

**SHAWNEE MASS TRANSIT DISTRICT
BID – MASS TRANSIT VEHICLE MAINTENANCE FACILITY**

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SHAWNEE MASS TRANSIT DISTRICT INVITATION TO BID

Notice is hereby given that the Shawnee Mass Transit District (SMTD) is soliciting bids for one design for three office/depot buildings to be located one each in the following counties; Massac, Pulaski, and Union. Bids will be accepted from ????? until 3:00 p.m. CDT, on ??????. SMTD will hold a Pre-Bid Meeting on ?????? at 10:00 a.m. CDT at SMTD's Administrative Headquarters, 100 Smart Drive, Vienna, IL 62995.

Project Description: The facility is to be composed of an administrative office, driver's lounge with a kitchenette, two small storage rooms, an indoor public waiting area w ½ bathroom, separate women's and men's bathrooms and a meeting/training room. Also included will be an attached two bay maintenance facility. The overall size of the facility will be approximately 4000 square feet and will be located in each county's Industrial Park.

Project Documents: Requests for Project Documents, which include bidding instructions, contract requirements, drawings and specifications, should be submitted to:

Shawnee Mass Transit District
Attn: Maureen Mann
100 Smart Drive
Vienna, Illinois 62995
Phone: 618-658-8384
Fax: 618-658-8398

Bids must be enclosed in a sealed envelope clearly marked on the outside: "BID – MASS TRANSIT Design for Office/Depot Building and delivered to the above address on or before **3:00 p.m. CDT on ?????, 2017**, at which time and place the bid proposals will be opened and read aloud. Faxed or emailed bids will not be accepted. Bids not submitted by the deadline will be returned to the bidder unopened.

Funding for this project is provided by the State of Illinois.

A contract for design will be based on qualifications and technical criteria/No price considerations. SMTD reserves the right to accept any bid or any part or parts thereof or to reject any and all bids. Acceptance of any Bid is subject to concurrence by the Illinois Department of Transportation.

Bids will be required to be submitted under a condition of irrevocability for a period of 120 days after submission.

Any contract resulting from this Advertisement is subject to financial assistance contracts between SMTD and the United States Department of Transportation and the Illinois Department of Transportation.

Contractors will be required to comply with all applicable Equal Employment Opportunity laws and regulations. Additionally, successful bidders must comply with the Illinois Prevailing Wage Act (820 ILCS 130 *et seq.*).

Certified Disadvantaged Business Enterprises are encouraged to participate in any procurement opportunity with SMTD. SMTD shall not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service in the participation or performance of any resulting contract or agreement.

SHAWNEE MASS TRANSIT DISTRICT BID – MASS TRANSIT VEHICLE MAINTENANCE FACILITY

INSTRUCTIONS

1.0 GENERAL

1.1 TERMINOLOGY:

The following shall apply to the entirety of the Project Documents:

- A. The terms “District,” “SMTD,” or “Purchaser” shall be construed to be the same as “Shawnee Mass Transit District.”
- B. The term “Contractor” shall be construed to be the same as “Vendor” or “Bidder.”
- C. The terms “Project Documents” and “Contract Documents” may be used interchangeably.

1.2 CONTRACT REQUIREMENTS:

The portion of these Project Documents entitled “Contract Requirements” contains provisions required for all third party contracts as well as other important information for contractors. A copy of the Contract Requirements is attached hereto and is to be considered a part of the Instructions as if fully repeated herein.

1.3 QUESTIONS:

Questions regarding these Project Documents should be directed to Maureen Mann, Executive Director, at (618) 658-8384, or via email, mmann@smtdil.com.

2.0 PROJECT DESCRIPTION

2.1 PROJECT DESCRIPTION:

The facility is composed of an administrative office (approx. 6000 sf), a maintenance garage area (approx. 10,000 sf) and a partially paved parking/driver training area (approx. 2 acres). The maintenance garage area will be steel on steel construction and the administrative office will be standard frame construction.

2.2 PROJECT BUDGET:

The maximum budget for Facility renovation is two million dollars (\$2,000,000).

3.0 CONTRACT DOCUMENTS

3.1 CONTRACT DOCUMENTS:

- A. The following documents shall constitute the Contract Documents:
 - 1. Request for Proposals (included in the Project Documents)
 - 2. Instructions (included in the Project Documents)
 - 3. Contract Requirements (included in the Project Documents)
 - 4. Contractor Certification(s) (included in the Project Documents)
 - 5. Certification Regarding Lobbying (included in the Project Documents)

6. IDOT DBE Utilization Plan Form (included in the Project Documents)
7. Bid Form (included in the Project Documents)
8. Purchaser/Contractor Agreement (to be included upon completion)

4.0 BID PREPARATION

4.1 EXAMINATION OF PROJECT DOCUMENTS:

- A. Examination of Project Documents:
 1. Contractors must examine the Project Documents carefully, and before submitting a Bid, must request in writing from the specified SMTD contact person listed under “Questions” in Section 1.3, any interpretation or correction of every apparent ambiguity, inconsistency, error or omission therein. Such interpretation or correction, as well as any additional contract provisions the District may decide to include, will be issued in writing as an Addendum to the contract, which will be mailed or delivered to each person recorded as having received a copy of the Project Documents from the District, and which will also be posted for inspection. Upon such mailing or delivery and posting, such Addendum shall become a part of the Project Documents and be binding on all Contractors, whether or not actual notice of such Addendum is shown.
 2. The written interpretation or correction given by SMTD shall be binding.
 3. If the Contractor, prior to the submission of his Bid, fails to call SMTD's attention to the existence of any ambiguity, inconsistency, error or omission in the Project Documents, his Bid will be conclusively presumed to have been based upon the interpretation of such ambiguity, or inconsistency, or the directions correcting such error or omission, which may subsequently be given by the District.
 4. Questions Period: Questions, requests for interpretation or correction of apparent ambiguities, inconsistencies, errors or omissions, as well as requests for additional information shall be submitted before 3:00 p.m. CDT on ??????.
- B. Contractors are required to submit their Bids upon the following conditions:
 1. The Contractor shall carefully examine the specifications and requirements contained in the Project Documents.
 2. The Contractor shall make all the investigations necessary to thoroughly inform him/her before submitting a Bid.

4.2 PREPARATION:

- A. Bids shall be prepared on the Bid Form provided within the Bid Packet.
- B. The Bidder shall not make changes in the Bid Form provided.
- C. The Bidder shall fill in all relevant blank spaces, including alternate bids and unit prices in ink or by typewriter. When a bidder submits a bid with spaces containing erasures or other changes, each erasure or change shall be initialed by the person signing the bid.
- D. Base Bid and Alternate Bid items shall show total amounts in both words and figures. In case of a conflict, the amount shown in words will govern, unless such conflict is otherwise resolved by the District after considering all facts and circumstances present at the time of bid opening.
- E. If any base bid, alternate bid, or unit price is omitted, the Owner may reject the entire bid.
- F. No conditional bids will be accepted..

4.3 SIGNATURE:

Bid Forms shall be signed, with the individual's name typed or printed below his/her signature. The Bid Form shall be signed by a person authorized to bind the entity submitting the Bid Form to a contract, and the legal name of the entity (sole proprietorship, corporation, partnership, joint venture, etc.) shall be stated.

- A. Partnerships shall sign in the firm name by one of the general partners.
- B. Corporations, including divisions or subsidiaries, shall state on the Proposal Form the complete corporate name and be signed and attested to by authorized officers of the corporation.
- C. Individuals doing business under a fictitious name shall sign in the name of the individual "doing business as."

4.4 STATUTORY BIDDING REQUIREMENTS:

All applicable Federal and State laws and the rules and regulations of all authorities having jurisdiction over the bidding process shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though written therein in full

5.0 BID SUBMISSION

5.1 SUBMISSION:

Bids must be verified and presented to the District on or before the time and at the place mentioned in the Invitation to Bid. Bids received after such date will be rejected and will be returned unopened to the Contractor. Bids shall be sent in a sealed envelope and must be clearly marked: "BID – MASS TRANSIT VEHICLE MAINTENANCE FACILITY." Bids must include the completed Bid Form (pages 14-15), Contractor Certification (page 13), Certification Regarding Lobbying and the IDOT DBE Utilization Plan Forms (pages ???). All Bids must comply with the provisions of the Project Documents; failure to do so may result in SMTD's refusal to consider the Bid.

5.2 NO PROPOSALS BY FAX OR EMAIL:

The District will not accept any Proposal sent by facsimile machine, email, or any other unsealed method.

6.0 SELECTION PROCEDURE

6.1 SELECTION PROCESS:

The contract will be awarded to the lowest responsible bidder as defined by Illinois law. Whenever in its opinion it is in the best interest of the public and not inconsistent with the competitive bidding process, the District reserves the right to: (1) accept any Bid or any part or parts thereof; (2) reject any and all Bids; and (3) waive any technical deficiencies and acceptable irregularities.

6.2 SELECTION SCHEDULE:

SMTD's proposed schedule for Contractor selection, subject to change, is as follows:

- | | |
|--|----------------------------|
| 1. Advertisement for Proposals | January 2, 2013 |
| 2. Pre-Proposal Meeting | January 9, 2013 @ 10:00 AM |
| 3. Deadline for Submittal of Proposals | January 25, 2013 @ 3:00 PM |
| 4. Preliminary Selection of Contractors | January 28, 2013 |
| 5. Notify Contractors Chosen for Interview | January 28, 2013 |
| 6. Contractor Interviews | January 30, 2013 |
| 7. Final Selection | February 1, 2013 |

8. Complete Contract Negotiations	February 18, 2013
9. SMTD Board and IDOT Concurrence	March 19, 2013
10. Execution of Agreement	March 22, 2013

7.0 PROTEST PROCEDURE:

7.1 PROTEST SUBMITTAL AND CONTENT:

Protests must be submitted in writing and must contain the name, address and telephone number of the protester. If the protester is a company, the name address and telephone contact for the company must be provided. Protests must clearly identify the proposal question, and must contain a complete statement outlining the grounds for the protest, including full documentation of the protestor’s claims. Protests must be submitted according to the timelines listed in 12.5 below.

7.2 SUBMISSION OF PROTEST:

Protest information (7.1 above) must be submitted to:

Maureen Mann
 Executive Director
 1001 West Vine
 Vienna, Illinois 62995
 Phone: 618-658-8380
 Fax: 618-658-8398

7.3 RESPONSE BY EXECUTIVE DIRECTOR:

The Executive Director shall review the written protest and shall respond in writing and in detail to each important and essential issue raised in the protest. The Executive Director’s response shall be mailed to the protester according to the timeframes listed in 7.5 below. The Executive Director has the authority to make the final determination regarding all protests.

7.4 TYPES OF PROTEST:

The three types of acceptable protests, depending on their time of occurrence in the procurement process, are as follows:

- A. Pre-Proposal Protest: A pre-proposal or solicitation phase protest shall be made prior to the proposal opening or the proposal due date.
- B. Pre-Award Protest: A pre-award protest is made after the proposal due date, but before the award of the contract to the successful proposer.
- C. Post-Award Protest: A post-award protest is made after the award of the contract.

7.5 TIMEFRAMES:

The timeframes for the filing of and responding to a protest are as follows:

- A. Pre-Proposal Protest: The protest must be received by the Executive Director at least five (5) working days prior to the proposal due date. The Executive Director must respond in writing no later than seven (7) working days after receipt of the protest.
- B. Pre-Award Protest: The protest must be made at least three (3) working days before the scheduled award date. The Executive Director must respond in writing no later than seven (7) working days after the receipt of the protest. A pre-award protest received without sufficient time for the Executive Director to respond will

be considered a post-award protest and will be resolved in the manner described in the post-award protest procedures.

- C. Post-Award Protest: The protest must be received by the Executive Director no later than seven (7) working days after the date of the contract award. The Executive Director must respond in writing and in full detail no later than seven (7) working days after the receipt of the protest.

7.6. REQUEST FOR RECONSIDERATION:

Although the Executive Directors decision is final, a request for reconsideration by the Executive Director can be submitted in writing by the protester no later than three (3) working days after the protester has received the denial of the protest. The request for reconsideration must be based on data not known at the time of the original protest or on an allegation that an error of law or regulation has occurred. The Executive Director will respond in writing and in detail to the request for reconsideration no later than seven (7) working days after receipt of the request for reconsideration.

7.7 PROTEST TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION:

SMTD will disclose to the Illinois Department of Transportation-Division of Public and Intermodal Transportation (IDOT-DPIT) complete information regarding any protest received. A protester must exhaust all administrative remedies with SMTD before pursuing a protest with IDOT-DPIT. A protest to IDOT-DPIT shall be limited to review regarding a failure by SMTD to have written protest procedures, follow these procedures, or to review a protest and/or respond in writing in the timeframe specified. An appeal to IDOT-DPIT must be received within five (5) working days of the date the protester knew or should have known of the violation.

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CONTRACT REQUIREMENTS

1. CONTRACTOR COMPLIANCE:

The Contractor shall comply with all applicable codes, laws, ordinances and regulations of the Shawnee Mass Transit District, the State of Illinois, and the Federal Government. Additionally, the Contractor must certify to SMTD that it is not barred from entering into public contracts by the State of Illinois and that the Bidder's name does not appear on the U.S. Comptroller's list of Ineligible Contractors, and is therefore eligible for award of, or participation in, any contract that may be awarded as a result of this invitation. All proposals or bids shall contain all certifications which are contained herein which are applicable to the procurement. Failure to do so may result in SMTD's refusal to consider the proposal or bid.

2. STATUTORY BIDDING REQUIREMENTS:

All applicable Federal and State laws and the rules and regulations of all authorities having jurisdiction over the bidding process shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though written therein in full.

3. PROHIBITIONS:

- a) No member of or delegate to the Illinois General Assembly or the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.
- b) No member, officer, or employee of the Shawnee Mass Transit District or a local public body with financial interest or control in this contract during their tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- c) Escalation clauses are prohibited.

4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS:

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- 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 originally awarded by FTA under the authority of 49

U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

5. CONSTRUCTION ACTIVITIES:

a) **Government Inspection:** Representatives of the State of Illinois shall have access to the site of construction and shall have the right to inspect all project works.

b) **Bonding:**

1. In all construction contracts in which the total project cost is expected to equal or exceed \$100,000, the Contractor shall adhere to the following bonding requirements:

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

2. Bid Bond Requirements:

- a. A Bid Bond must be issued by a fully qualified surety company acceptable to SMTD and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- b. In submitting this Bid, it is understood and agreed by bidder that the right is reserved by SMTD to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of SMTD.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of SMTD, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as

provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of SMTD's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

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

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

3. Performance Bond Requirements:
 - a. The penal amount of performance bonds shall be 100 percent of the original contract price, unless SMTD determines that a lesser amount would be adequate for the protection of SMTD.
 - b. SMTD may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. SMTD may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
4. Payment Bond Requirements:
 - a. The penal amount of the payment bonds shall equal:
 1. 50% of the contract price if the contract price is not more than \$1 million;
 2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 3. \$2.5 million if the contract price is more than \$5 million.
 - b. If the original contract price is \$5 million or less, SMTD may require additional protection as required by subparagraph 1 if the contract price is increased.
- c) **Insurance:** The Contractor and his subcontractors shall maintain Workmen's Compensation, Public Liability Property Damage, and Vehicle Liability Insurance in amounts and on terms satisfactory to SMTD and the Illinois Department of Transportation. Such insurance coverage is required to remain in effect until the construction has been accepted by SMTD.
- d) **Prime Contractor Participation:** The Prime Contractor shall perform on the site, with his own staff, work equivalent to at least ten (10) percent of the total amount of construction work at the site. Only pay items of the construction contract will be used in computing the total amount of construction at the work site.
- e) **Prevailing Wage Act:** The Illinois Prevailing Wage Act (820 ILCS 130 *et seq.*) applies to this contract. Accordingly, the Contractor is required to pay his laborers a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed.
- f) **Certified Payrolls:** SMTD shall obtain from the Contractor and each subcontractor a certified copy of each weekly payroll within seven (7) days after the regular payroll date. Following a review by SMTD for compliance with state and federal labor laws, the payroll copy shall be retained at the project site for later review by the authorized representatives of the State of Illinois.

- g) **Project Sign:** The Contractor shall erect and maintain signs satisfactory to the Illinois Department of Transportation identifying the project and indicating state participation.
- h) **Metric Requirements:** Property and services shall be delivered with dimensions in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," July 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.
- i) **Warranty of the Work and Maintenance Bonds:**
 - 1. The Contractor warrants to SMTD, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by SMTD, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. **If required by SMTD or representatives of the State of Illinois**, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
 - 2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by SMTD and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to SMTD. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment **[as provided in Item X below]**, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to SMTD written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).
- j) **Davis-Bacon and Copeland Anti-Kickback Acts:**
 - (1) **Minimum wages**
 - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid

the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly

rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

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

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

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

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

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

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

(2) **Withholding** - SMTD 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, SMTD 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 SMTD 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.

6. **GENERAL REQUIREMENTS FOR THIRD PARTY CONTRACTS:**

- a) **Subcontracts:** The Contractor shall not enter into any subcontracts or agreements, or start any work by the work forces of the Contractor or use any materials from the stores of the Contractor, with respect to this contract, without the prior concurrence of the Illinois Department of Transportation. All such subcontracts, agreements, and force work and materials shall be handled as prescribed for third-party contracts, agreements, and force-account work by the IDOT manual for Public Transportation Capital Improvement Grants. All requests for concurrence shall be submitted to SMTD for approval prior to submittal to IDOT.
- b) **Assignment:** Assignment of any portion of the work by subcontract must be approved in advance by SMTD.
- c) **Access to Records and Reports:** The following access to records requirements apply to this contract:
 - 1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and constructions sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.
 - 2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions reasonably needed.
 - 3. 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. 49 C.F.R. 18.39(i)(11).

4. FTA does not require the inclusion of these requirements in subcontracts.
- d) **Audit and Inspection of Records:** The Contractor shall permit the authorized representatives of SMTD and the State of Illinois to inspect and audit all data and records of the Contractor relating to his performance under the contract.
- e) **Retention of Records:** (Service contracts only) The Contractor shall maintain records to show actual time devoted and cost incurred. The Contractor shall maintain such records for a minimum of three (3) years after contract completion.
- f) **Ownership of Records:** (Service contracts only) SMTD shall retain ownership of all plans, specifications, and related documents.
- g) **Equal Employment Opportunity:** In the event of the Contractor's noncompliance with any provisions of this Equal Employment opportunity Clause or the Illinois Human Rights Act Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:
 1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
 2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
 3. That in all solicitations or advertisements for employees placed by it or on its behalf it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organizations or representative of the Contractor's obligations under the Human Rights Act and the Department's Rules and Regulations. If any such labor organizations or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
 5. That it will submit reports as requires by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the

Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
 7. That it shall have written sexual harassment policies that shall include, at a minimum, the following information: (1) the illegality of sexual harassment; (2) the definition of sexual harassment under State law; (3) a description of sexual harassment, utilizing examples; (4) an internal complaint process, including penalties; (5) the legal recourse, investigative and complaint process available through the Department of Human Rights and the Human Rights Commission; (6) directions on how to contact the Department and the Commission; and (7) protection against retaliation as provided by Section 6-101 of the Human Rights Act. A copy of the policies shall be provided to the Department upon request.
 8. That it will include verbatim or by reference the provisions of this Item in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.
- h) **Federal Civil Rights Requirements:** The following requirements apply to the underlying contract:
1. Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 2. Equal Employment Opportunity – Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.
 - a) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color,

creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b) Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- i) **Privacy Act:** (Contracts involving Federal Privacy Act requirements) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
 - 1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
 - 2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
 - j) **Fly America Requirements:** The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
 - k) **Cargo Preference:** The Contractor agrees:

1. 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;
 2. 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 loading 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 the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and
 3. 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.
- l) **Seismic Safety:** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
 - m) **Energy Conservation:** To the extent applicable, the Contractor and its third party contractors at all tiers shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable state energy conservations plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321, *et seq.*
 - n) **Clean Air Requirements:** For contracts which exceed \$100,000 or which are indefinite but are expected to exceed \$100,000 in any year, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
 - o) **Clean Water Requirements:** For contracts which exceed \$100,000 or which are indefinite but are expected to exceed \$100,000 in any year, the Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
 - p) **Recycled Products:** The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6962, including but not limited to the regulatory

- provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R Part 247.
- q) **Buy America:** The following provision shall apply only if the contract or purchase amount exceeds \$100,000: This contract is subject to Buy America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. 661. This statute and implementing regulations are incorporated by reference into this contract.
 - r) **Lobbying Certification:** Contractors and subcontractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. 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 a member of Congress in connection with obtaining any Federal contract, grant or 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 contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
 - s) **Notification of Federal Participation:** To the extent required by law, in the announcement of any third party contract award for goods or services having an aggregate value of \$500,000 or more, the Recipient agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of that third party contract.
 - t) **No Government Obligation to Third Parties:** The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent of the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. 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.
 - u) **State and Local Law Disclaimer:** Any state or local law that is more restrictive than the FTA requirements listed herein are nonetheless as enforceable as the FTA requirements.
 - v) **Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT. Whether or not expressly set forth in the preceding contract provisions, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMTD requests which would cause SMTD to be in violation of the FTA terms and conditions.
 - w) **Federal Changes:** 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 Purchaser 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.

7. DISADVANTAGED BUSINESS ENTERPRISE:

- a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. **A separate contract goal of 8% DBE participation has been established for this procurement.**
- b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this DOT assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SMTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).
- c) Bidders are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid:
 - 1. The names and addresses of DBE firms that will participate in this contract;
 - 2. A description of the work each DBE will perform;
 - 3. The dollar amount of the participation of each DBE firm participating;
 - 4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits will meet the contract goal;
 - 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - 6. If the contract goal is not met; evidence of good faith efforts to do so
- d) Bidders must present the information listed above in subsection (c) with their initial bids. Failure to submit the required information will result in rejection of the bid.
- e) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from SMTD. **In addition**
- f) The Contractor must promptly notify SMTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make a good faith effort to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMTD.

7. DEBARMENT AND SUSPENSION:

Any contract resulting from this Advertisement is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

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

8. REJECTION OF PROPOSALS:

SMTD reserves the right to reject any or all proposals and to reject proposals of any person or firm who, in its opinion, is unable to perform successfully under the terms and conditions described herein.

9. CONCURRENCE:

Any contract resulting from this Advertisement is subject to financial assistance contracts between SMTD and the United States Department of Transportation and the Illinois Department of Transportation. All Bids and subsequent agreements are subject to concurrence by the Illinois Department of Transportation.

10. COMPENSATION/METHOD OF PAYMENT:

SMTD shall comply with the Illinois Prompt Payment Act. The Contractor will be compensated with funds derived from state, federal and local revenue sources. Specific payment and compensation terms will be delineated in the Purchaser/Contractor Agreement (to be incorporated into the Contract Documents upon execution).

11. CONTRACT CHANGES:

Any proposed changes to the Contract Documents shall be submitted to SMTD for its prior approval.

12. CONTRACT PERIOD:

Substantial Completion of the Project shall be within three (3) months after issuance of the Notice to Proceed. Final Completion will be achieved within twenty-five (25) calendar days after Substantial Completion.

13. TERMINATION AND DISPUTE RESOLUTION:

a) **Termination for Convenience:** SMTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the best interest of the District. 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 SMTD to be paid to the Contractor. If the Contractor has any property in its possession belonging to SMTD, the Contractor will account for the same, and dispose of it in the manner SMTD directs.

b) **Termination for Cause:**

1. 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 the Contract Documents or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of the Contract Documents, SMTD may terminate this contract for cause. In this event, SMTD 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 SMTD resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by SMTD in completing the work. Termination for Cause shall be effected by serving a written 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 services performed in accordance with the manner set forth in the contract.

2. If it is later determined by SMTD that the Contractor had an excusable reason for not performing, such as a strike, fire, flood, or other events which are not the fault of or are beyond the control of the Contractor, SMTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue, or treat the termination as a Termination for Convenience.
 3. SMTD may, in its sole discretion, in the case of Termination for Cause, allow the Contractor ten (10) 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 the Contractor fails to remedy the breach or default to SMTD's satisfaction within ten (10) days after receipt by the Contractor of the notice of termination, SMTD shall have the right to terminate the contract without any further obligation to the Contractor. Any such Termination for Cause shall not in any way operate to preclude SMTD from also pursuing all available remedies against the Contractor for said breach or default.
 4. In the event that SMTD elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this contract, such waiver by SMTD shall not limit SMTD's remedies for any subsequent breach of that or of any other term, covenant or condition of this contract.
 5. If, after Termination for Cause, 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 convenience.
- c) **Disputes:** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by SMTD's Executive Director. 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 Executive Director. In connection with any such appeal, the Contractor shall be afforded the opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- d) **Performance During Dispute:** Unless otherwise directed by SMTD, the Contractor shall continue performance under the contract while matters in dispute are being resolved.
- e) **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.
- f) **Remedies:** Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between SMTD and the Contractor arising out of or relating to this agreement shall be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Illinois.
- g) **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 SMTD, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under this 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.

**SHAWNEE MASS TRANSIT DISTRICT
BID – MASS TRANSIT VEHICLE MAINTENANCE FACILITY**

CONTRACTOR CERTIFICATION

_____, a(n) _____,
(PRINT NAME OF CONTRACTOR) (INDIVIDUAL, PARTNERSHIP, CORPORATION)

hereby certifies that the Contractor is not barred from bidding on the above referenced contract as a result of a violation of either Section 33E-3 Bid-rigging or 33E-4 Bid-stating of Article 33E of the Illinois Criminal Code, 720 ILCS 5/33E-1, *et. seq.*, as amended, and that neither the Contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible,

or voluntarily excluded from participation from this transaction by any Federal department or agency, and is therefore eligible for award of, or participation in, any contract that may be awarded as a result of this invitation.

CONTRACTOR

By: _____

Title: _____

STATE OF ILLINOIS, COUNTY OF _____

I, the undersigned, a notary public in and for the State and County aforesaid, hereby certify that _____ appeared before me this day in person and, being first duly sworn on oath, acknowledged that he/she executed the foregoing certification as his/her free act and deed.

DATED: _____ NOTARY PUBLIC: _____

**SHAWNEE MASS TRANSIT DISTRICT
BID – MASS TRANSIT VEHICLE MAINTENANCE FACILITY**

PROPOSAL FORM

SUBMITTED TO: Shawnee Mass Transit District
1001 West Vine Street
Vienna, Illinois 62995

FOR: MAINTENANCE FACILITY RENOVATION PROJECT

CONTRACTOR: Name: _____

Address: _____

Phone: _____ Fax: _____

DATE: _____

THE UNDERSIGNED AGREES:

1. That this Proposal is made in good faith and without any previous understanding, agreement, or connection with any other person, firm, or corporation making a proposal for the same purpose, and is in all respects, fair and without collusion or fraud.
2. That the Contractor has carefully examined the Contract Documents and will, if successful in this Proposal, furnish and deliver the services described herein under the terms and conditions contained in the Contract Documents.

Signed: _____

(PRINT NAME)

(TITLE)

(FIRM OR CORPORATION)

Subscribed and sworn before me this

_____ day of _____, 2013

(Notary Public)