

SECTION 4 SPECIAL PROVISIONS

4.1 CONTRACT DOCUMENTS

All parts of the Contract Documents are intended to be correlated so that any work called for in one part and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. Wherever conflicting, contradictory, or redundant statements exist between the Scope of Services and the other sections of the RFP document, the other sections of the RFP take precedence.

4.2 MODIFICATION TO CONTRACT

A. Written Change Orders

Oral change orders are not permitted. No change in the contract shall be made unless AATA gives prior written approval. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the contract signed by AATA. A properly executed change order takes precedence over previous executed contract provisions.

B. Change Order Procedure

Within fifteen (15) calendar days after receipt of the written change order to modify the contract, the Contractor shall submit to AATA a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the contractor and AATA. At this time, a detailed modification shall be executed in writing by both parties.

4.3 RESERVED RIGHTS OF AATA IN SOLICITATION PROCESS

In addition to all other rights of AATA under Michigan and Federal law, AATA reserves the following:

- A.** AATA reserves the right to rank firms and negotiate with the highest ranking firm. Negotiation with an individual Proposer does not require negotiation with others.
- B.** AATA reserves the right to select the proposal that it believes will serve the best interest of AATA.
- C.** AATA reserves the right to reject any and all proposals.

- D. AATA reserves the right to remedy or waive technical or immaterial errors in the RFP.
- E. AATA reserves the right to request any necessary clarifications or proposal data without changing the terms.
- F. AATA reserves the right to make selection of the Proposer to perform the services required based on the original proposals without negotiations.
- G. AATA reserves the right to make all final determination as to whether the services and scope of service have been satisfactorily completed.

4.4 PROTEST PROCEDURES

A. General Procedures

1. Any Proposer or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with AATA pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.
2. Protests, claims or disputes, where applicable, shall be in writing and filed with AATA directed to the Chief Executive Officer, 2700 South Industrial Hwy, Ann Arbor, MI. 48104. Failure To Comply With Any Of The Requirements May Result In Rejection Of The Protest.

B. Protest Before Proposal Opening

Protests shall be submitted in writing prior to the opening of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening. In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:

1. The name, address, and telephone number of the protester
2. The grounds for the protest, any and all documentation to support the protest and the relief sought
3. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

C. Protest After Award

1. Any individual or entity may file a protest with AATA alleging a violation of applicable federal, state law and/or AATA policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with AATA alleging that AATA has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.
2. A protest, dispute, or claim with respect to the award of a Contract through solicitation of bids shall be submitted in writing within five (5) days of notification of such award to the Chief Executive Officer for a decision. All claims shall clearly identify:
 - a. The name, address, and telephone number of the protester
 - b. The grounds for the protest, any and all documentation to support the protest and the relief sought
 - c. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

A written decision by the AATA Chief Executive Officer stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the Chief Executive Officer's decision.

D. FTA Protest Procedures

FTA will only review protests regarding the alleged failure of the Authority to have no written protest procedures, the failure to follow such procedures, and any protests based on AATA violating a federal law or regulation. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authority. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protests submitted by an intercede party as defined in FTA 4220.1F. FTA's decision on any appeal will be final. FTA will be notified of any protest that AATA receives from any contract using federal funds.

SECTION 5 TERMS AND CONDITIONS

5.1 TERMINATION

A. Termination for Convenience

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

B. Termination for Default/Breach

If the Contractor fails to perform in the manner called for in the contract, or the notice of termination, or if the Contractor fails to comply with any other provisions of this contract, AATA may terminate this contract for default. AATA shall terminate by delivering to the Contractor a Notice of Termination specifying 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 required in this Contract.

C. Termination for Force Majeure

AATA may terminate this Contract upon written notice from the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor. Such causes are those of acts of God, acts of the public enemy, governmental acts, fires and epidemics whose causes irrecoverably disrupt or render impossible the Contractor's performance. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against such act.

D. Opportunity to Cure

AATA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor within ten (10) calendar days 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 AATA's satisfaction the breach or default, within ten (10) calendar days after receipt by Contractor of written notice from AATA, AATA shall have the right to terminate the Contract without

any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude AATA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

E. Waiver of Remedies for any Breach

In the event that AATA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by AATA shall not limit AATA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5.2 DISPUTE RESOLUTION

- A. Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the Chief Executive Officer of AATA. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. 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 Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.
- B. Unless otherwise directed by AATA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

5.3 LITIGATION

In the event of any dispute that results in litigation or arbitration arising from or related to the services provided under this Contract, the prevailing party will be entitled to recovery of all reasonable costs incurred, including that party's time, court costs, attorney fees, or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party and shall not require initiation of a separate legal proceeding.

5.4 PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this Contract, the Contractor agrees as follows:

- A. In accordance with Act No. 453, Public Acts of 1976, The contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
- B. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in paragraph 19.1.
- C. The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- D. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, stat that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
- E. The contractor or their collective bargaining representative will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments.

- F. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission, which may be in effect prior to the taking of bids for any individual state project.
- G. The contractor will furnish and file compliance reports within such time as upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as the practices, program, and employment statistics of each subcontractor as well as the contractor themselves, and said contractor will permit access to their books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
- H. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
- I. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

5.5 PARTIES TO THE CONTRACT

The parties to the contract are the Procuring Agency and the Offeror as set out in the accepted Offer.

5.6 SUCCESSION

The Contract will be binding on the parties, their successors, and assigns, if any, except that nothing contained in this clause shall be construed to permit any attempted assignment which would be unauthorized or void pursuant to any other provision of this Contract.

5.7 ASSIGNMENT

Any Contract issued pursuant to this solicitation and the monies, which may become due, are not assignable except with the prior written approval of AATA. Any required consent will not be unreasonably withheld or delayed.

5.8 INDEMNIFICATION

- A. The Contractor shall, to the extent permitted by law (1) protect, indemnify and save AATA and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by AATA and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the negligent acts, errors or omissions of the Contractor, including negligent acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against AATA and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. AATA shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. AATA shall have the right to be represented therein by advisory counsel of its own selection at its own expense.
- B. Nothing in this Contract shall be construed to waive AATA's immunities or liability limits provided under applicable state or federal law.

5.9 PROHIBITED INTEREST

No member, officer, or employee of AATA or of a local public body during their tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

5.10 CONFLICT OF INTEREST

- A. The Contractor, by entering into the Contract with AATA, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed or provided under the Contract and that it shall not employ any person or agent having such interests. In the event that the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to AATA and take action immediately to eliminate the conflict or to withdraw from this Contract, as AATA may require.
- B. The Contractor also certifies that to the best of its knowledge, no AATA Board Member or employee, or employee or officer of any agency interested in the Contract has a pecuniary interest in the business of the Contractor or with the Contract and that no person associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the Contract.
- C. The Contractor, by entering into a Contract with AATA further covenants:
1) that no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and 2) that no gratuities were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member, or employee of AATA or other governmental agency with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this service.

5.11 LIMITATION OF LIABILITY

AATA's liability is, in the aggregate, limited to the total amount payable under this Contract.

5.12 LAWS GOVERNING CONTRACT

This Proposal and the resulting Contract shall be governed and construed in accordance with the laws of the State of Michigan. The parties stipulate that this contract was entered into in the County of Washtenaw, in the State of Michigan. The parties further stipulate that the County of Washtenaw is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from. All parties to this proposal and any resulting contract agreed that venue shall be within the County of Washtenaw, Michigan. Each party will perform its obligations hereunder in accordance with applicable laws, rules, and regulations now or hereafter in affect.

5.13 COMPLETE AGREEMENT

The Contract resulting from this Solicitation, including exhibits and other documents incorporated in the Contract or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Contract between the Contractor and AATA. The Contract supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition or the Contract shall not affect the validity of other terms or conditions. AATA's failure to insist in any one or more instances upon the Contractor's performance of any term or condition of the Contract shall not be construed as a waiver or relinquishment of AATA's right to such performance, or to future performance, of such term or condition to the Contractor, and Contractor's obligation for performance of that term or condition shall continue in full force and effect.

5.14 SEVERABILITY

If any provisions or portion of any provision, of this Contract are held invalid, illegal or unenforceable, they shall be severed from the Contract and the remaining provisions shall be valid and enforceable.

5.15 NO OBLIGATION BY THE FEDERAL GOVERNMENT

AATA and the 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 AATA, Contractor, or any

other party (whether or not a part to that Contract) pertaining to any matter resulting from the underlying Contract.

5.16 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTIONS

- A. The Contractor acknowledges that the provision of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance awarded by FTA under the authority of 49 U.S.C. § 5301 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §5301 et seq. on the Contractor, to the extent of the Federal Government deems appropriate.

5.17 AUDIT AND INSPECTION OF RECORDS

- A. In accordance with 49 C.F.R. § 18.36(i), 49 C.F.R. § 19.48(d), and 49 U.S.C. § 5325(a), provided AATA is the FTA Recipient or a sub-grantee of the FTA Recipient, the Contractor agrees to provide AATA, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts, and transcriptions and (2) when conducting an audit and inspection.
- B. In the event of a sole source Contract, or single Offer, single responsive Offer, or competitive negotiated procurement the Contractor shall maintain and the Contracting Officer, the U.S. Department of Transportation, or the representatives thereof, shall have the right to examine all books, records,

documents, and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the contract shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.

- C. For Contract modifications or change orders the Contracting Officer, the U.S. Department of Transportation, or their representatives shall have the right to examine all books, records, documents, and other cost and pricing data related to a Contract modification, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract modification or change order shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract modification or change order for the purpose of conducting a cost analysis. If an examination made after execution of the contract modification or change order reveals inaccurate, incomplete, or out-of-date data, the Contracting Officer may renegotiate the contract modification or change order price adjustment and AATA shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.
- D. For any cost reimbursable work the Contracting Officer, the U.S. Department of Transportation, or their representatives shall have the right to examine books, records, documents, and other evidence, including review of accounting principles and practices that reflect properly all direct and indirect costs incurred as related to said cost reimbursable work.
- E. The materials described in the above three paragraphs shall be available at the Contractor's office at all reasonable times for inspection, audit, and making excerpts and transcriptions until three years from the date of final payment under the Contract except that the materials described above shall also be available prior to any award and materials relating to Service and Parts. For records relating to appeals under the Disputes, Audit and

Inspection of Records, litigation, or the settlement of claims arising out of the negotiation or the performance of the contract modifications, records shall be kept available until such appeals, litigation, or claims have been disposed of.

- F. The Contracting Officer and his/her representative and any other parties authorized under this clause shall employ sound business practices to protect the confidence of the data specified under this clause, for which the Contractor provides access, against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that any confidential data bear appropriate notices relating to its confidential character.
- G. The requirements of this section are in addition to other audit, inspection, and record-keeping provisions specified elsewhere in the Contract documents.

5.18 ACCESS TO RECORDS

- A. The Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5.19 INCORPORATION OF FTA TERMS

“General Contract Provisions,” includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, 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

Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any AATA requests that would cause AATA to be in violation of the FTA terms and conditions.

5.20 CHANGES IN FEDERAL LAWS AND REGULATIONS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between AATA and FTA that funds any part of this Contract, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

5.21 CIVIL RIGHTS

A. Nondiscrimination

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

B. The following equal opportunity requirements apply to the underlying Contract:

1. Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order no. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or

transfer, recruitment or recruitment advertising, layoff or termination; rates or pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§623 and Federal transit law at 49 U.S. C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities. In accordance with Section 102 of the American with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R., Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5.22 DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

- A. The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as AATA deems appropriate.
- B. If a specific DBE goal is assigned to this contract, it will clearly stated in the Special Provision section of this document. If the Contractor fails to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, AATA may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Provisions, it will be understood that NO specific goal is assigned to this contract.
- C. A Disadvantaged Business Enterprise, or DBE, means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals, and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- D. “Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women; and any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- E. Contractors must pay subcontractors for satisfactory performance of their contracts no later than 30 days following the receipt of each payment made by AATA to the prime contractor. This includes the prompt return of retainage payments from the prime contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. AATA may apply appropriate penalties for failure to comply with these terms and conditions. Any delay or postponement of payment among parties may take place only for good cause, and only with the prior written permission of AATA. Contractors must include in their subcontracts language providing the appropriate alternative dispute resolution mechanisms to resolve payment disputes. Prime contractors will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

5.23 DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS

- A. By signing and submitting this proposal, the prospective participant is providing the signed certification set out in Debarment and Suspension Certification.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, AATA may pursue available remedies, including suspension and/or debarment.
- C. The prospective participant shall provide immediate written notice to AATA if at any time the prospective participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms “covered transaction,” “debarred”, “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29].

You may contact AATA for assistance in obtaining a copy of these regulations.

- E. The prospective participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by AATA.
- F. The prospective participant further agrees by submitting this proposal that it will include the clause titled Debarment and Suspension Certification Requirements and the certificate form, without modification, in all covered transactions and in all solicitations for covered transactions.
- G. The prospective participant in a covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- H. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 62.5, if a participant in a covered transaction knowingly enters into a covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, AATA may pursue available remedies including suspension and/or debarment.

5.24 LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS

In accordance with 31 U.S.C. (1352, and U.S. DOT regulations, "New Restrictions on Lobbying", 49 C.F.R., Part 20), the Contractor must have provided a certification to AATA that the Contractor has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an 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.

5.25 BUY AMERICA

- A. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.1. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60% domestic content.
- B. A Bidder or Offeror must submit to the Buy America form included in this document. Proposals that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

5.26 ENERGY CONSERVATION REQUIREMENTS

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

5.27 CLEAN AIR

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

5.28 CLEAN WATER

The Contractor shall 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 shall report each violation to AATA and understands and agrees that AATA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Region Office.

SECTION 5 -- REQUIRED FORMS AND CERTIFICATIONS

5.1 PROPOSAL ADDENDA

Addenda:

The undersigned acknowledges receipt of the following addenda to the document:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

The undersigned understands that any conditions stated above, clarifications made to above or information submitted on or with this form other than that requested, will render bid unresponsive.

(Name of Individual, Partnership or Corporation)

(Address)

(Authorized Signature)

(Title)

(Date)

(Telephone)

5.2 AGREEMENT OF GOODS and SERVICES

TO: Ann Arbor Transportation Authority
2700 South Industrial Hwy.
Ann Arbor, MI 48104

The undersigned hereby agrees to furnish the goods and services as listed below in accordance with the specifications which have been carefully examined and are attached.

Signed: _____

Printed Name: _____ Title: _____

Date: _____ Telephone: _____

For (Company): _____

Address: _____

5.3 CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT

All primary participants in contracts over \$25,000 shall be required to execute the certification listed below.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTACT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

The undersigned chief legal counsel for the _____ hereby certifies that
(entity)
the _____ has authority under State and local law to comply with the subject
(entity)
assurances and that the certification above has been legally made.

5.4 LOBBYING

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

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

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

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

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

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 proposal 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 or State legislature, 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 AATA.

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

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 or State Legislature, 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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, 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: _____

DISCLOSURE OF LOBBING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance 	<p>2. Status of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. bid/offer/application b. initial award c. post-award
<p>3. Report Type: (circle one)</p> <ul style="list-style-type: none"> a. initial filing b. material change <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>	<p>4. Name and Address of Reporting Entity:</p> <p>Prime</p> <p>Sub-awardee</p> <p>Tier _____, <i>if known:</i></p> <p>Congressional District, <i>if known:</i></p>
<p>5. If Reporting Entity in No. 4 is a Sub-awardee, Enter Name and Address of Prime:</p> <p>Congressional District, <i>if known:</i></p>	<p>6. Federal Department/Agency:</p>
<p>1. Federal Program Name/Description:</p> <p>CFDA Number, <i>if applicable:</i> _____</p>	<p>8. Federal Action Number, <i>if known:</i></p>
<p>9. Award Amount, <i>if known:</i></p> <p>\$ _____</p>	<p>10. a. Name and Address of Lobbying Registrant (<i>if individual, last name, first name, MI</i>):</p> <p>b. Individual Performing Services (<i>including address if different from No. 10a</i>) (<i>last name, first name, MI</i>):</p>
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____</p> <p>Date: _____</p>
<p>Federal Use Only:</p>	<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

5.5 CERTIFICATE OF NON COLLUSION

I hereby swear (or affirm) under penalty for perjury:

1. That I am the Bidder or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid has been arrived at by the Bidder independently and has been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the Invitation for Bid, designed to limit independent bids or competition;
3. That the contents of the bid has not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished with the Bidder, and will not be communicated to any such person prior to the official opening of the proposals; and,
4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

SIGNED _____

FIRM
NAME _____

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

Notary Public

My _____ commission
expires _____

Proposers E.I. Number _____
(Number used on employer's Quarterly Federal Tax Return)

AFFIRMATIVE ACTION PLAN CERTIFICATION

The undersigned hereby certifies that the business is in compliance with all federal affirmative action requirements applicable to the business.

Signature: _____

Typed Name: _____

Company: _____

Title: _____

Date: _____

Bidder's firm is: (check or complete all applicable boxes)

- an individual
- a partnership
- a non-profit organization
- a corporation, incorporated under the laws of the State of _____
- a limited liability corporation (LLC)
- other, _____

Covenants Against Gratuities:

Neither Proposer, nor any of its employees, representatives or agents, have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of AATA with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to Proposer selection or the performance of the Contract.

The undersigned Bidder certifies that the foregoing is true.

Date

Proposer

Authorized Representative

SECTION 6 BID FORMS

Bidder:

Name

Name of Authorized Representative

Signature of Authorized Representative

Title

Address, including Zip Code

Telephone Number

Fax Number

Prompt Payment Discount: _____% @ _____ days