 1 by December 2013 and on Segment 2 by August 31, 2015,
- Maintain open communications between the CM/GC, subcontractors, jurisdictional partners and other stakeholders.
- Minimize construction impacts to Woodward Avenue stakeholders, business owners and users of the corridor, minimize all utility disruptions and interferences during construction
- Encourage and maximize the development and participation of the local workforce, and
- Serve as a catalyst to spur other economic development along the Woodward Avenue corridor.

M-1 RAIL Project Manager

The M-1 RAIL Project Manager is Paul Childs, Chief Operating Officer of M-1 RAIL; he will be the sole point of contact during the RFP process.

All inquiries must be made via email to: paul.childs@comcast.net.

Project Schedule

Final Design – Segment 1 (South of Adams)	April 2013 – July 2013
Final Design – Segment 2 (North of Adams)	April 2013 – October 2013
Vehicle Procurement RFP Issued	2nd Quarter 2013
Construction – Segment 1 (South of Adams)	
Segment 1 Utility Relocations, TPSS & Station Foundation, Site/Demo	June 2013 – December 2013
Segment 1 Woodward Avenue Rehabilitation Work	June 2013 – December 2013
Segment 1 Guideway Construction	June 2013 – August 2015
Station & Systems Construction	April 2014 – August 2015
Construction – Segment 2 (North of Adams)	
Utility Relocations, TPSS & Station Foundation, Site/Demo	April 2014 – April 2015
Woodward Avenue Rehabilitation Work	April 2014 – August 2015
Guideway Construction	April 2014 – August 2015
Stations & Systems Construction	April 2014 – August 2015
VSMF Site Work	October 2013 – August 2014
System Start-up & Testing	Aug. 2015 – Last Quarter 2015
Begin System Operations	Fourth Quarter 2015

The above schedule assumes accelerated reviews will be completed on the deliverables of the Design Consultant by the Owner, the OR, MDOT and the City of Detroit. Additional details regarding the proposed Project delivery approach is contained in **Appendix B**.

Project Budget

The budget for the design and construction work in Package A is \$85.0 million which includes the design and construction of the following items:

- Roadway rehabilitation from Larned Street to Sibley Street
- Roadway reconstruction from Sibley Street to Chandler Street
- Replacement of the bridge over the I-94 expressway
- Guideway and track elements
- Station platforms and shelters
- TPSS and VSMF site work and special conditions
- All Systems, including the Overhead Contact System (“OCS”), TPC, signal work and communications up to Package B limits
- Professional services such as design and construction oversight

All components of Package A, including soft costs and unknowns must be completed within the allotted budget.

Project Scope of Work

Pre-Construction Services

The CM/GC shall consult with the Project Team during the pre-construction phase to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, Package A is deemed a success by all.

The scope of pre-construction services shall include, but is not limited to, the following work:

- Analyze and evaluate the constructability of the Design Consultant's design for the elements included within Package A.
- Provide information, cost estimates and alternative options to help facilitate decisions regarding existing conditions, construction impacts and staging.
- Provide input to the Project Team regarding current construction industry practices, labor market and material availability.
- Attend all Project coordination and/or review meetings and workshops, requiring subcontractors to attend if appropriate for their area of work.
- Provide input for and participate in two (2) Value Engineering workshops, one for each Segment of Package A.
- Coordinate the construction of the MDOT Elements with MDOT.
- Use Subcontractors as needed to provide the necessary expertise.
- Review in-progress design plans and provide input and suggestions with respect to the methods, materials and construction sequencing.
- Review design documents in-progress and offer suggestions to improve completeness or clarity.
- Assist the Owner/OR with the development of Maintenance of Traffic ("MOT") and Woodward Avenue Open for Business performance measures used to provide monthly incentive payments to the CM/GC for maintaining access and minimizing impacts, including construction duration along Woodward Avenue.
- Notify the Consultant and M-1 RAIL Project Manager, in writing, of all problems, conflicts and/or deficiencies identified during the review and evaluation of design drawings.
- Assist the Consultant and M-1 RAIL Project Manager in resolving problems, conflicts and/or deficiencies identified during the review and evaluation of design drawings.
- Provide a preliminary construction cost estimate upon completion of the preliminary plans.
- Provide recommendations to the plans or construction documents to ensure completion of the Project in the most expeditious and efficient manner possible.
- Provide a final review and evaluation of the final plans and construction documents.
- Support stakeholder engagement and public outreach activities as requested by the Owner, including attending meetings.
- Maintain a current working estimate for the Project.
- Perform activities proposed in the "Local Contractor and Workforce Development and Participation" section of this RFP.

Additional work requested by M-1 RAIL, above the work agreed upon in the Contract, shall be negotiated for payment with the Contractor. M-1 RAIL reserves the right to engage an outside vendor to perform the work if a negotiated fee cannot be reached.

Construction Services

The scope of construction services shall include the following:

- Construct the Project elements in Package A in accordance with the approved design and the MDOT 2012 Standard Specifications for Construction. “Construction” shall include, but is not limited to, the following activities:
 - Survey/staking of horizontal and vertical alignments of all proposed work, including road, drainage, and track work.
 - Removal of existing pavement and base, curb and gutter, drainage system, signing, signals and other items designated in the plans.
 - Removal and disposing of abandoned streetcar tracks materials and ballast that may be encountered along Woodward Avenue.
 - Construction of new pavement and base, streetcar tracks, drainage system, signing, signals and other items designated in the plans.
 - Construction of the OCS, including catenaries, cable installation, TPSS and stray current protection.
 - Modifications to the foundations of existing light poles identified for collocation of proposed lighting and OCS elements, installation of new poles, and installation/attachment of all required equipment and connections.
 - Construction of an off-wire system for streetcar power, if utilized, according to the approved design.
 - Construction of the stations and stop platforms, including all proposed amenities.
 - Relocate public utilities according to the approved design and provide appropriate protection of remaining facilities during construction.
- Perform vibration monitoring and analysis at the Woodward, Kennedy and Grand Circus parking garages, residential and industrial buildings within 50 feet of the Project ROW lines, construction staging areas and all buried and private and public utilities inside the Project ROW lines. Vibration monitoring work shall include:
 - Submitting proposed monitoring locations, equipment and method of analysis for review and approval by the Owner.
 - Obtaining vibration readings at an agreed-upon frequency when performing demolition work and/or other work that may produce vibrations within the structures.
 - Interpreting the readings to determine the effects of the vibrations on the structures, under the supervision of a Professional Engineer registered in the state of Michigan.
 - Proposing methods of protection from further damage and remediation of any damage caused to the structures from the vibrations. An analysis of the existing structures will be performed by the Consultant and will be provided to the CM/GC upon completion.
- Minimize construction impacts to hollow walks and basements along the corridor, especially during installation of OCS foundations and all vibration-causing work.
- Coordinate and facilitate with private utility owners, or their contractors, for utility relocations and protection of facilities during construction.
- Make reasonable provisions to facilitate work in the corridor for Packages B, C and D
- Bid subcontractor work and manage all construction-related contracts while meeting the DBE and other requirements.
- Perform activities proposed in the “Local Contractor and Workforce Development and Participation” section of this RFP.
- Submit for approval and execute a construction Quality Assurance/Quality Control Plan.
- Address and adhere to all federal, state and local permitting and environmental requirements.

- Address and adhere to seasonal and/or daytime/nighttime work restrictions as set forth by MDOT and/or the City of Detroit.
- Maintain a safe work site, meeting OSHA and MIOSHA requirements.
- Provide a cost-loaded CPM schedule for Package A. The schedule must identify Project activities, sequence, critical path and milestones and shall be updated weekly throughout construction.
- Self-perform at least 30% of all construction work, excluding all identified specialty items.
- Support stakeholder engagement and public outreach activities as requested by the Owner, including attending meetings.
- Complete the construction, excluding restoration, no later than **August 31, 2015**.
- Complete restoration work and punch list items no later than **May 1, 2016**.

Any additional work requested by M-1 RAIL to complete Package A, above the work agreed upon in the contracted GMPs, shall be negotiated for payment with the Contractor. M-1 RAIL reserves the right to engage an outside vendor to perform the additional work should the CM/GC refuse to perform additional work or the parties are unable to reach agreement on the cost, schedule or other terms of additional work.

Extra work and associated costs resulting from errors in the design will be considered included in the GMPs. The required Pre-Construction Services are intended to facilitate close coordination between the Consultant and CM/GC, thereby reducing and/or eliminating the frequency and severity of design errors impacting construction.

Pre-Construction Services Fee Derivation

Compensation for the Pre-Construction Services work shall be on a **lump sum** basis, paid monthly as Pre-Construction Services are rendered. All billings for services must be directed to M-1 RAIL. Payment to the CM/GC for services rendered shall not exceed the maximum lump sum amount unless an increase is approved by M-1 RAIL in accordance with the contract with the CM/GC. The final billing must be received by M-1 RAIL within sixty (60) days of the completion of services.

The Proposal must include a Pre-Construction Services Fee sealed in a separate envelope. This lump sum price should include all direct costs, overhead and profit required to complete the scope of work outlined above. The Proposal should include a description of the intended level of effort and equivalent cost per hour during the development of plans and specifications for Segments 1 and 2, according to the schedule outlined above. M-1 RAIL will require verification and certification of the costs from the selected CM/GC prior to executing a contract.

The Proposal shall include a table showing labor rates and estimated hours for all Project personnel providing Pre-Construction Services, overhead rate, sub consultant or subcontractor costs (if any), direct expenses, fixed fee and total costs (using MDOT forms 5101A, 5101B, and 5101C).

M-1 RAIL reserves the right to negotiate the cost of the Pre-Construction Services Fee. If M-1 RAIL and the selected CM/GC cannot agree on a price, hours of effort or number of employees providing the Pre-Construction Services, M-1 RAIL will begin negotiations with the next-highest-ranking CM/GC from the RFP scoring process.

M-1 RAIL may terminate the contract with the CM/GC if Pre-Construction Services and coordination are not provided as negotiated and/or expected, or for convenience. If the Contract is terminated for any reason during the Pre-Construction phase, M-1 RAIL will determine if partial compensation for services rendered shall be paid to the CM/GC.

Guaranteed Maximum Price (GMP)

M-1 RAIL anticipates the CM/GC will be required to submit two separate GMPs for Package A. The first GMP shall be submitted when the design of Segment 1 has reached approximately 70% completion. It is strongly encouraged that the CM/GC coordinates closely with the Design Consultant while developing each GMP. M-1 RAIL intends to establish an Owner's Management Reserve Fund for high risk items that remain at the 70% Design Plan level. The final GMP for Segment 1 will be agreed upon at the completion of the Segment 1 design (100% design completion), with changes between the 70% design number and the final number reflecting additional information or clarification between the two points of design. The GMP for Segment 2 (Adams Avenue to Chandler Streets) will be commenced when design of the Segment is between 70% and 100% complete and will be finalized when the design of Segment 2 is complete (100% design completion).

Each GMP must include all necessary materials, equipment and staff to complete the construction of the work reflected in Package A. The GMPs will not be exceeded without written approval from the M-1 RAIL Project Manager, and only by a written work order. When a GMP is negotiated, contingency items may be identified that will be paid for outside of the GMP using an Owner's Management Reserve Fund.

If the M-1 RAIL Project Manager and the CM/GC cannot agree on a GMP and/or contingency items, M-1 RAIL reserves the right to terminate the CM/GC services without penalty or payment, except payment for Pre-Construction Services previously rendered, and proceed as necessary. If a GMP cannot be agreed upon for a Segment, M-1 RAIL reserves the right to re-advertise the applicable Segment and select and begin negotiations with a new CM/GC or choose to use an alternative form of project delivery approaches to construct the Segment. M-1 RAIL also reserves the right to execute a contract for only Segment 1 and terminate the CM/GC contract for Segment 2 scope of work, if agreement cannot be reached on the Segment 2 GMP.

Any information provided by the CM/GC during the Pre-Construction phase will be used to develop the plans and specifications for the letting. Each GMP shall include:

- GMP proposal, including all overhead and profit considered within specified pay items as well as any and all subcontracted work.
- Construction schedule showing the proposed start and finished dates and any significant milestones.
- Quality Assurance / Quality Control Plan.
- Maintenance of Traffic Plan including all provisions proposed to maintain access to business and residences located along the Woodward Avenue corridor throughout construction.
- Clarification of understanding of the EPA/MDNRE/USACOE requirements, including adherence to the soil erosion and sedimentation control plan requirements.
- Disadvantaged Business Enterprise (DBE) participation description and Local Workforce Development and Participation Plan during construction.
- Description of all other inclusions to, or exclusions from, the GMP, including all assumptions and clarifications.

- Written guarantee from the CM/GC that the total construction cost shall not exceed the GMP. All costs or expenses in excess of the GMP shall be borne by the CM/GC, unless adjusted by a previously-approved written work order.

The CM/GC will be required to make available all cost and budget estimates, including supporting materials and records, to M-1 RAIL.

Incentive Based MOT & Open For Business Stipend Payments

Woodward Avenue serves as the main artery for Detroit's business, institutional, cultural, educational and recreational attractions. Woodward Avenue also contains and will generate new or recently opened retail stores and other business endeavors that could be negatively impacted if there is undue disruption caused by construction activities along Woodward Avenue. M-1 RAIL desires to minimize construction impacts and the overall duration of construction on adjacent property owners. For this reason, this RFP requests information as to how the CM/GC will seek to avoid or minimize disruption to adjacent property owners. In addition, M-1 RAIL intends to provide a to-be-agreed-upon monthly stipend to the CM/GC if pre-established MOT and Open For Business Performance Measures are achieved. M-1 RAIL intends to appoint a Stakeholder Advisory Council ("SAC"), made up of impacted stakeholders along the corridor, to assess the performance of the CM/GC on a monthly basis. The SAC will meet monthly with the CM/GC, which will submit a monthly Community Involvement Report along with an application for the MOT/Open For Business Stipend Payment. The SAC will determine whether the CM/GC's performance measures have been achieved and warrant payment of the Stipend.

The CM/GC shall conduct all work necessary to meet the requirements associated with MOT minimum requirements as defined in **Appendix A**, including providing for the safe and efficient movement of people, goods and services around the Project while minimizing impacts to residents, commuters and businesses throughout the life of the Contract from the start of Contract operations to the final completion thereof. M-1 RAIL retains the right to modify the requirements for traffic control as deemed necessary due to existing field conditions.

Termination of Contract

In the event that the Contract is terminated after the award of the Construction Phase to the CM/GC, the termination procedures described below, based on the MDOT 2012 Standard Specifications for Construction associated with Package A, shall be followed:

If M-1 RAIL determines that termination is in M-1 RAIL's best interest, it may terminate the Contract or any portion thereof. If M-1 RAIL orders termination of the Contract effective on a certain date, M-1 RAIL will pay the Contractor for completed and partially-completed work as of that date at the Contract price. If M-1 RAIL terminates a portion of the Contract, M-1 RAIL may stop delivery and payment for materials deemed unnecessary. M-1 RAIL will compensate the CM/GC a fair and equitable amount for all direct costs incurred on items of eliminated work prior to the CM/GC's removal from the Contract.

M-1 RAIL may choose to purchase from the CM/GC acceptable materials obtained for the work but not used at actual cost delivered to a prescribed location plus fifteen (15%) percent, or otherwise disposed of as mutually agreed.

The CM/GC must submit any claim for additional compensation not covered in the Contract within sixty (60) days after the effective termination date, or as otherwise authorized by the M-1 RAIL Project Manager. The CM/GC must make records available to support the validity and amount of compensation

sought. The CM/GC is not entitled to compensation for loss of anticipated profits, income or revenues due to the M-1 RAIL's termination of the Contract or any portion thereof.

M-1 RAIL's decision to terminate the Contract or a portion thereof will neither relieve the CM/GC of its contractual responsibilities for the completed work, nor will it relieve the CM/GC's Surety of its obligation for any claim arising out of the work performed.

M-1 RAIL may terminate the Contract for convenience or after determining that, for reasons beyond either M-1 RAIL's or the CM/GC's control, the Contractor is prevented from proceeding with or completing the Contract work. Reasons for termination may include, but are not limited to, the following:

- Executive orders by the President of the United States relating to war or national defense;
- A national emergency that creates a serious shortage of materials;
- Orders from duly constituted authorities relating to energy conservation, preservation of archaeological and historical findings, funding problems or a change in Project priorities;
- Restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws, or where the issuance of the order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor; or
- A differing site condition or altered character of work amounting to significant additional contract costs.

The M-1 RAIL Project Manager will deliver a Notice of Termination to the Contractor that specifies the extent of termination and the effective date. After receipt of a Notice of Termination, the Contractor must immediately proceed with the following obligations:

1. Stop work as specified in the notice;
2. Place no further subcontracts or orders for materials, services or facilities, except as necessary to complete the remaining portion of the Contract;
3. Terminate all subcontracts to the extent they relate to the work terminated;
4. Transfer title and deliver to M-1 RAIL or MDOT (as to the MDOT Elements) the following:
 - For the fabricated, partially fabricated or unfabricated parts, all work in progress, completed work, supplies and other material produced or acquired for the terminated work (whether or not on-site); and
 - The completed or partially completed plans, drawings, information and other property that, if the contract had been completed, the Contractor would have been required to provide to M-1 RAIL or MDOT, as applicable;
5. Complete the performance of the non-terminated work;
6. With the OR, on a date identified by the OR, take inventory of acceptable materials obtained for the Project that has not been incorporated into the work; and
7. Take any action necessary, or directed by the OR or the Owner, for the protection and preservation of the property related to the Contract that is in the possession of the CM/GC and in which the M-1 RAIL or MDOT has or may acquire an interest.

Assignment

M-1 RAIL may elect to use a subsidiary or an affiliate to construct the Project. In such event, M-1 RAIL shall have the right to have its subsidiary or affiliate execute the Contract, or if M-1 RAIL has already signed the Contract, to assign the Contract to its subsidiary or affiliate.

Conditions of Submittal

Prequalification

The CM/GC is hereby notified that the MDOT net classification required for construction of the entire Project is 80000N5 or Combined/Joint 80000B, Fa.

In addition to the above minimum prequalification requirement for prime contractors, this Project includes the sub classifications of N5, B, Ea, Fa and L. If the prime contractor is not prequalified in these sub classifications, it must use prequalified subcontractors. For information on how to become prequalified, visit the MDOT website (http://www.michigan.gov/mdot/0,4616,7-151-9625_21539_21545---,00.html) or contact Jill Mullins at [\(517\) 373-1576](tel:517-373-1576).

Selection Process

Submission of a Proposal in response to this RFP indicates the Proposer's acceptance of the evaluation process and the recognition that subjective judgments must be made by the Selection Committee during the evaluation process and in its final selection.

Requests for Clarification

Any and all inquiries, suggestions, or requests concerning interpretation, clarification or additional information pertaining to this RFP shall be made by e-mail **by 4:00 PM EST, May 13, 2013** to:

Paul Childs

COO, M-1 RAIL

Paul.Childs@m1rail.org

Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of M-1 RAIL other than the individual named above during the RFP process.

Responses to all inquiries shall be compiled in one document and posted at www.m-1rail.com. This response by M-1 RAIL will be the only official method for communicating interpretations, clarifications or additional information.

Addenda

All addenda issued by M-1 RAIL before the Proposal due date are part of the RFP, and all requirements shall be incorporated into the Proposal. The Proposer shall acknowledge receipt of each addendum by completing and submitting form CM/GC-002.

Notice to Proceed

The selected CM/GC shall not begin work until a Notice to Proceed ("NTP") has been issued by M-1 RAIL. Work done by the CM/GC prior to the NTP is not eligible for compensation without express written approval from the M-1 RAIL Project Manager.

Completeness of Proposal

Each Proposal should be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of the RFP. Emphasis should be on the Proposer's understanding of the Project needs and written to ensure completeness, clarity of content and responsiveness to requirements.

Failure to comply with the requirements contained in the RFP may be subject for rejection of the Proposal. Any Proposal submitted past the deadline or that does not meet the requirements of this RFP will be rejected and returned to the Proposer without being evaluated.

Withdrawal or Modification

Proposals may be withdrawn and resubmitted any time prior to the RFP deadline, but may not be changed, altered or modified after the deadline. Proposal withdrawal requests after the deadline must be made by the Proposer in writing, and must include reasons for the withdrawal. M-1 RAIL reserves the right to reject Proposal withdrawal requests made after the deadline; this decision will be at the sole discretion of M-1 RAIL.

Validity Period

Proposals are to remain valid for a period of ninety (90) days beyond the submittal deadline.

Conflicts of Interest

Organizational conflict of interest means that because of other activities or relationships with other persons or entities, an organization:

- Is unable, or potentially unable, to render impartial assistance or advice to the Project Team
- Is, or might otherwise be, impaired in its objectivity in performing the Contract work
- Has an unfair competitive advantage

Disclosure, evaluation, neutralization and management of these conflicts and the appearance of conflicts, is in the interest of the public, Project Team and the consultant and construction communities. Proposers are required to disclose all relevant facts concerning any past, present or currently planned interests, activities or relationships which may present an organizational conflict of interest. Proposers shall state how their interest, activities or relationships, or those of the chief executives, directors, key Project personnel or proposed consultants may result, or could be viewed as, an organizational conflict of interest. Proposers shall submit Conflict of Interest Statement (page 2 of 2 in MDOT form 5100D) with the Proposal. It is recommended to contact the M-1 RAIL Project Manager immediately if a conflict of interest is found, or appears to be present, so a course of action may be determined with minimal impact to a Proposer.

If an organizational conflict of interest is determined to exist, M-1 RAIL may, at its sole discretion:

- Offer the Proposer the opportunity to avoid or neutralize the organizational conflict of interest
- Disqualify the Proposer from participation
- If award has already occurred, declare the Proposer nonresponsive and award the Contract to the next highest scoring Proposer
- Cancel the Contract

If the Proposer was aware of an organizational conflict of interest prior to award of a Contract and did not disclose the conflict, M-1 RAIL may terminate the Contract for default.

Key Personnel Changes

After submittal of the Proposal, Key Personnel may not be removed, replaced or added without the written approval of the M-1 RAIL Project Manager. It is expected that Key Personnel presented in the RFP will be available for the duration of the Project. Any changes to Key Personnel will require approval

from the M-1 RAIL Project Manager; failure to obtain written approval may result in termination of the Contract.

To qualify for approval as to Key Personnel, the written request shall document that the proposed removal and replacement, or addition will be equal to or better-qualified than the Key Personnel provided in the Proposal.

Equal Employment Opportunity

The Submitter will be required to follow both the State of Michigan and Federal Equal Employment Opportunity (“EEO”) policies.

Disadvantaged Business Enterprises

As the Project is partially funded by the State of Michigan, Proposers shall adhere to the following:

It is the policy of M-1 RAIL and MDOT that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, no person or business shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any U.S. Department of Transportation (“DOT”) assisted contract because of sex, race, religion, or national origin.

MDOT has established a DBE program in accordance with regulations of the DOT, 49 CFP Part 26. It is the Proposer’s responsibility to take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE’s have the maximum possible opportunity to compete for and perform the contract. **DBE requirements do not apply to Pre-Construction Services. Use of a DBE during Pre-Construction services does not apply toward the required DBE Percentage.**

M-1 RAIL’s goal for DBE participation for construction services is 11%. A Submitter who fails to meet the DBE participation will be deemed ineligible for award of the Contract. A request for waiver or modification of the DBE participation may be submitted in accordance with current MDOT DBE Program Procedures and Section 102.18 of the MDOT Standard Specifications for Construction. The Contract will not be awarded until a determination is made by MDOT. Only firms that are certified and listed on the Michigan Uniform Certification Program (MUCP) are eligible for DBE participation credit. An MUCP DBE directory is linked to the State of Michigan website at <http://www.michigan.gov/mucp>.

In addition, it is a goal of M-1 RAIL to encourage local contractor and workforce development and participation set forth in the Proposal Requirements Section of this RFP.

Obligations of Parties

The Proposer is solely responsible for ensuring that its Proposal is clear, correct and consistent. M-1 RAIL reserves the right, at its sole discretion (but is not obligated), to:

- Investigate the qualifications of any Proposer
- Seek or obtain data from any source related to the Proposal
- Require confirmation of information furnished by a Proposer
- Require additional information from a Proposer concerning its Proposal
- Seek and receive clarifications to a Proposal
- Require additional evidence of qualifications to perform the work

- Waive minor deficiencies and irregularities in a Proposal
- Reject any or all Proposals
- Cancel, modify or withdraw the RFP
- Issue a new RFP

Additional Requirements

By submitting a Proposal, the Proposer understands and acknowledges the following:

1. M-1 RAIL reserves the right to accept or reject any or all Proposals and to waive irregularities and technicalities which, in its opinion, would best serve its interests or the interests of the Project. M-1 RAIL reserves the right to cancel or withdraw this RFP, without liability, at any time prior to the execution of a formal Contract by M-1 RAIL. M-1 RAIL also reserves the right to make investigations and inquires as it deems necessary to determine the ability and qualifications of any submitting firm or team to perform the work or services requested. The award of the CM/GC's Contract is contingent on the issuance of FTA funding approval as well as a number of other financial contingencies.
2. This RFP is not an offer to enter into a Contract. M-1 RAIL intends to begin contract negotiations with the firm or team it selects as the best firm or team for the Project, but reserves the right to enter into negotiations with one or more qualified firms or teams at the same time. Should negotiations with a party fail to result in the execution of a formal contract, M-1 RAIL reserves the right to terminate negotiations with such party and may, at its discretion, begin negotiations with the next-most-qualified party, as determined by M-1 RAIL. This process may continue until a Contract is negotiated and signed or until M-1 RAIL terminates or withdraws this RFP. The terms of any Contract must be acceptable to M-1 RAIL.
3. The CM/GC shall meet the DBE requirements of the Project as stated in this RFP.
4. The CM/GC shall comply with all applicable laws and regulations during the conduct of the Contract. This includes any and all requirements to conduct business in the City of Detroit, the County of Wayne, and the State of Michigan. By submitting a Proposal, the Proposer will be confirming its compliance with these requirements.
5. M-1 RAIL shall not be liable, nor will provide any compensation, for costs incurred by any Proposer responding to this RFP, or any costs incurred in connection with any discussions, correspondence or negotiation sessions. M-1 RAIL shall not be obligated to return any Proposal submitted by a Proposer, and M-1 RAIL shall be free to use any suggestions, information or ideas contained in any Proposal, whether or not the Proposal is selected by M-1 RAIL.
6. Insurance

The general insurance requirements, as well as minimum limits, for insurance to be carried by the CM/GC are set forth in attached **Appendix C**. M-1 RAIL reserves the right to increase or change these requirements during the selection process. Any construction services contract entered into with a CM/GC selected under this RFP shall require the CM/GC to carry the necessary liability insurance during the terms of this contract or any extension thereof. A certified copy of the insurance policy shall be provided to M-1 RAIL as evidence thereof naming M-1 RAIL, its directors, officers, agents, consultants and employees, as well as MDOT and its directors, officers, agents and employees as additional insureds for public liability and property damage, pursuant to an endorsement acceptable to M-1 RAIL and providing for a thirty (30) day

notice to M-1 RAIL prior to termination or cancellation of the policy. M-1 RAIL reserves the right to require review and approval of the actual policy of insurance before it executes an agreement pursuant to this RFP. All liability insurance coverage's shall be maintained in effect for a period of not less than five (5) years after completion of the work reflected in Package A. The CM/GC shall give M-1 RAIL prompt written notice of any claims made during the periods in which the insurance coverage's are in effect.

7. Indemnification and Defense of Suits

Any construction services contract entered into with the CM/GC selected under this RFP shall require the CM/GC to the fullest extent permitted by law, to defend, indemnify and hold harmless M-1 RAIL, its constituent entities, officers, agents, and employees, and MDOT, and its officers, directors, agents and employees (collectively, the "Indemnified Parties"). In case any claim is made, or any action in court, or proceeding before an administrative agency is brought against any of the Indemnified Parties arising out of or resulting from the failure, omission or neglect of the CM/GC, a Subcontractor, or any other parties or entity performing any portion of the services or work specified in this RFP, in whole or in part, to perform any of the covenants, acts, matters or things by the Contract undertaken or for injury or damage caused by the negligence of the CM/GC, a Subcontractor, or any other parties or entity performing any of the services or work, then the CM/GC shall defend, indemnify and save harmless the Indemnified Parties from all liabilities, losses, damages, costs, expenses, judgments, or decrees arising out of such claim, action or proceeding. The Indemnified Party shall tender the defense of any claim or action at law or in equity or other proceeding to the CM/GC, and upon such tender, it shall be the duty of the CM/GC or the CM/GC's insurer to defend such claim or action without cost or expense to any of the Indemnified Parties. The CM/GC shall be solely responsible for the conduct and performance of the services and work required under the Contract and for the results therefrom. This provision is not intended to have the CM/GC be responsible for the negligent errors or acts of the Indemnified Parties. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 7. In claims against any Indemnified Party by an employee of the CM/GC, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 7 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CM/GC, a Subcontractor, or any other person or entity performing any portion of the Services under workers' compensation acts, disability benefit acts or other employee benefit acts.

8. Records, Audits, and Confidentiality

Any Contract entered into with CM/GC selected under this RFP shall require the CM/GC to work in concert with the Design Consultant to maintain a Project file, incorporating all Project materials for future reference by M-1 RAIL. The CM/GC shall provide copies of all data, calculations and reports, as may be requested by M-1 RAIL or its OR. All materials produced under the Contract are to become and/or remain the property of M-1 RAIL, which may utilize such material in any manner or purpose as it desires without the further permission, approval or compensation to the CM/GC. The CM/GC may not use or publish any materials produced under the contract without the written permission of M-1 RAIL. The CM/GC shall maintain books, records, documents, and other evidence directly pertinent to performance of the Contract in accordance with accepted applicable industry practices. M-1 RAIL, or any of its duly authorized representatives, shall have access at all times to such books, records, documents, papers or any

records of the CM/GC which are directly pertinent to the Project or the agreement between the CM/GC and M-1 RAIL, for the purpose of making audits, examinations, excerpts and transcriptions, including audits of the fees or reimbursables paid or payable to the CM/GC or any Subcontractor. M-1 RAIL and the CM/GC shall comply with the *Michigan Open Meetings Act* (MI Act No. 442) and the *Michigan Freedom of Information Act* (MI Act No. 267), and the CM/GC will assist M-1 Rail in conforming to the law. Except as otherwise authorized, those records shall be maintained for a period of three (3) years after receipt of the final payment under the construction services contract. All data and information pertaining to this RFP shall be treated by the Proposer and its agents as confidential. The Proposer and its agents shall not disclose or communicate the aforesaid matters to a third party or use them in advertising, publicity, propaganda and/or in another job or jobs, unless written consent is obtained from M-1 RAIL.

All material submitted pursuant to this RFP shall become the property of M-1 RAIL.

Submittals shall be kept confidential and will not be released until the CM/GC selection process is complete with the exception of the CM/GC selection process.

9. Non-Discrimination and Equal Employment

Any Contract entered into with the CM/GC selected under the future RFP shall require the CM/GC to agree

- a. not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status;
- b. not to discriminate for the same reason in regard to tenure, terms or conditions of employment;
- c. not to deny promotion or increase in compensation solely for these reasons;
- d. not to adopt or enforce any rule or employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status;
- e. not to seek such information as to any employee as a condition of employment;
- f. not to penalize any employee or discriminate in the selection of personnel for training solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

10. Subcontracting / Project Teams

Proposers responding to this RFP may identify and utilize Subcontractors in order to appropriately fulfill all aspects of the scope of services and DBE participation goals as outlined in this RFP. The Prime Contractor that enters into a Contract under this RFP shall be responsible for all services performed under the Contract by its Subcontractors. Unless identified in the response to this RFP, none of the services to be performed under the Contract shall be subcontracted without the prior written approval of M-1 RAIL. If any services are subcontracted, the performance of such services shall be specified by the Contract and shall be subject to each provision contained therein.

11. E-Verify Compliance

The Proposer warrants that it complies with all Federal Immigration laws and regulations that relate to its employees with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et

seq.) and certify use of the E-Verify system established by the Department of Homeland Security. The Proposer warrants (by submitting this RFP) that it is in compliance with the Act in relation to all employees performing work in the United States and do not knowingly employ persons in violation of United States immigration laws, and, by the date of performance of services under the Contract, the CM/GC and all Subcontractors have implemented the E-Verify program for all employees who will perform work on this project.

For information on E-Verify, please refer to the following website: <http://www.uscis.gov/>

Federal Requirements

Package A elements will be funded through private donations, philanthropic sources, federal and State Act 51 highway funding, Transportation Enhancement (“TE”) funding, Congestion Mitigation and Air Quality funding (“CMAQ”), and a TIGER I (Transportation Investment Generating Economic Recovery, Phase I) federal discretionary grant that will be administered by the FTA. As such, all work, including work under the CM/GC’s contract, is subject to State Act 51 and federal requirements as may be updated during the course of the Project. Relevant federal requirements are generally identified in the following regulations, circulars, and guidance documents and are available at <http://www.fta.dot.gov/>. The TIGER I grant funding is from the American Recovery and Reinvestment Act of 2009 (ARRA). The CM/GC will be responsible for ARRA employment reports regarding the number of newly hired employees and the number of existing employees for the prime and all-tier subcontractors working on this contract.

Regulations

- Project Management Oversight, 49 C.F.R. Part 633
- Major Capital Investment Projects, 49 C.F.R. Part 611
- Joint FTA/FHWA regulations, Metropolitan Planning, 23 C.F.R. Part 450
- Joint FTA/FHWA regulations, Environmental Impact and Related Procedures, 23 C.F.R. Part 771
- U.S. DOT regulation, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24

FTA Circulars

- C4220.1F, Third Party Contracting Guidance
- C5010.1D, Grant Management Guidelines
- FTA Master Agreement
- C5800/1, Safety and Security Management Plan
- Best Practices Procurement Manual

Guidance

- Guidance for Transit Financial Plans, June 2000
- Reporting Instructions for the Section 5309 New Starts Criteria
- Interim Guidance on Design-Build
- Quality Assurance and Quality Control Guidelines
- Project and Construction Management Guidelines, 2009 Update
- Value Engineering Process Overview, January 1998
- TCRP G-08 - A Guidebook for the Evaluation of Project Delivery Methods

The CM/GC shall be responsible for ensuring compliance with all federal requirements during Project implementation, including MDOT’s Form 3163, which lists and references all contractual provisions

required by U.S. DOT, as set forth in FTA Circular 4220.1F. MDOT Form 3163, which the CM/GC will be required to submit for CM/GC scope of services, is included in **Appendix D**. The documents described above and in Appendix D may not be inclusive of all federal requirements, and the CM/GC is responsible for compliance with all federal requirements, whether or not they are listed above or in Appendix D.

Proposal Requirements

Proposal content must adhere to the page limits specified. Proposals that exceed the page limits specified below will be rejected.

Cover Sheet

(One page maximum)

Proposal cover sheet shall include Proposer's firm, name of overall CM/GC Project Manager, and Project Manager's contact information, along with the date submitted and total number of pages.

Project Approach

(Two pages maximum)

Proposers should describe their approach to the Project, drawing on past project examples and outcomes. Provide details regarding the proposed method for the Project Manager to work with the Owner, OR and Consultant, and what tools will be utilized to apprise the Owner on progress of work and budget. Discuss how the work approach will be delivered within M-1 RAIL's envisioned schedule, address the scope of services and support the Project goals.

Understanding of Pre-Construction Services

(Three pages maximum)

Proposers shall demonstrate a clear understanding of the required Pre-Construction Services, showcasing the ability to support the Consultant through Final Design, especially during the overlapping period of Segment 1 construction and Segment 2 design. The Proposal should highlight the CM/GC's ability to work with the Consultant to enhance Project constructability, minimize overall cost, provide Value Engineering, optimize project performance, and meet all City and MDOT requirements with special regard to MOT/Staging. Provide experience with scheduling and estimating for projects and describe approach to developing GMP.

Understanding of Construction Services

(Three pages maximum)

Proposers should demonstrate clear understating of the required Construction Services. State experience on projects of similar scale and ability to provide qualified labor and appropriate materials. Demonstrate the staff's technical and resource capacity to complete the service within the milestone proposed for executing work. Highlight the QA/QC plan and implementation measures.

Identified Risks and Proposed Mitigation Efforts

(Four pages maximum)

Proposers should identify potential cost and schedule risks within the Project, drawing on past experience; examples of risk items are long lead times, coordination of tasks of significant duration, interface risks or seasonal work restrictions. Proposers should provide their opinion of the likelihood of each identified risk and the expected impacts of such risks on the Project. Additional discussion as to how the entity will coordinate activities to minimize utility disruptions and interferences is required.

For each risk item, the Proposer should describe possible risk mitigation actions, pros and cons, and the expected overall outcome from the mitigation action.

Experience and Past Performance

(Five pages maximum, excluding letters of reference)

Proposers shall describe the team's experience on projects of similar scope and complexity, and/or other CM/GC projects, and provide a brief narrative describing why they are the "best qualified" to perform the services outlined in this RFP. Provide examples of at least two (2), but no more than five (5), relative projects for the Prime Contractor, and no more than three (3) relative projects for each Subcontractor. Proposers should identify the staff members on each project who will be involved in this Project and shall provide a reference for each project with contact name, e-mail address, and telephone number.

Proposers may include a current reference letter from an owner/agency representative describing the Proposer's successful performance and satisfactory completion on the subject project; pictures and/or figures relating to the project are also welcomed. Although this letter is not required, it is strongly recommended, and if used, may improve the Proposal's total score.

Team Organization

(Three pages maximum, excluding resumes)

The Proposal shall include detailed resumes for Key Personnel, including the following:

- CM/GC Project Manager
- Civil construction manager
- Rail construction manager
- Structural construction manager
- OCS/Electrical construction manager
- Utility Relocation manager
- DBE and Workforce Utilization manager
- Schedule manager
- Cost Estimating and Budget manager
- Safety manager
- Quality Assurance/Quality Control ("QA/QC") manager

Past projects presented in the overall team qualifications and/or individual resumes, shall list:

- Project title, limits and description
- Years of award and completion
- Project budgeted cost and actual cost, including extras, errors and force account work
- Brief explanation of cost differential
- Client/reference and contact information
- Proposed Key Personnel who worked on the project

The Proposal must include an organizational chart depicting the relationships of Key Personnel and Project staff, including subcontractors. If Key Personnel include Subcontractors, the Proposal shall include detailed resumes and experience for those Subcontractors.

Proposers must describe their working relationship with any consultants previously assigned to the Project in other capacities or functions (e.g., the Design Consultant and the OR).

Proposers shall provide the total number and dollar amount of contracts currently in progress and discuss any impacts the current projects may have on availability of Key Personnel.

Project Schedule

(No page limit)

The Proposal shall include a detailed Project construction schedule that accounts for pre-construction and construction activities and long-lead items and tasks. Detail of the schedule shall show summary task levels (e.g., Segment 1 rail construction, Segment 2 utility relocations), matching the overall Project schedule provided in this RFP. Proposers shall describe the staging and maintenance of traffic impacts to schedule, as well as how access to businesses will be maintained and any interruption to businesses will be avoided, minimized or scheduled. Variance from the anticipated Project schedule should be highlighted with an explanation of the factors contributing to the schedule change and impacts arising from such change.

Additional History

(Two pages maximum)

Proposers shall list each project in the past five (5) years your organization has, on an awarded contract, defaulted or failed to complete and the reasons why.

Proposers should list all litigation, arbitration and/or mediation that their firm, or a subcontractor's firm, has been involved in for the last five (5) years, including as to each matter the nature of the dispute, the parties involved in the dispute, the amount in dispute and (if applicable) the outcome.

The Proposal shall demonstrate sufficient bonding capacity for the Project as part of the firm's qualifications. Proposers also shall provide a disclosure statement identifying the state of the company's financial standing, including if the company is currently for sale or involved in any transaction to expand or to be acquired by another business entity. Proposers also should disclose if the company has been given a credit rating (and if so, by what rating agency and what that rating is), and whether the firm is publicly traded or privately owned. If publicly traded, provide a listing of the stock markets or exchanges on which the company is listed. M-1 RAIL reserves the right to require a party to provide additional financial information to ensure that the financial capacity of the party is acceptable to M-1 RAIL.

Safety of the CM/GC's employees and subcontractors, City residents, commuters, and business owners and patrons during construction is of paramount importance to M-1 RAIL. Proposer shall provide detailed information for the following over the past five (5) years:

- Number of work-related injuries and illnesses
- Number of lost time accidents
- Number of work-related fatalities
- Number of MIOSHA and/or OSHA citations, including fines and or disciplinary actions
- The current Experience Modification Rating for the firm.

DBE/Local Contractor and Workforce Development and Participation

(Two pages maximum)

High unemployment in the southeastern Michigan region has drawn attention to major projects and the perceived opportunity for construction-related employment for local residents. There is an expectation

that members of their community can and will participate in economic opportunities made possible by the infrastructure investment being made in their neighborhoods.

To meet established goals included in the DBE program, the CMGC must develop a “Local Contractor and Workforce Development and Participation Plan” to be included in the Proposal demonstrating how they will better engage the local contractors and the community and provide contracting and employment opportunities, where feasible. It is the expectation that the CM/GC will be in close communication with the immediately impacted community regarding construction and mobility concerns, and as a part of this effort, the CM/GC should provide contracting and employment opportunities to the local contractors and workforce in a manner that is consistent with the law. Nothing in this clause must be construed as requiring the CM/GC to establish a local hiring or subcontracting preference.

M-1 RAIL’s goal for DBE participation for construction services is 11%. A Submitter who fails to meet the DBE participation will be deemed ineligible for award of the Contract. A Submitter should state how the proposed team will meet or exceed this goal. A request for waiver or modification of the DBE participation may be submitted in accordance with current MDOT DBE Program Procedures and Section 102.18 of the MDOT Standard Specifications for Construction. The Contract will not be awarded until a determination is made by MDOT. Only firms that are certified and listed on the Michigan Uniform Certification Program (MUCP) are eligible for DBE participation credit. An MUCP DBE directory is linked to the State of Michigan website at <http://www.michigan.gov/mucp>.

Submittal Instructions

Proposals must be submitted no later than **4:00 P.M. EST May 17, 2013**. All Proposals will be reviewed by a selection committee established by M-1 RAIL. The committee will select a CM/CG and a Contract will be executed by the parties. M-1 RAIL will not accept Proposals delivered via facsimile or e-mail.

Please submit **ten (10) bound copies** of the Proposal to the attention of Paul Childs. Proposals should be delivered to:

**Paul Childs, Chief Operating Officer
M-1 RAIL
600 Renaissance Center, Suite 1740
Detroit, MI 48243**

Evaluation Process

This will be a **Qualifications-Based Selection**. The criteria listed below will be used to evaluate proposals and select a CM/GC to complete the requested construction management services for Package A:

- | | |
|---------------------------------------------------------------------------------------------|-----|
| 1. Project Approach | 20% |
| 2. Experience, Qualifications, and Organization | 25% |
| 3. Understanding of Pre-Construction Services | 10% |
| 4. Understanding of Construction Services | 15% |
| 5. Risks and Mitigation | 20% |
| 6. Project Schedule (including MOT and avoidance of disruption to adjacent property owners) | 20% |

Proposals will be evaluated by M-1 RAIL and ranked by score.

Proposers should ensure they have reviewed and fully understand the Appendices before submitting a Proposal. By submitting a Proposal, Proposers accept and agree to the Selection Process. A sample score sheet is shown in **Appendix E**.

List of Appendices

Appendix A – Preliminary Engineering Task 30% Plan Deliverable

Appendix B – M-1 RAIL Project Delivery Approach

Appendix C – Insurance Requirements

Appendix D – Required Forms

Appendix E – Sample Score Sheet

Appendix F – Anti-Slavery Affidavit

Appendix G – Bid Protest Procedure

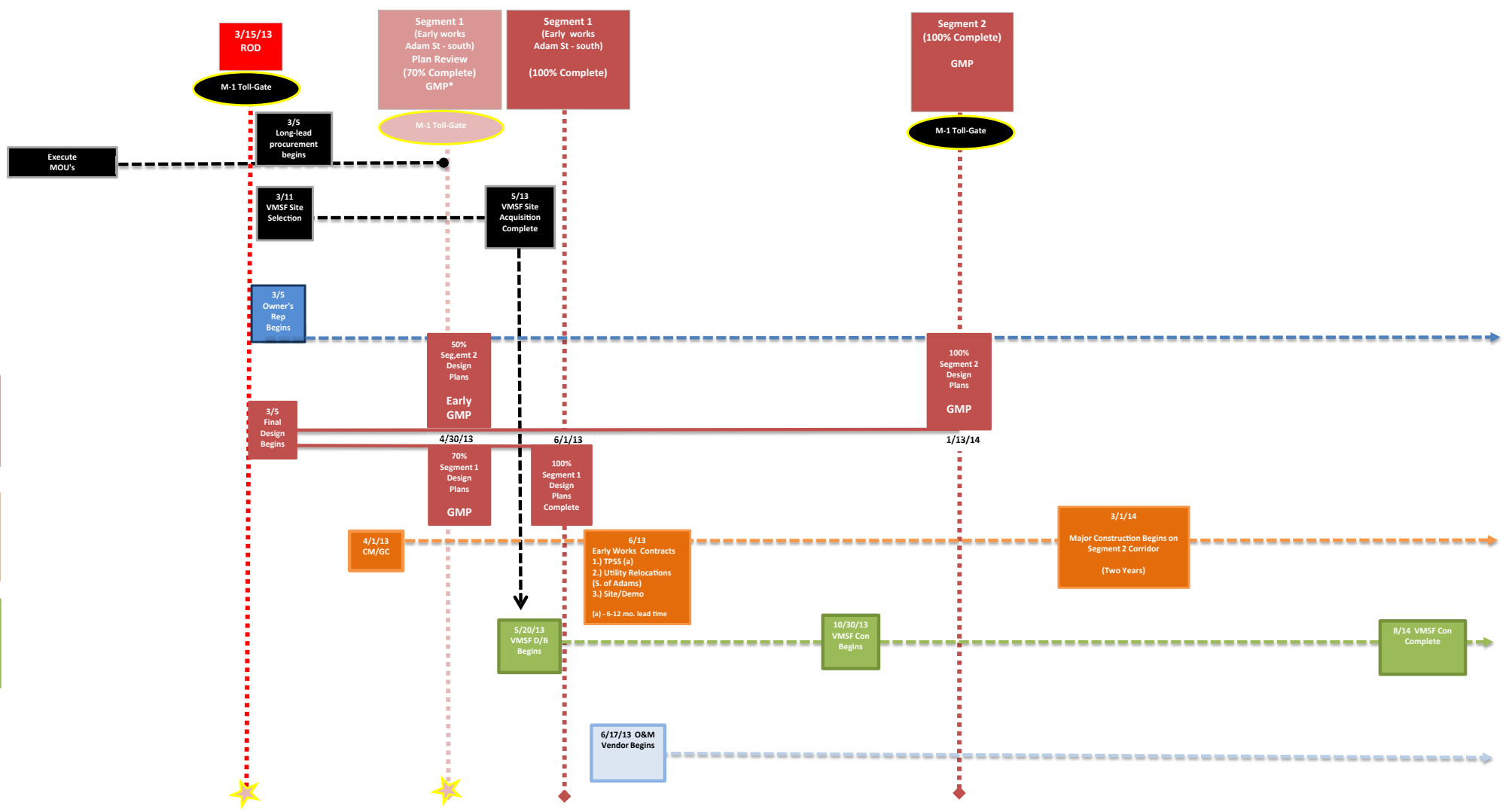
Appendix A – Preliminary Engineering Task 30% Plan Deliverable

Please download Segment 1 and Segment 2 plans from M-1 RAIL Project website.

Appendix B – M-1 RAIL Project Delivery Approach

M-1 RAIL CMGC Project Delivery Approach

FTA City of Detroit Role: FTA Grant Recipient	FHWA MDOT Role: Environmental Clearance/Reconstruction (Sibley to Chandler)
M-1 RAIL Scope: Overall Project Management, Financial Management, Land Acquisition, Legal, Procurement, Development/Execution of MOU's, Risk Management, Project Communications and Stakeholder Outreach	
Owner's Representative(s) Scope: Oversight of CM/GC and VMSF DB teams, Permits, Project Controls, Procurement, QA/QC, ICE, Construction Engineering & Inspection, Risk Management, D/B VSMF and O&M Vendor Procurement Assistance, Federal Compliance including Title VI and DBE	
Final Designer Scope: 30%-100% Final Design for mainline, track, OCS, TPSS, stations, utility relocation, signals, geotechnical services, SUE	
CM/GC Scope: Construction management and construction of mainline, track, OCS, stations, utility relocations, TPSS, signals, responsible for construction staging & maintenance of traffic, self-perform 20%-25% of construction oversight/compliance	
VSMF Design/Build Team Scope: Design and construction of VMSF facilities, including any necessary site preparation	
O&M Vendor Scope: Operate and maintain M-1 RAIL system, provide input into design of VMSF, track, station, communications, and system elements	



Appendix C – Insurance Requirements

INSURANCE REQUIREMENTS FOR CONSTRUCTION SERVICES CONTRACTS

Amounts shown in each section define the limits of coverage required for the agreement.

I. WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY

Worker’s Compensation

(Must fully comply with all State and Federal requirements)

(Broad Form All States and Voluntary Compensation Endorsement)

Employer’s Liability

Statutory Requirement

Bodily Injury by Accident	Each Accident	\$1,000,000.00
Bodily Injury by Disease	Each Occurrence	\$1,000,000.00
	Policy Limit	\$5,000,000.00

II. GENERAL COMMERCIAL LIABILITY

Bodily Injury/Property Damage

Each Occurrence	\$10,000,000.00
General Aggregate	\$10,000,000.00
Products/Completed	
Operations Aggregate	\$10,000,000.00

Personal Injury

Aggregate	\$10,000,000.00
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To include:

- Coverage and terms comparable to ISO CG-0001 Form Occurrence Form
- Premises/Operations Coverage
- Products/Completed Operations Coverage
- (to extend for four (4) years after acceptance of the work by M-1 RAIL)
- Contractual liability for risks assumed in this agreement

III. AUTOMOBILE LIABILITY

Bodily Injury/Property Damage

Each Accident	\$1,000,000.00
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To include:

- Coverage on all owned, non-owned and hired vehicles

IV. RAILROAD PROTECTIVE LIABILITY INSURANCE

Grand Trunk Western Railroad Company and its Parents Coverage

Per Occurrence	\$5,000,000
Aggregate	\$10,000,000

Consolidated Rail Corporation Coverage

Per Occurrence	\$2,000,000
Aggregate	\$6,000,000

V. UMBRELLA LIABILITY

Personal Injury/Property Damage

Each Occurrence	\$10,000,000.00
Aggregate	\$10,000,000.00

To include:

Occurrence Insuring Agreement

First Dollar Defense Coverage

Insuring Agreement, which will:

Provide Excess Protection to the Primary Coverage, exclusive of Professional Liability

VI. PROFESSIONAL LIABILITY

Wrongful Act

Per Claim	\$5,000,000.00
Aggregate	\$5,000,000.00

To include:

Insuring Agreement to cover errors and omissions, including loss, costs, and expenses, that result from the operations of the service provider, including subcontractors.

Note: With regard to Sections II, III, and IV, a copy of the Insurance Policy shall be provided to M-1 RAIL as evidence thereof naming M-1 RAIL, its officers, directors, agents, and employees and MDOT and its officers, directors, agents and employees as additional insureds for public liability and property damage, and providing for a thirty (30) day notice to M-1 RAIL prior to change, termination, or cancellation. The CM/GC shall not have a self-insurance retention. The amount of any deductibles shall be consistent with prudent industry practices, and the CM/GC shall be responsible for paying any deductibles.

Appendix D – Required Forms

CM/GC-001 Proposer Information

CM/GC-002 Request for Proposal Submittal Checklist

CM/GC-003 Acknowledgement of Receipt of Addenda

MDOT 3163

MDOT 5100I

MDOT 5101A

MDOT 5101B

MDOT 5101

REQUEST FOR QUALIFICATIONS

CMGC-001 SUBMITTER INFORMATION

Project: _____

Name of Submitter: _____

Street Address: _____

City: _____ **State:** _____ **Zip:** _____

Contract Person: _____

Telephone No.: _____ **E-Mail:** _____

REQUEST FOR QUALIFICATIONS

CMGC-002 STATEMENT OF QUALIFICATIONS CHECKLIST

Project: _____

Name of Submitter: _____

- Title Sheet**
- CMGC-001 – Submitter Information**
- CMGC-002– Statement of Qualifications Checklist**
- CMGC-003 – Addenda Acknowledgment**
- Submitter History
- Understanding of Service
- Experience / Past Experience
- Pre-Construction Services
- Construction Services
- Organization & Project Personnel Qualifications
- Bonding Company Letter**
- Conflict of Interest Statement (MDOT form 5100I)**
- Key Personnel Resumes**

- Pre-Construction Services Fee (sealed in separate envelope)****

****NOT INCLUDED IN SOQ MAXIMUM PAGE COUNT**

REQUEST FOR QUALIFICATIONS

CMGC-003 ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

Project: _____

Name of Submitter: _____

Receipt is hereby acknowledged of the following addenda and responses to questions by MDOT to this RFQ by entering "YES" or "NO" below and indicating the date received:

<u>Addendum No.</u>	<u>Received</u>	<u>Date Received:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

<u>Response to Question Set No.</u>	<u>Received</u>	<u>Date Received:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Name)

(Date)

(Title)

CONSTRUCTION MORE THAN \$100,000

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in the Federal Transit Administration (FTA) Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The hereafter referenced as "CONTRACTOR" shall not perform any act, fail to perform any act, or refuse to comply with any , hereafter referenced as "AGENCY," requests which would cause AGENCY to be in violation of the FTA terms and conditions.

BUY AMERICA REQUIREMENTS (For Projects over \$100,000)

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 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 CONTRACTOR 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.

SIGNATURE		DATE
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.

SIGNATURE		DATE
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.

SIGNATURE		DATE
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.

SIGNATURE		DATE
COMPANY NAME	TITLE	

LOBBYING (For projects over \$100,000)

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 CONTRACTOR.

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 subcontractors 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

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The AGENCY 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 AGENCY, 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.

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The CONTRACTOR acknowledges and agrees that:

(1) Civil Fraud. 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 the CONTRACTOR's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

ACCESS TO THIRD PARTY CONTRACT RECORDS

The AGENCY agrees to require, and assures that its CONTRACTOR require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The CONTRACTOR further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

CHANGES TO FEDERAL REQUIREMENTS

The 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 AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to so comply shall constitute a material breach of this contract in compliance with 49 CFR Part 18.

TERMINATION (For projects over \$10,000)

a. Termination for Convenience (General Provision) The AGENCY 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 in compliance with 49 U.S.C. Part 18/FTA Circular 4220.1F. 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 AGENCY to be paid. If the CONTRACTOR has any property in its possession belonging to the AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, 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 AGENCY 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 AGENCY'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 AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY 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 AGENCY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by AGENCY shall not limit AGENCY'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 AGENCY, 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 AGENCY 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 AGENCY may terminate this contract for default. The AGENCY 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 CONTRACTOR.

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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY goods, the CONTRACTOR shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The CONTRACTOR and AGENCY 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 AGENCY.

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 AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, the AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, acts of another CONTRACTOR in the performance of a contract with the CONTRACTOR, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the CONTRACTOR, within [10] days from the beginning of any delay, notifies the AGENCY in writing of the causes of delay. If in the judgment of the AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of the AGENCY shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

a. 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 CONTRACTOR.

i. Termination for Convenience or Default (Architect and Engineering) The AGENCY may terminate this contract in whole or in part, for the CONTRACTOR's convenience or because of the failure of the CONTRACTOR to fulfill the contract obligations. The AGENCY 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 CONTRACTOR, 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 AGENCY may complete the work by contract or otherwise and the CONTRACTOR shall be liable for any additional cost incurred by the AGENCY.

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 CONTRACTOR.

j. Termination for Convenience of Default (Cost-Type Contracts) The AGENCY 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 AGENCY 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 AGENCY, or property supplied to the CONTRACTOR by the AGENCY. If the termination is for default, the AGENCY 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 AGENCY and the parties shall negotiate the termination settlement to be paid the CONTRACTOR. If the termination is for the convenience of the AGENCY, 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 AGENCY 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 AGENCY, after setting up a new work schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

CIVIL RIGHTS (For projects over \$10,000)

The CONTRACTOR agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C.

§ 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. Equal Employment Opportunity. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment

advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the CONTRACTOR agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. **Nondiscrimination on the Basis of Sex.** The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

e. **Nondiscrimination on the Basis of Age.** The CONTRACTOR agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

f. **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the CONTRACTOR agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

g. **Access to Services for Persons with Limited English Proficiency.** The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

h. **Environmental Justice.** The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

i. **Other Nondiscrimination Laws.** The CONTRACTOR agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

DISADVANTAGED BUSINESS ENTERPRISE

To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26.

The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the CONTRACTOR's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative agreement for the Project. The CONTRACTOR agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the CONTRACTOR of the CONTRACTOR's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

DEBARMENT AND SUSPENSION (For projects over \$25,000)

The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The CONTRACTOR agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <https://www.sam.gov/portal/public/SAM/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

BREACHES AND DISPUTE RESOLUTION (For project over \$100,000)

In compliance with 49 CFR Part 18/FTA Circular 4220.1F:

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 AGENCY. 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 AGENCY. 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 AGENCY shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

Performance During Dispute - Unless otherwise directed by AGENCY, 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 therefore 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 AGENCY 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 AGENCY 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 AGENCY 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.

CLEAN AIR (For project over \$100,000)

(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/40 CFR 15.61/49 CFR Part 18. The CONTRACTOR agrees to report each violation to the AGENCY and understands and agrees that the AGENCY 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 \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER REQUIREMENTS (For project over \$100,000)

(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 AGENCY and understands and agrees that the AGENCY 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 \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CARGO PREFERENCE REQUIREMENTS (FOR PROPERTY TRANSPORTED BY OCEAN VESSEL)

Use of United States-Flag Vessels - The CONTRACTOR agrees in compliance with 46 U.S.C. 1241/46 CFR Part 381:

- 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 MDOT (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.

FLY AMERICA (FOR FOREIGN AIR TRANSPORT AND TRAVEL)

The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

DAVIS-BACON AND COPELAND "ANTI-KICKBACK" ACTS (For Construction Projects over \$2,000- Including ferry vessels)

(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 therefore only when the following criteria have been met:

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

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

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

(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 AGENCY 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 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 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 AGENCY 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 subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(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.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (For projects over \$100,000- including ferry vessels)

(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 AGENCY 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.

BONDING (For construction projects over \$100,000)

Except to the extent that FTA determines otherwise in writing, the CONTRACTOR agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The CONTRACTOR agrees to provide bid guarantee, contract performance, and payment bonds as provided by Federal regulations and to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives, except to the extent that FTA determines otherwise in writing.

(2) Activities Not Involving Construction. The CONTRACTOR agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.

SEISMIC SAFETY (NEW BUILDINGS AND ADDITIONS)

The CONTRACTOR agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

ENERGY CONSERVATION

The CONTRACTOR agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the CONTRACTOR agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

PREFERENCE FOR RECYCLED PRODUCTS (CONTRACTS FOR ITEMS DESIGNATED BY EPA, WHEN PROCURING \$10,000 OR MORE PER YEAR)

To the extent applicable, the CONTRACTOR agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS (For all ITS projects)

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

ACCESS FOR INDIVIDUALS WITH DISABILITIES

The CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The CONTRACTOR also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the CONTRACTOR agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

STATE, TERRITORIAL, AND LOCAL LAW

Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the CONTRACTOR must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision

of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the CONTRACTOR to violate any State, territorial, or local law, regulation, or ordinance, the CONTRACTOR agrees to notify FTA immediately in writing. Should this occur, FTA and the CONTRACTOR agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

PRICED PROPOSAL COVER SHEET

This form replaces a traditional cover letter, and must have an original signature by an authorized legal signer. This form is required for all priced proposals, and shall be the very first page(s). This price proposal is a binding document and no further Consultant signature(s) will be required if an authorization is issued, rather than a contract.

This form shall be initiated by the prime consultant, which will require signature from all first and second tier subconsultant(s) that has a derivation of cost sheet as part of this priced proposal. Traditional cover letters are not required, but may be added after this Priced Proposal Cover Sheet(s).

COMPLETED BY THE PRIME CONSULTANT ONLY	
MDOT CONTROL SECTION(S) - JOB NUMBER(S):	CONTRACT / AUTHORIZATION NUMBER:

PROJECT DESCRIPTION:

BASIS FOR REIMBURSEMENT AND METHOD OF PAYMENT as specified in the MDOT Scope of Service (*Actual cost, Actual Cost Plus Fixed Fee, Loaded Hourly Rate, Unit Price, Lump Sum and Milestones*) When applicable, list ALL Consultant(s) performing work on this project and the basis for reimbursement and method of payment for each.): **Example: ABC Design, Inc.: Actual Cost Plus Fixed Fee**

PREQUALIFICATION CLASSIFICATION(S) (When applicable, list ALL Consultant(s) performing work on this project and all classification(s) in which they will be working. Use current MDOT classification names.): **Example: Roadway Rehabilitation & Rural Freeways; ABC Design, Inc. XYZ Development, LLC., and STP Design Group.j**

CONSULTANT INFORMATION			
ROLE:	<input type="checkbox"/> Prime	<input type="checkbox"/> Tier 1	<input type="checkbox"/> Tier 2
LEGAL BUSINESS NAME:	FEDERAL ID NUMBER (Must match prequalification file):		
COMPANY ADDRESS:	CITY:	STATE:	ZIP CODE:
EMAIL ADDRESS: (To Receive Awarded Agreement)	PHONE NO.:		

By signature on this form, the consultant agrees that information provided in the consultant priced proposal does not contradict the scope of services or violate the contract terms and conditions.

AUTHORIZED LEGAL SIGNER (Print name - Title):	SIGNATURE	DATE
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SUMMARY OF TOTAL PROJECT COSTS BY JOB NUMBER

All Prime and Subconsultants Costs for **ALL JOB NUMBERS** (Including phases).
For amendment or revision, complete this form showing all job numbers for all services provided.
Report Tier 2 Subconsultant costs with Tier 1 Subconsultants.
For use with all Priced Proposals. Use additional pages as necessary.

MDOT CONTROL SECTION(S) – JOB NUMBER(S)	CONTRACT / AUTHORIZATION NUMBER
-----------------------------------------	---------------------------------

PRIME CONSULTANT NAME	DBE GOAL	PROJECT DESCRIPTION
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Consultant	Job Number	Job Number	Job Number	Job Number	DBE (Y if DBE)	Total	% of Contract
HOURS							
Prime Firm							
SUB							
SUB							
DIRECT LABOR							
Prime Firm	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
OVERHEAD							
Prime Firm	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
F.C.C.M.							
Prime Firm	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
DIRECT EXPENSES							
Prime Firm	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
FIXED FEE							
Prime Firm	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUBCONTRACTORS (Low Bid)							
(Tier 1 Subs only)	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
SUB	\$	\$	\$	\$		\$	
TOTAL COSTS SUMMARY (Prime & Tier 1 Sub)							
Prime Firm	\$	\$	\$	\$	Y	\$	
SUB	\$	\$	\$	\$	N	\$	
SUB	\$	\$	\$	\$	Y	\$	
TOTAL COSTS	\$	\$	\$	\$		\$	

DERIVATION OF PRIME CONSULTANT COSTS
Summary of all Prime Costs for ALL JOB NUMBERS (Including phases)
for all services provided. Use additional pages as necessary.

MDOT CONTROL SECTION(S) – JOB NUMBER(S):	CONTRACT / AUTHORIZATION #:
PRIME CONSULTANT NAME:	PROJECT DESCRIPTION:

PRIME DIRECT LABOR:

<i>NAME AND/OR CLASSIFICATION</i>	<i>HOURS</i>	<i>x</i>	<i>HOURLY RATE</i>	<i>=</i>	<i>LABOR COST</i>
Engineering Manager		x	\$	=	\$
Transportation Engineer		x	\$	=	\$
Civil Engineer		x	\$	=	\$
Cadd Designer		x	\$	=	\$
Survey Manager		x	\$	=	\$
Survey Party Chief		x	\$	=	\$
Survey Technician		x	\$	=	\$
Administrative Assistant		x	\$	=	\$
Total Hours _____				Total Labor	\$ _____

PRIME OVERHEAD (Total Labor & Overhead Rate):

Overhead Rate _____ %	Total Overhead \$ _____
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PRIME FACILITIES CAPITAL COST OF MONEY (F.C.C.M.): (Total Labor x F.C.C.M. Rate)

F.C.C.M. Rate: _____ %	Total F.C.C.M. \$ _____
------------------------	--------------------------------

PRIME OTHER DIRECT EXPENSES (List each item price at Actual Cost – NO MARKUP.):

<i>ITEMS</i>	<i>QUANTITY</i>	<i>@</i>	<i>UNIT PRICE</i>	<i>UNIT</i>	<i>=</i>	<i>ITEM PRICE</i>
		@	\$		=	\$
		@	\$		=	\$
		@	\$		=	\$
		@	\$		=	\$
		@	\$		=	\$
		@	\$		=	\$
		@	\$		=	\$
Total Other Direct Expenses						\$ _____

PRIME FIXED FEE FOR PROFIT ((Total Labor + Total Overhead) x 11%):

Fixed Fee Rate _____ 11 %	Total Fixed Fee \$ _____
---------------------------	---------------------------------

PRIME TOTAL COSTS SUMMARY \$ _____

Appendix E – Sample Score Sheet

M-1 RAIL SCORE SHEET

The selection team will complete one consensus score sheet.

This score sheet will be used to score proposals.

M-1 RAIL PACKAGE: A	DESCRIPTION: CM/GC		
Selection Criteria	VENDOR NAME:	Total Possible	Score
	<input type="checkbox"/> Vendor does not appear to have any conflicts of interest concerning this service. <input type="checkbox"/> Vendor has met DBE goal or has approved waiver if DBE goal was assigned.		
<p>Project Approach. Describe approach to the project and understanding of the CMGC project delivery. Provide details on work methods and tools that will be utilized to complete the scope of work and meet project goals. Develop a clearly defined "Local Contractor and Workforce Development and Participation Plan".</p>	Comments:	20	
<p>Experience, Qualifications, & Organization. Describe the structure of the project team and its qualifications delivering similar projects, including experience of any sub vendors. For each sub vendor, describe role in service and include what percent of the named role that the sub vendor is expected to provide. Provide resumes for key personnel and organization chart.</p>	Comments:	25	
<p>Understanding of Pre-Construction Services. Demonstrate clear understanding of pre-construction services. Describe ability to work with design Consultant on constructability, minimizing cost, and optimizing project performance. Provide track record of producing estimates. Describe approach to a timely and accurate GMP. Describe any innovations proposed.</p>	Comments:	10	
<p>Understanding of Construction Services. Demonstrate clear understanding of the construction services. Outline QA/QC approach to be used for this service. Describe ability to select qualified labor and secure appropriate material to complete the project. Describe any innovations proposed.</p>	Comments:	15	

<p>Risks and Mitigation. Identify potential project risks and describe potential risk mitigation actions with expected outcomes. Draw on past experience.</p>	<p>Comments:</p>	<p>20</p>	
<p>Project Schedule. Describe the availability and technical capacity of the CMGC and resources to complete the project within the identified schedule listed within the RFP. Provide detailed construction schedule. Discuss staging and maintenance of traffic impacts to both schedule and access to businesses.</p>	<p>Comments:</p>	<p>20</p>	
	<p style="text-align: right;">Grand Total:</p>	<p>100</p>	

SELECTION TEAM NAME: _____ **SELECTION TEAM MEMBER SIGNATURE** _____ **DATE** _____

SELECTION TEAM NAME: _____ **SELECTION TEAM MEMBER SIGNATURE** _____ **DATE** _____

SELECTION TEAM NAME: _____ **SELECTION TEAM MEMBER SIGNATURE** _____ **DATE** _____

SELECTION TEAM NAME: _____ **SELECTION TEAM MEMBER SIGNATURE** _____ **DATE** _____

Appendix F – Anti-Slavery Affidavit

AFFIDAVIT OF COMPLIANCE
DISCLOSURE OF PARTICIPATION IN OR PROFITS DERIVED FROM SLAVERY BY CONTRACTORS

COMPANY NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

This affidavit of compliance will be the contractor's sworn statement that publicly discloses any slavery policies sold by any companies, or profits from slavery by industries or their predecessors who are doing business with M-1 RAIL.

Please check one:

- _____ This business was not in existence prior to the slavery era (1865).
_____ This business was in existence prior to the slavery era (1865). I have searched any and all records for records of investments or profits from slavery, and have found no such records in existence prior to the slavery era (1865).
_____ This business was in existence prior to the slavery era (1865). I have searched any and all records for records of investments or profits from slavery and am disclosing the following findings (attach additional pages, if necessary):

I hereby declare that all statements are true, accurate and complete as of the date furnished to M-1 RAIL.

AUTHORIZED SIGNATURE: _____

PRINTED NAME: _____

DATE: _____

Subscribed to before me on this day ____ of _____, 20____, at _____ County,
_____ State.

NOTARY PUBLIC SIGNATURE: _____

(SEAL)

PRINT NAME: _____

My commission expires: _____

PLEASE RETURN THIS FORM TO:
M-1 CORPORATION, 600 RENAISSANCE CENTER, SUITE 1740, DETROIT, MI 48243

Appendix G – Bid Protest Procedure

Procurement Protest Procedure for FTA-funded Projects

This Protest Procedure is intended to comply with FTA Circular 4220.1F, Chapter 7.1, and is in no way intended as a substitute for resolution of any questions or concerns on the part of prospective bidders or proposers that may be addressed as outlined in a particular request for bids/request for proposals, ("RFB/RFP"), or informally through other appropriate means. M-1 RAIL strives to ensure that all proposers and bidders are treated fairly and equitably and shall incorporate this Protest Procedure explicitly, or by reference, in all RFB/RFPs for FTA-funded Projects.

Protests concerning aspects of the procurement process may be made as follows:

Prior to bid opening/proposal submission date:

Protests pertaining to specifications contained in an RFB/RFP may be made by a prospective bidder/proposer and shall be received by Chief Operations Officer of M-1 RAIL (COO), on a date not less than five (5) calendar days prior to the date scheduled for bid opening/proposal submission. Such protest shall be in writing and state the reason(s) for it as well as the relief sought. Any supporting documentation should be included with the written protest. Failure to follow the deadlines set forth in this paragraph, to provide the protest in writing or to state with specificity the reasons for the protest or the relief sought, will result in summary rejection of such protest. The COO shall review protests and, if modification is deemed necessary, an addendum containing the changes shall be issued. If necessary, the bid opening date/proposal submission date shall be extended. If the protest is rejected, the protestor shall be notified in writing. Such notice will be mailed no more than five (5) calendar days after receipt of the protest by the COO. The decision of the COO shall be final.

After bid opening/proposal submission date:

The COO shall, with regard to any contract for an FTA-funded project, make a written recommendation as to which bidder appears to be the lowest responsible bidder or which proposer appears to be the highest ranked proposer, and notify all unsuccessful bidders/proposers by mail of such recommendation. Protests pertaining to award recommendations may be made by an unsuccessful bidder/proposer and shall be received by the COO within five (5) calendar days after receipt of the award recommendation. Such award recommendation will be deemed received two (2) days after mailing. Such protest shall be in writing and state the reason/s for it as well as the relief sought. Any supporting documentation should be included with the written protest. Failure to follow the deadlines set forth in this paragraph, to provide the protest in writing or to state with specificity the reasons for the protest or the relief sought, will result in summary rejection of such protest.

The COO shall review the protest and issue a written decision, addressing each substantive issue raised by the protestor. The written decision will be mailed no more than five (5) calendar days after receipt of the protest by the COO. If the protest is rejected, the COO shall proceed to award the contract in accordance with his/her award recommendation. If the protest is granted, in whole or in part, the COO shall take further action consistent with such decision and notify any interested parties, if necessary. No contract shall be awarded while a protest is pending. The decision of the COO is final.

The COO shall inform FTA of any protests received pursuant to this Protest Procedure, and keep the FTA apprised of the progress and resolution of any protests.

Any protest filed pursuant to this Protest Procedure shall be delivered to:

Paul Childs, Chief Operations Officer
M-1 RAIL
600 Renaissance Center, Suite 1740
Detroit, MI 48243

Review of any aspect of the procurement process must be sought under this Protest Procedure prior to an appeal to the FTA. The FTA's review of the appeal will be limited to whether: (1) M-1 RAIL failed to have or follow this Protest Procedure; (2) M-1 RAIL failed to review a properly file protest; or (3) M-1 RAIL violated federal laws or regulations. Such appeal must be received by the appropriate FTA regional or Headquarters Office within five (5) working days of the date the protestor learned or should have learned of an adverse decision by M-1 RAIL; or the date M-1 RAIL is alleged to failed to have or follow this Protest Procedure or failed to review a properly filed protest.