



INVITATION FOR BIDS

RAIL WELDING SERVICES
MTS DOC. NO. PWL323.0-21



San Diego Metropolitan Transit System

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101

TABLE OF CONTENTS

1. INTRODUCTION	7
1.1. CALENDAR OF EVENTS	7
1.2. DETAILED INFORMATION FOR THE CALENDAR OF EVENTS	7
1.3. MTS POINT OF CONTACT	8
1.4. ENCOURAGEMENT OF DISADVANTAGED BUSINESS ENTERPRISES AND OTHER SMALL BUSINESSES	8
2. BID INFORMATION	9
2.1. SUBMISSION OF BIDS	9
2.2. SUBMITTAL FORMAT	9
3. GENERAL PROVISIONS	10
3.1. EXAMINATION OF SPECIFICATION	10
3.2. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS	10
3.3. CONTRACT PROVISIONS	10
3.4. DEBARMENT AND SUSPENSION	11
3.5. CHANGES	11
3.6. COMPLIANCE WITH INDUSTRIAL SAFETY CODES	11
3.7. WORKMANSHIP	11
3.8. CONSISTENCY OF PRODUCT	11
3.9. OMISSIONS	11
3.10. BRAND NAMES	12
3.11. COMPONENT MATERIAL	12
3.12. TAXES	12
3.13. PRE-CONTRACTUAL EXPENSES	12
3.14. PERIOD OF AWARD	12
3.15. W-9 FORMS	12
3.16. CALIFORNIA WITHHOLDING FORMS	12
3.17. BID REVIEW	12
3.18. CONDITIONAL OR NON RESPONSIVE BIDS	13
3.19. SUBMISSION OF BIDS	13
3.19.1. FORMS	13
3.19.2. PRICES	13
3.20. VERIFY QUOTATIONS BID REVIEW	13

3.21.	FIRM PRICES	13
3.22.	SIGNATURE	13
3.23.	PROTEST PROCEDURES	14
3.23.1.	PROTESTS PRIOR TO BID OPENING	14
3.23.2.	PROTESTS RECEIVED SUBSEQUENT TO BID OPENING:	14
3.23.3.	PROTEST CONTENTS:	14
3.23.4.	REPLY TO PROTESTS:	14
3.23.5.	REQUEST FOR PROTEST RECONSIDERATION:	14
3.23.6.	APPEAL TO BOARD OF DIRECTORS:	15
3.23.7.	FTA REVIEW OF PROTESTS	15
3.24.	DUTY TO CLARIFY OBVIOUS AMBIGUITY	15
3.25.	CONFIDENTIALITY, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE FREEDOM OF INFORMATION ACT	15
3.25.1.	EXCLUSIVE PROPERTY	15
3.25.2.	DISCLOSURE OF RECORDS	16
3.25.3.	EXEMPTION FROM DISCLOSURE MAY BE DEEMED UNRESPONSIVE	16
3.25.4.	INDEMNIFICATION OF MTS BY CONTRACTOR	16
3.25.5.	PUBLIC INTEREST	16
4.	SCOPE OF WORK/TECHNICAL SPECIFICATIONS	17
4.1.	GENERAL	17
4.2.	CONTRACTOR MINIMUM QUALIFICATIONS AND EXPERIENCE	17
4.3.	QUALIFICATIONS OF DESIGNATED PERSONNEL	17
4.4.	BID FORM	17
4.5.	SCOPE OF SERVICES	18
4.6.	PAYMENT TERMS	21
4.7.	INVOICES	21
4.8.	WARRANTY	22
4.9.	REPLACEMENT PARTS	22
4.10.	DELIVERY AND ACCEPTANCE	22
5.	ATTACHMENTS	23
6.	SAMPLE OF STANDARD AGREEMENT, STANDARD CONDITIONS	24
6.1.	COMPLETE AGREEMENT	25
6.2.	COUNTERPARTS	25
6.3.	SURVIVAL	25
6.4.	DUTY TO CLARIFY OBVIOUS AMBIGUITY	25
6.5.	NOTICES	25

6.6.	CHANGES IN WORK	25
6.7.	SEVERABILITY	26
6.8.	TERMINATION OF AGREEMENT	26
6.8.1.	TERMINATION FOR CONVENIENCE	26
6.8.2.	TERMINATION FOR DEFAULT	27
6.9.	ASSIGNABILITY	27
6.10.	STANDARD OF PERFORMANCE	28
6.11.	TIME	28
6.12.	EXCUSABLE DELAYS / FORCE MAJEURE	28
6.13.	SUSPENSION OF WORK	29
6.14.	INSPECTION AND TESTING	29
6.15.	INDEPENDENT CONTRACTOR	30
6.16.	THIRD PARTY BENEFICIARIES	30
6.17.	SUBCONTRACTORS	30
6.18.	INDEMNITY	30
6.19.	DISPUTES, CLAIMS, AND RESOLUTION	31
6.20.	NONWAIVER	31
6.21.	GOVERNING LAW AND CHOICE OF FORUM	32
6.22.	LITIGATION EXPENSES	32
6.23.	INSURANCE	32
6.23.1.	COVERAGE REQUIRED - ALL CONTRACTS	32
6.23.2.	ADDITIONAL COVERAGES REQUIRED (AS INDICATED)	33
6.23.3.	MINIMUM POLICY LIMITS REQUIRED	35
6.23.4.	NOTICE OF POLICY CHANGES	36
6.23.5.	EVIDENCE REQUIRED	36
6.23.6.	SPECIAL PROVISIONS	36
6.24.	PRICE AND PAYMENT	36
6.25.	CONSIDERATION PAID	37
6.26.	COST PRINCIPLES	37
6.27.	PROMPT PROGRESS PAYMENT AND RETENTION	37
6.28.	RECORDS RETENTION	38
6.29.	WARRANTIES-GUARANTEES	38
6.30.	INTELLECTUAL PROPERTY WARRANTY	39
6.31.	DATA RIGHTS	39
6.32.	EXCLUSIVE USE	39

6.33.	OWNERSHIP OF DOCUMENTS	39
6.34.	LANGUAGE AND MEASURE UNITS	40
6.35.	DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION	40
6.36.	AMERICANS WITH DISABILITIES ACT	41
6.37.	SUBSTANCE ABUSE	41
6.37.1.	CONTRACTORS CERTIFICATION:	41
6.37.2.	INDEMNIFICATION OF MTS:	42
6.37.3.	SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:	42
6.37.4.	FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT:	42
6.38.	EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM	42
6.38.1.	MTS'S EEO PROGRAM:	42
6.38.2.	CONTRACTOR'S EEO PLAN:	42
6.38.3.	COMPLIANCE WITH REGULATIONS:	42
6.39.	COVENANT AGAINST CONTINGENT FEES	43
6.40.	CALIFORNIA POLITICAL REFORM ACT	43
6.41.	PUBLIC WORKS	43
7.	FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS	46
7.1.	INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS	46
7.2.	FEDERAL CHANGES	46
7.3.	NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES	46
7.4.	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	46
7.5.	ACCESS TO RECORDS, REPORTS AND SITES	47
7.6.	DEBARMENT AND SUSPENSION	47
7.7.	RESTRICTIONS ON LOBBYING	48
7.8.	CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT	48
7.9.	ENERGY CONSERVATION	48
7.10.	RECYCLED PRODUCTS	48
7.11.	ENVIRONMENTAL PROTECTIONS	49
7.11.1.	GENERAL	49
7.11.2.	NATIONAL ENVIRONMENTAL POLICY ACT	49
7.11.3.	ENVIRONMENTAL JUSTICE	49
7.11.4.	OTHER ENVIRONMENTAL FEDERAL LAWS	49
7.11.5.	USE OF CERTAIN PUBLIC LANDS	50
7.11.6.	HISTORIC PRESERVATION	50
7.11.7.	INDIAN SACRED SITES	50
7.12.	ADA ACCESS	50

7.13.	CIVIL RIGHTS	50
7.13.1.	SUBCONTRACT	50
7.13.2.	NONDISCRIMINATION	51
7.13.3.	RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX	51
7.13.4.	AGE	51
7.13.5.	DISABILITIES	51
7.14.	VETERANS EMPLOYMENT	51
7.15.	EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS	52
7.16.	CONTRACTOR ASSURANCE	52
7.17.	SAFE OPERATION OF MOTOR VEHICLES	52
7.17.1.	SEAT BELT USE	52
7.17.2.	DISTRACTED DRIVING.	52
7.18.	GEOGRAPHIC RESTRICTIONS	53
7.19.	BUY AMERICA	53
7.20.	CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION	53
8.	FORMS	55
	ADDENDA ACKNOWLEDGEMENT FORM	56
	CONTACT INFORMATION	57
	BID FORM	58
	BID FORM (continued)	59
	DESIGNATION OF SUBCONTRACTORS	61
	DBE PROGRAM – INFORMATION FOR MTS’S BID LIST	63
	CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS	64
	EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT	65
	EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED	66
	ETHNIC IDENTIFICATION	67
	STATUS OF CURRENT AND PAST CONTRACTS	68
	FINANCIAL QUESTIONNAIRE FORM	70
	CALIFORNIA PUBLIC RECORD ACT (CPRA) ACKNOWLEDGEMENT	72
	NONCOLLUSION DECLARATION	73
	IRAN CONTRACTING ACT CERTIFICATION	74
	SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES	75
	SAFETY DEPARTMENT SAFETY RULES	76
	PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATE FORM	77
	BUY AMERICA	78
	BUY AMERICA	79
	CERTIFICATE OF RESTRICTIONS ON LOBBYING	80
	SAMPLE PROMPT PAYMENT CERTIFICATION FORM	81

1. INTRODUCTION

The San Diego Metropolitan Transit System (MTS) is seeking offers for RAIL WELDING SERVICES (to be referred to as “the project”) for a contract term of five (5) years.

The Scope of Work is to be supplied hereunder for the primary use of the MTS. MTS is a California public agency established by California Public Utilities Code, Section 120000. et. seq. MTS and its subsidiaries are subject to the California Tort Claims Act (Cal. Pub. Util. Code § 120202).

MTS strongly encourages bidders to register to become a vendor on [PlanetBids](#). Vendors can receive information about bid notices, addenda, bid awards, submit bids online (when applicable), and view and update in their portal. Bidders are advised that the MTS website link above is the only true source of information for MTS procurements. MTS shall not be held responsible for other third party websites that may post some or all of MTS’s solicitation documents.

There will be no oral changes to this solicitation. Any changes will be made by written addendum only and shall be signed by the Chief Executive Officer or designee.

MTS reserves the right to accept any Bid, or any part or parts thereof, or to reject any and all Bids.

As a condition of award the successful Bidder will be required to execute MTS Standard Agreement found in this IFB. Please read this agreement carefully. The successful Bidder may be required to provide a copy of its latest financial statement prior to award.

1.1. CALENDAR OF EVENTS

Event	Date
MTS Issues Invitation for Bid	October 30, 2020
Deadline for Submitting Written Questions/Clarifications and/or Request for Approved Equals (RFAs):	5:00 P.M., Prevailing Local Time, on November 20, 2020
MTS Issues Response to Written Questions/Clarifications and/or RFAs Deadline:	November 25, 2020
<i>Bid Opening:</i>	<i>2:00 P.M., Prevailing Local Time, on December 17, 2020</i>
MTS Issues Notice of Intent to Award:	Week of: January 11, 2021
Anticipated Contract Award:	March 11, 2021

*These dates are tentative and subject to change by MTS.

1.2. DETAILED INFORMATION FOR THE CALENDAR OF EVENTS

Deadline for Submitting Questions/RFA	By this date and time, all questions, clarifications, and requests for equals must be submitted in
---------------------------------------	--

MTS Issues Response to Questions/RFA's:	writing to MTS' online bid portal on PlanetBids . Additional details on the RFA process can be found in the General Provisions.
Bid Opening:	By this date, MTS will respond in writing to all questions, clarifications, and requests for equals that were submitted. These responses will be provided to all Bidders on PlanetBids .
Notice of Intent to Award (NIA):	Bids will be publicly opened and read via WebEx. An invitation link will be provided via PlanetBids. Bids arriving after this time or at a location other than that which is specified in this IFB will be returned unopened.
Anticipated Contract Award:	All NIA will be posted on PlanetBids advising all Bidders of an apparent low Bidder and the bid amount.
	On the board meeting date listed above, the contract is scheduled to be approved by the MTS Board of Directors. After this date, a contract will be executed and the Notice to Proceed will be issued.


1.3. MTS POINT OF CONTACT

Diana Singleton, Contract Officer is the sole point of contact for this solicitation. She can be reached via telephone at (619)557-4551 or via email at Diana.Singleton@sdmts.com. Bidders are directed to not contact other MTS staff or Board Members in connection with this Solicitation. **Failure to follow this instruction may render Bids non-responsive.**

1.4. ENCOURAGEMENT OF DISADVANTAGED BUSINESS ENTERPRISES AND OTHER SMALL BUSINESSES

In furtherance of MTS's Disadvantaged Business Enterprise (DBE) Program and MTS's program to foster small business participation, MTS highly encourages Proposer to include participation of DBEs, minority owned businesses (MBEs), women owned businesses (WBEs), disabled veteran business enterprises (DVBES), lesbian gay bisexual transgender owned businesses (LGBTs) or small businesses (SB) for any potential subcontracting opportunities on this Contract. If assistance is needed to locate these certified firms, please contact Samantha Leslie, MTS DBE Liaison Officer, at Samantha.Leslie@sdmts.com.

MTS Signature of Approval:


 Sharon Cooney
 Chief Executive Officer

2. BID INFORMATION

2.1. SUBMISSION OF BIDS

Bids must be submitted on or before the deadline shown on the calendar of events. All bids will be opened publicly.

Bids received after the specified date and time will be rejected.

2.2. SUBMITTAL FORMAT

Electronic Copies:

Bidders are to upload an electronic copy of their bid to MTS' online bid portal on [PlanetBids](#). Bids will be accepted until **the date and time listed on the Calendar of Events**, at which time all such bids will be opened and all results announced publicly.

3. GENERAL PROVISIONS

MTS hereby invites bids for the project consistent with the scope of work, general provisions, and requirements herein.

The needs as described in this scope of work may be purchased with the assistance of a grant from the Federal Transit Administration (FTA), Moving Ahead for Progress in the 21st Century (MAP-21) or Fixing America's Surface Transportation Act (FAST-ACT), Public Law 112-141, as amended. The successful Bidder will be required to comply with all terms and conditions prescribed for third-party contracts in a grant contract between the United States of America and MTS. These grant contract guidelines are available for examination by prospective Bidders at the offices of the MTS Procurement Department.

The contract award is subject to the approval of the MTS Board of Directors.

3.1. EXAMINATION OF SPECIFICATION

In submitting its bid, the Bidder certifies that:

- A. It has carefully examined the requirements, scope of work, and all provisions relating to the scope of work to be furnished or the work to be done, and understands the meaning, intent, and requirements of and agrees to the same; and
- B. It will enter into a written contract and furnish the scope of work or complete the work in the time specified and in strict conformity with the scope of work shown herein for the price bid.

3.2. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

The successful Bidder shall recognize that by submitting the Bid Form, the Bidder certifies to the truthfulness and accuracy of any statement it has made pertaining to this procurement. In addition to other penalties that may be applicable, the Bidder also acknowledges that if it makes false, fictitious, or fraudulent claims, statements, submissions, or certifications, MTS reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Bidder to the extent MTS deems appropriate.

3.3. CONTRACT PROVISIONS

The contract between MTS and the successful Bidder shall contain the following provisions:

- A. The Scope of Work, including any Addenda, and Approved Equals.
- B. Bid (Cost) Form
- C. The attached sample Standard Agreement including the Standard Conditions. The execution of the Standard Agreement will be required after an award is made.
- D. The Federal Requirements
- E. Forms
- F. Attachments (as applicable)

3.4. DEBARMENT AND SUSPENSION

The resultant contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 1200. As such, the successful Bidder is required to verify that the Bidder, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are not excluded or disqualified as defined at 2 C.F.R. 180.940 and 180.935.

The successful Bidder is required to comply with 2 C.F.R. 180, Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C, in any lower tier covered transaction it enters into.

By signing and submitting its bid, the successful Bidder also certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the successful Bidder knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The successful Bidder agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, while this offer is valid and throughout the period of any Contract that may arise from this offer. The successful Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3.5. CHANGES

Prior to award of a contract, the General Provisions, Scope of Work/Minimum Technical Specifications, Addenda, and all certification documents of this IFB, constitute the potential contract. Any requests for change in these documents must be submitted according to the instructions of the IFB. All changes to this IFB will be made by MTS through a written addendum. **There will be no oral changes, oral communications are not binding.**

MTS reserves the right to change or cancel the bid opening date at its discretion.

3.6. COMPLIANCE WITH INDUSTRIAL SAFETY CODES

All equipment shall be in complete compliance with all requirements of the laws of the State of California and City and County of San Diego, as well as all applicable federal laws and regulations at date of delivery and/or installation at MTS.

3.7. WORKMANSHIP

All Bidders must conform to the final approved specifications. Workmanship throughout shall conform to the highest standard of commercially accepted practice for the class of work, and shall result in a neat and finished appearance.

3.8. CONSISTENCY OF PRODUCT

On procurements requiring multiple units or periodic or phased delivery of a product, all units of the product shall be identical unless otherwise provided for in the technical specifications. Contractor will be required to correct or replace (at MTS discretion) said units or products found to be inconsistent and compensate MTS for any damages incurred.

3.9. OMISSIONS

No advantage shall be taken by the Bidder and/or manufacturer in the omission of any parts or details, which make the equipment complete and ready for service, even though such parts or

details are not mentioned in these specifications. All units or parts not herein specified shall be manufacturer's standard units.

3.10. BRAND NAMES

Whenever reference to a specific "Brand Name" is made in the specifications, it is to be considered solely illustrative, and is used merely to describe a component which has been selected by MTS as best meeting the specific minimal operational, design, performance, capacity, maintenance, quality, and reliability criteria of the desired end product. Wherever a "Brand Name" appears, the term "or approved equal" shall be automatically inferred.

3.11. COMPONENT MATERIAL

The Bidder shall assume responsibility for materials and accessories used in the manufacture thereof, whether the same are made by the manufacturer or purchased under sub-contract.

3.12. TAXES

MTS is exempt from the payment of Federal Excise Tax, so such tax must not be included in bid prices. Necessary exemption certificates will be furnished to the successful Bidder. Bidder shall show applicable California Sales Tax separately as part of the contract price.

In the case of out-of-state bidders, MTS will pay use tax directly to the State of California.

3.13. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Bidder in: 1) Preparing the bid in response to this Solicitation; 2) Submission of said bid to MTS; and 3) Any other expenses incurred by Bidder prior to date of award.

MTS shall not, in any event, be liable for any pre-contractual expenses incurred by the Bidder. Bidder shall not include any such expenses in its bid. In submitting its bid, the Bidder certifies that no such expenses are included in its offer, as submitted.

3.14. PERIOD OF AWARD

MTS reserves the right to award within one hundred twenty (120) calendar days after the Bid opening date. Should the award be delayed beyond this period, such award shall be conditioned upon Bidder's acceptance.

3.15. W-9 FORMS

Upon award, all Contractors must have a W9 on file with MTS. Completed forms must be submitted to MTS Procurement Department, point of contact electronically.

3.16. CALIFORNIA WITHHOLDING FORMS

Upon award, all Contractors must complete the Form 590 Withholding Exemption Certificate if they have a permanent place of business in California, or Form 587 Nonresident Withholding Allocation Worksheet if the Contractor does not have a place of business in California. Completed forms must be submitted to the point of contact electronically.

3.17. BID REVIEW

The Basis of Award will be the lowest responsive, responsible Bidder:

- A. Bids will be reviewed as to:
 - 1. Compliance with the General Provisions.
 - 2. Compliance with the Scope of Work/Technical Specifications.
- B. The lowest responsive, responsible Bidder will be determined by (A) above, and a comparison of the total bid amount, inclusive of any options.

MTS reserves the right to reject any bid, or parts thereof, or to reject any item or items therein, and to waive errors in technicalities, postpone or cancel at any time; and to award one or more contracts, or a part of a contract, on the bids submitted, either by award of all or some items to one bidder, or by award of separate items or group of items to various bidders, as the best interests of MTS may dictate.

3.18. CONDITIONAL OR NON RESPONSIVE BIDS

Conditional bids or those that take material exception to the specifications or any other requirements of this Solicitation or its resultant Agreement will be considered non-responsive and will be rejected.

3.19. SUBMISSION OF BIDS

3.19.1. FORMS

All bids shall be submitted on the blank forms provided by MTS.

3.19.2. PRICES

All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or written with ink adjacent thereto, and must be initialed in ink by person signing the bid.

3.20. VERIFY QUOTATIONS BID REVIEW

Bidders are cautioned to completely check their Bids for accuracy prior to submission. Bids cannot be withdrawn or corrected after they are opened publicly announced.

3.21. FIRM PRICES

Prices on bids shall be firm and not subject to escalation. However, should a Solicitation allow for escalation, the escalation rates, and the maximum limit shall be shown. If no limit is set by Bidder to this escalation in the bid, the bid shall not be considered. In the event of a decline in market price(s), MTS shall receive the benefit of such decline.

3.22. SIGNATURE

All submission documents must be signed as indicated. A bid by a corporation must be signed by a duly authorized officer, employee or agent. Unendorsed documents may be grounds for disqualification from this solicitation.

3.23. PROTEST PROCEDURES

3.23.1. PROTESTS PRIOR TO BID OPENING

Following the advertisement of this formal IFB, or a denial of approved equal, or if there is any other matter, which a Bidder may wish to protest, a protest may be filed with MTS. Protests must be in writing and received by MTS within ten (10) calendar days after the first advertisement of the IFB. MTS' Chief Executive Officer or his designee will notify all bidders that a protest has been filed, and will issue a written decision on the protest prior to the bid opening. A protest may be renewed by re-filing the protest with MTS within fifteen (15) calendar days from the postmark date of the notice of intent to award. The protest must be received by MTS no later than 4:00 p.m. Pacific Standard Time (PST) on the due date.

3.23.2. PROTESTS RECEIVED SUBSEQUENT TO BID OPENING:

MTS will review all bids and determine the winning bid. A Notice of Intent to Award will be emailed to all bidders. Any protest to the Notice of Intent to Award must be in writing and received by MTS within fifteen (15) calendar days from the postmark date of the Notice of Intent to Award. The protest must be received by MTS no later than 4:00 p.m. PST on the due date.

3.23.3. PROTEST CONTENTS:

The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of the Buy America requirements.

Protests must contain a full and complete written statement of the grounds for protest and all supporting documentation. MTS may, but is not obligated to request additional information concerning the grounds for protest.

3.23.4. REPLY TO PROTESTS:

MTS will review all protests as soon as possible. All materials submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MTS or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor determines that the protest contains proprietary material, which should be protected, a statement advising of this fact may be affixed to the front page of the protest document and the alleged proprietary information must be so identified wherever it appears.

The MTS Procurement Manager will reply to all protests in writing with its determination.

3.23.5. REQUEST FOR PROTEST RECONSIDERATION:

Upon receipt of the decision by the MTS Procurement Manager, protestor may file a request for protest reconsideration. A request for protest reconsideration must be directed to the MTS Chief Executive Officer in writing and received within five (5) calendar days from the postmark date of the reply from MTS. The Chief Executive Officer shall respond to the protest in writing with his or her determination. The protest

must be received by MTS no later than 4:00 p.m. Pacific Standard Time (PST) on the due date.

3.23.6. APPEAL TO BOARD OF DIRECTORS:

Protestors shall have an opportunity to appear and be heard before the Board prior to the opening of the procurement solicitation; in the case of protests based on the content of the procurement solicitation, or prior to final award in the case of protests based on other grounds, or the renewal of protests based on the content of the procurement solicitation. A request for an Administrative Hearing regarding a protest shall be in writing and directed to the General Counsel. A request for an Administrative Hearing shall be received within five (5) business days of the Chief Executive Officer's written decision. The protest must be received by MTS no later than 4:00 p.m. Pacific Standard Time (PST) on the due date.

The decision of the Board shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

3.23.7. FTA REVIEW OF PROTESTS

Subject to FTA rules and as permitted by 2 C.F.R. 200.318(k), a protestor may appeal to the FTA within five (5) working days of MTS's final decision.

3.24. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Bidder is required to seek clarification of any obvious ambiguity contained in the bid documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

3.25. CONFIDENTIALITY, THE CALIFORNIA PUBLIC RECORDS ACT, AND THE FREEDOM OF INFORMATION ACT

3.25.1. EXCLUSIVE PROPERTY

Responses to this IFB shall become the exclusive property of MTS and are subject to disclosure under the California Public Records Act.

Those elements of each bid that are *trade secrets*, as the term is defined in Civil Code Section 3426.1(d) or otherwise exempt by law from disclosure and which are prominently marked as *TRADE SECRET*, *CONFIDENTIAL* or *PROPRIETARY* may not be subject to disclosure. This may include private financial information about a bidder, but does not include the proposed price submitted as part of the bid.

The California Public Contract Code section 20216 provides that other than proprietary information, the content of any invitation for bid, any bid received, and any other communications between a transportation agency and a potential bidder on a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a bidder, except that the price proposed in any bidder's initial bid shall be available upon the opening of the bid by the agency requesting the bid.

3.25.2. DISCLOSURE OF RECORDS

- A. Unless a State or Federal law or regulation requires that information or a document is exempt from disclosure to third parties, MTS does not consent to withhold information, merely because it is accompanied by a routine confidentiality statement
- B. As provided by State and Federal laws, regulations, and guidance, MTS will review information and documents that are the subject of each confidentiality request to determine the extent to which MTS must withhold the information or those documents.
- C. Any genuinely confidential or privileged information should be:
 - 1. Marked clearly and specifically as "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY," and
 - 2. Accompanied by a statement detailing why the information is exempt from public disclosure under State and Federal law. Simply restating the Civil Code definition of a "TRADE SECRET" is not sufficient. The statement must include a factual and legal analysis supporting the Bidder's conclusion that the specific document marked is exempt from disclosure.

*Bidder shall identify and provide a list of all the sections/page numbers marked as "confidential" and/or "proprietary" in its **bid submittal**.*

3.25.3. EXEMPTION FROM DISCLOSURE MAY BE DEEMED UNRESPONSIVE

MTS will take into consideration, documents that Bidder deem exempt from disclosure, which must be marked "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY."

Bidders who indiscriminately identify all or most of their Bids as exempt from disclosure without justification may be deemed unresponsive.

3.25.4. INDEMNIFICATION OF MTS BY CONTRACTOR

The Bidder agrees to defend and indemnify MTS in any action on a Public Records Act request for any of the contents of a Bid marked *TRADE SECRET, CONFIDENTIAL or PROPRIETARY*.

Bidder agrees to absorb all costs and expenses, including attorneys' fees, in any action or liability arising from Bidder's claim that its documents are exempt from disclosure under the Public Records Act.

3.25.5. PUBLIC INTEREST

The public interest exemption of the California Public Records Act provides that an agency may withhold the disclosure of a record by showing that the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Bidders must sign the attached California Public Records Act Acknowledgement form and submit with the bid.

4. SCOPE OF WORK/TECHNICAL SPECIFICATIONS

4.1. GENERAL

MTS is looking for an experienced contractor to provide rail welding services. This contract involves in-track and out-of-track welding repairs of rail and track components used within the light rail system.

The total track mileage is 110 miles which will increase to 132 miles with the completion of the Mid-Coast Project in mid-2021, which will extend the Blue Line Trolley service from the Santa Fe Depot in Downtown San Diego to the University City community. Services also include tracks in maintenance yards A and C, as well as auxiliary tracks.

The entire rail has been either electrically flash butt-welded or thermite welded. The individual areas of work and the type of welding process to be used will be determined through discussion with San Diego Trolley Inc. (SDTI) Maintenance of Way (MOW) Manager or designee.

Work will be performed mainly during non-revenue hours (11:30 pm to 4:30 am).

The resultant contract will be for five (5) years effective May 1, 2021.

4.2. CONTRACTOR MINIMUM QUALIFICATIONS AND EXPERIENCE

Contractor must be licensed, must be registered with the Department of Industrial Relations, and must have a minimum of five (5) years' experience in this scope of work. Experience should be shown on the Status of Current and Past Contracts Form attached to this IFB.

4.3. QUALIFICATIONS OF DESIGNATED PERSONNEL

Contractor will provide qualified welders with a minimum of three years of track welding experience that conforms to FRA (Federal Railroad Administration) and AREMA (American Railroad Engineering and Maintenance-of-Way Association) specifications. As part of the bid package submittal, Contractor shall provide welding certifications for designated personnel.

MTS will not award a contract without receipt of this documentation.

4.4. BID FORM

On the Bid Form, MTS has provided the estimated quantities based on historical usage and projected quantities for the Mid-Coast Project. The Option hours (as requested by MTS) will be for situations when MTS needs the Contractor to perform additional services. These quantities are for bidding purposes and Contractor should note that actual usage may be more or less than estimated. Contractor shall perform all welding work described at the rates quoted on the Bid Form.

Contractor shall provide its all-inclusive hourly labor cost based on hours provided, and the all-inclusive mobilization and transportation fees based on the quantities shown on the bid form. These all-inclusive costs include but are not limited to wages, insurance, overhead, profit, equipment, fuel, tax and all other related costs necessary to perform the welding work described.

Travel time will not be billable. Hours are for onsite work only.

Charges not described on the Bid Form will not be considered valid and MTS will not pay additional costs.

4.5. SCOPE OF SERVICES

A. TUNNEL REQUIREMENTS

Work performed in the 1-mile twin bore tunnel will only be able to be accomplished during non-revenue hours when trains are not operating. This generally will mean tunnel work will only be done at night. Because of the environment, gasoline engines are not allowed on any equipment nor may flammable liquids be transported into the tunnel in any container. All equipment must be either diesel powered with a functional scrubber or compressed natural gas powered.

B. WELDING REQUIREMENTS AND SPECIFICATIONS

Contractor's personnel shall:

- i. Assure all work practices meet all OSHA standards.
- ii. Be capable of performing both stick weld and wire feed arc welding. Wire feed welding for rail repair is the method preferred by SDTI.
- iii. Make repair on 115lb rail and frogs, switch points, stock rails and other components of wood/concrete tie and ballast track as well as embedded track.
- iv. Respond to work requests within five calendar days.
- v. Able to work within constraints of normal Light Rail train schedule.
- vi. Able to perform work at night and on weekends as the need arises.
- vii. Able to work in a tunnel environment, approximately 260 feet below the surface at the deepest point. (See additional requirements for tunnel work).

Contractor shall:

- i. Guarantee all work for a minimum of 90 days.
- ii. Be able to make all weld repairs either in track, in the field or out of track, in a shop.
- iii. Adhere to all SDTI testing requirements. SDTI may require laboratory quality testing of contractor's arc welds. SDTI will provide the rail while the cost of testing will be at the contractor's expense.
- iv. Adhere to SDTI method and standards as defined within these specifications. Contractor will submit for approval to SDTI a copy of contractor's welding procedure (for each type of rail and for each method of construction) including pre-heat, post-heat and cooling of repair areas.
- v. Include list of equipment used.

C. REQUIRED TOOLS AND EQUIPMENT PROVIDED BY THE CONTRACTOR

- i. Welder capable of amperage ranges (found in welding parameters) with C type clamp to affixed to the field and gauge side of ball of rail only.

- ii. SDTI approved welding rod or wire.
- iii. Grinder with 1" flat stone.
- iv. Profile grinder.
- v. Generator (if welder is not equipped).
- vi. Tent or umbrella.
- vii. Pre-heat and post-heat equipment.
- viii. Carbon backing strips (to be used in welding of flange ways).
- ix. Copper strap and SDTI approved method/equipment for clamping to rail.
- x. 36" straight edge and taper gage.
- xi. Tong type volt/amperage meter (for verifying welding amperage source).
- xii. Welding Curtain.
- xiii. Tempilstiks.

D. REPAIRING WHEEL BURNS

- i. Arc welding or oxy-acetylene welding are excepted procedures.
- ii. Wheel burns must not be welded if air temperature is below 32°F; not when rain or snow is falling unless protection is provided.
- iii. Sufficient distressed metal must be removed by grinding to eliminate all cracks and damaged metal.
- iv. Rail having burns more than .35 inches deep must not be repaired, but must be removed from the track, unless otherwise directed by the MOW Manager or designee.
- v. When a wheel burn is over 3 inches long it will be welded in stages and allowed to cool to 700°F between stages, the length of a stage must not exceed 3 inches.
- vi. After normalizing, the weld must be surface ground to the railhead contour within .0005 in. Any flow or batter on either side of the head of the rail must be removed.
- vii. No more than 4 wheel burns in 39 ft. shall be welded within 8 hours. Wheel burns may be welded consecutively only if they are more than 10 ft. apart.

E. ELECTRIC ARC WELDING OF RAIL AND CASTINGS

Track Components:

i. Switch Points

Switch points must be repaired or built up by welding other than in the shop. Only the heel ends of switch points may be built up using the procedures specified for rail-end welding unless directed otherwise by the MOW Manager or designee.

ii. Frogs

- a) Bolted rail frogs, solid manganese frogs, manganese insert of rail bound manganese frogs and manganese knuckles may be required by welding.
- b) Chipped or battered rail ends at the toe and heel ends of rail bound manganese frogs and bolted rail frogs may be built up using the procedures specified for rail-end welding.
- c) Frogs may be repaired in place in any track.

iii. Guard Rails

Guardrails must be repaired or built up by welding in the field. Defective guardrails or those having excessive wear must be replaced.

iv. General Instructions for Welding by the Electric Arc Process

- a) The ground clamp must be applied to the same rail as the one which the welding is to be performed, and as near as possible to the area being welded.
- b) Ground clamps must have ample capacity to handle the welding current without undue heating; ground clamp contacts to which the clamp is attached must be thoroughly clean.
- c) At insulated joints care must be taken to avoid establishing an electrical connection between the two rails separated by the joint. An arc must not be struck on either rail without first attaching the ground clamp to rail upon which the arc is to be struck.
- d) Both cables (electrode and ground) must be completely insulated throughout their entire length.
- e) Approved electrical tong testers must be used periodically to ensure that the proper current is being delivered to the electrode.
- f) When the electrode holder is not in use it must not be permitted to contact any rail, frog or metallic part connected thereto.
- g) The supervisor in charge and the welders must observe that signal operated by the track circuits within which they are welding are operating normally. If any abnormal condition is noticed, they must immediately protect traffic, whether railway, highway or both, and advise Control of the circumstances.

- h) Signal Maintainers must carefully observe conditions when welding is performed on their territory and report any deviations from the instructions or any practice, which in their opinion endangers the proper operation of signal circuits or apparatus.
- i) Electrodes must be stored in a dry, warm location. Deterioration will result if the electrode coating absorbs dampness.

F. CARBON STEEL FROGS & DIAMOND CROSSINGS

i. Preparation

After determining the areas that require restoration, remove all fatigued, spalled or defective metal by grinding or by the air carbon arc process (Arcair). Arc or oxy-acetylene torch cutting is not permitted. When the air carbon arc process removes the defective metal, ensure that all slag is removed by grinding and that the parent surface is sound in preparation for the weld deposit.

ii. Welding Procedure

The technique of deposition will vary with the application. The first bead application shall be laid on the gauge side with successive beads being applied toward the field side with sufficient overlay to ensure complete fusion. Rebuild worn areas high enough to allow sufficient material for finish grinding.

Welding of frog points shall commence at the point and continue to the runout; that is, the same as for rail ends. Use proper techniques to end the welds so as to avoid end craters and undercutting.

iii. Finishing Grinding

Running surfaces shall be ground the shape and contour of the railhead, particularly with regard to the gauge line and the guard side of the flangeways. In turnout frogs only, the point should be $\frac{1}{4}$ inch lower than the adjacent wing rails and slope upward to where the point and wing rails are at the same level at a distance back from the point equal in inches to $\frac{3}{4}$ the frog number, but in no case less than 5 inches.

4.6. PAYMENT TERMS

Unless otherwise stated in the specifications or bid forms, one hundred (100%) of the contract price for each unit or units of material or equipment furnished and delivered under these specifications, will be paid to the Contractor within thirty (30) days after delivery to and acceptance by MTS of the unit or units ordered, as herein provided, and after the statements covering the unit or units have been presented to MTS by the Contractor.

Cash discounts as shown on the bid form shall be accepted at the option of MTS. Otherwise the terms will be Net thirty (30) from acceptance. Payment terms less than ten (10) days from acceptance will not be considered. Advanced Payment is Not Allowable.

4.7. INVOICES

Invoices must be sent to the MTS Accounting Department, via email, at ap@sdmts.com. All invoices must have the Purchase Order and contract number clearly displayed to ensure timely

payment. MTS will not pay on packing slips, receiving documents, delivery documents, or other similar documents. Invoices must be submitted for payment.

Contractors must also indicate if any of the invoiced amount(s) is for service or work provided by a subcontractor and indicate the amount that will be paid to the subcontractor. Contractors must also comply with the prompt payment requirements in the *Prompt Progress Payments* section of the Standard Conditions.

4.8. WARRANTY

Bidders shall outline in detail their warranty on the equipment offered, including the method of adjustment in cases of equipment, component or parts failure. Warranty shall also be stated for installation labor, materials, and method of adjustment.

4.9. REPLACEMENT PARTS

Replacement parts and technical support for the specified equipment must be guaranteed by the manufacturer; to be available for a ten (10) year period from the date of purchase. Manufacturer shall keep parts books and maintenance manuals up-to-date for that period.

4.10. DELIVERY AND ACCEPTANCE

Equipment or any deliverable provided under this contract shall be delivered F.O.B. to SDTI, 1341 Commercial Street, San Diego, California 92113 unless otherwise specified, in first class condition, complete and ready for operation, and the Contractor shall assume all responsibility and risk of loss incident to said delivery.

Contractor shall indicate delivery date on the Bid Form unless already specified, in which case, shall be made within the time set forth. Delivery is part of the consideration and must be adhered to as specified.

Contractor will not be held liable for failure to make delivery because of strikes, construction of property, governmental regulations, acts of God or any other causes beyond his control, provided a written extension of time is obtained from MTS.

Upon delivery, MTS will acknowledge receipt of said items or products. Delivery shall not constitute acceptance. Upon inspection and testing (if necessary) by MTS, a determination will be made whether said items or products are in conformance with contract requirements. If found in conformance, MTS shall approve the Contractor's invoice for payment; thereby constituting acceptance. Payment terms begin from this point. If the delivered items or products are found not in compliance, MTS will immediately notify the Contractor, and furnish all details of deficiencies. Contractor shall correct the deficiencies or supply new items or products (at the discretion of MTS), and resubmit for inspection and testing (if necessary).

5. ATTACHMENTS

NONE

6. SAMPLE OF STANDARD AGREEMENT, STANDARD CONDITIONS

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101
Tel 619.231.1466 Fax 619.234.3407

STANDARD AGREEMENT FOR MTS DOC. NO. PWL323.0-21 RAIL WELDING SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2020 in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: _____ Address: _____

Form of Business: _____
(Corporation, Partnership, Sole Proprietor, etc.) Email : _____

Telephone: _____

Authorized person to sign contracts _____
Name Title

The Contractor agrees to provide services as specified in the conformed Scope of Work/Minimum Technical Specification (Exhibit A), Contractor's Bid/Pricing Form (Exhibit B), and in accordance with the Standard Agreement, including Standard Conditions (Exhibit C), Federal Requirements (Exhibit D), and Forms (Exhibit E).

The contract term is for up to (5) years effective May 1, 2021 through April 30, 2026.

Payment terms shall be net 30 days from invoice date. The total cost of this contract shall not exceed \$_____ without the express written consent of MTS.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR NAME
By: _____ Sharon Cooney, Chief Executive Officer	By _____
Approved as to form:	
By: _____ Karen Landers, General Counsel	Title: _____



STANDARD CONDITIONS

6.1. COMPLETE AGREEMENT

This Agreement, including all applicable terms, conditions, and specifications, is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor.

MTS reserves the right to use alternative vendors/contractors at any time for any reason.

6.2. COUNTERPARTS

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

6.3. SURVIVAL

Notwithstanding MTS's acceptance of the services and payment therefore, Contractor shall remain obligated under all clauses of this Agreement which expressly, or by their nature, extend beyond and survive such acceptance and payment.

6.4. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

6.5. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

6.6. CHANGES IN WORK

No payment for changed or additional work shall be made unless the changed or additional work has first been approved in writing by the MTS Project Manager and the parties have agreed upon the appropriate adjustment, if any, to the payment schedule and maximum payment amount for the changed or additional work. The written notice of potential change in work be given to MTS prior to the time Contractor shall have performed the work within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential change in work.

The MTS Project Manager may order changes or additions to the scope of work. Whether a change or addition to the scope of work is proposed by the Contractor or ordered by the MTS Project Manager, the parties shall in good faith negotiate an appropriate adjustment, if any, to the payment schedule and maximum payment for the changed or additional work. An approved change or addition, along with the payment adjustment, if any, will be effective upon an amendment to this contract executed by both parties. The amendment shall not render ineffective or invalidate unaffected portions of this contract.

6.7. SEVERABILITY

If any term, provision, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.8. TERMINATION OF AGREEMENT

6.8.1. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- A. immediately discontinue performance on the date and to the extent specified in the notice;
- B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and
- D. assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- C. costs of settling and paying supplier's claim arising out of the canceled orders; and
- D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have

sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

6.8.2. TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

- A. MTS will give the Contractor ten (10) days' notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.
- B. No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.
- C. If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) days' time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines 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 beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

6.9. ASSIGNABILITY

- A. By MTS: This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to

determine fair and reasonable pricing, and shall enter into its own contract with the vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.

- B. By Contractor: Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

Any assignment of this Agreement or of any rights hereunder of hypothecation thereof in any manner, in whole or in part, without the prior written consent of MTS shall be null and void. Notwithstanding the foregoing, Contractor may assign monies due or to become due under this Agreement and such assignments will be recognized by MTS, provided that written notice thereof is given to MTS at least ten (10) calendar days before payment is due. Any assignment of monies shall be subject to proper setoffs in favor of MTS to all deductions provided for in this Agreement. All money withheld, whether assigned or not, shall be subject to being used by MTS for the completion of the Agreement, in the event Contractor should be in default therein.

In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions hereof shall inure to and bind hereto their and each of their respective heirs, executors, administrators, successors, and assigns.

6.10. STANDARD OF PERFORMANCE

Contractor's services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this contract and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Contract.

6.11. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

6.12. EXCUSABLE DELAYS / FORCE MAJEURE

Timely performance and deliveries are essential to this Agreement. However, Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's

fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

6.13. SUSPENSION OF WORK

MTS may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from MTS. The Contractor shall be allowed an equitable adjustment in the Contract price and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

6.14. INSPECTION AND TESTING

Except as otherwise expressly provided herein, Contractor shall be responsible for all inspection and testing, and agrees to strictly follow the standards of quality specified by MTS in addition to those customary in the industry. MTS shall be afforded free access to plants of Contractor and its suppliers in order to make surveillance inspections to monitor compliance with contractual quality requirements, and MTS's right to inspect, examine, and test the goods shall extend through the manufacturing process, the time and shipment, and a reasonable time after arrival at the ultimate destination. Contractor's failure to adhere to the standards of quality required under this Agreement shall be deemed to be reasonable grounds for insecurity justifying a written demand from MTS that Contractor provide adequate assurance of Contractor's ability to meet said standards.

Goods shall not be deemed accepted until finally inspected and examined at final destination.

The making or failure to make any surveillance inspection or examination of, payment for, or acceptance of the goods shall in no way impair MTS's right to reject nonconforming goods, or to avail itself of any other remedies to which MTS may be entitled, notwithstanding MTS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.

6.15. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

6.16. THIRD PARTY BENEFICIARIES

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract.

6.17. SUBCONTRACTORS

Contractor agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and MTS. MTS reserves the right to approve all subcontractors. MTS's approval of any subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this Agreement.

6.18. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall defend, indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

6.19. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 900 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder 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 MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, 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 to in writing.

6.20. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

6.21. GOVERNING LAW AND CHOICE OF FORUM

The definition of terms used, interpretation of this Agreement, and rights of all parties hereunder shall be determined in accordance with the laws of the State of California.

Any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the federal or state courts located in San Diego County, California, and the Contractor and MTS hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

6.22. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

6.23. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS' choosing.

6.23.1. COVERAGE REQUIRED - ALL CONTRACTS

A. LIABILITY

- 1) Commercial General Liability: At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear.

- 2) Automobile Liability: At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.

- 3) Workers' Compensation/Employer Liability: At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

6.23.2. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- ☐ (1) OWNER-PROVIDED BUILDER'S RISK

PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

- ☒ (2) **Railroad Protective or Equivalent**

REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted.

Option: purchase separate Railroad Protective Liability Policy as required.

- ☐ (3) Professional Liability

REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

- ☐ (4) Pollution Legal Liability

REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

- ☐ (5) Contractor Equipment

REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by

Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

☐ (6) Installation Floater

REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

☐ (7) Garage Keeper's Legal Liability & Automobile Portion

REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

☐ (8) Crime Fidelity Insurance

REQUIRED

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

☐ (9) Umbrella or Excess Liability (if required to meet liability limits above)

REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

☒ (10) Primary and Non-Contributory Insurance

REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

☐ (11) Property Insurance

REQUIRED

Contractor is responsible to insure physical damage coverage at replacement cost value on the rolling stock (i.e., revenue and non-revenue vehicles) it operates. [Note: MTS insures the buildings in which the fixed route contract operates.]

6.23.3. MINIMUM POLICY LIMITS REQUIRED

Combined Single Limit (CSL)

Commercial General Liability (Per Occurrence):	<u>\$2,000,000</u>
(General Aggregate)	<u>\$4,000,000</u>
(Completed Operations & Products Aggregate)	<u>\$2,000,000</u>
Automobile Liability: (Combined Single Limit)	<u>\$2,000,000</u>
Worker's Compensation:	<u>Statutory Limits</u>
Employer's Liability per Accident /or Disease:	<u>\$1,000,000</u>

Additional Coverages (as indicated under Additional Coverages Required Section):

<input type="checkbox"/> B (1) Builder's Risk	<u>Replacement Cost</u>
<input checked="" type="checkbox"/> B (2) Railroad Protective	<u>\$2,000,000 per occurrence/\$6,000,000 aggregate</u>
<input type="checkbox"/> B (3) Professional Liability	<u>\$</u>
<input type="checkbox"/> B (4) Pollution Liability	<u>\$</u>
<input type="checkbox"/> B (5) Contractor Equipment	<u>Replacement Cost</u>
<input type="checkbox"/> B (6) Installation Floater	<u>Replacement Cost</u>
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability (Combined Single Limit (CSL))	<u>(Per Occurrence)</u>
<input type="checkbox"/> B (8) Crime Fidelity Insurance	<u>\$</u>
<input type="checkbox"/> B (9) Umbrella or Excess Liability(if required to meet liability limits above)	<u>\$</u>
<input type="checkbox"/> B (11) Property Insurance	<u>\$</u>

6.23.4. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to the insurance requirements will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance coverage required is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

6.23.5. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

6.23.6. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

6.24. PRICE AND PAYMENT

The total price herein specified, unless otherwise expressly stated, shall include all taxes of any kind which either party is required to pay with respect to the sale of the goods covered by this Agreement, including sales and use taxes, and shall include all charges and expenses for customs duties, freight charges, inspection, testing, packaging and loading unless specifically excluded.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

ADVANCE PAYMENT IS NOT ALLOWABLE.

6.25. CONSIDERATION PAID

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed \$____. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of \$0. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed after performance of work, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of \$____.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

MTS does not reimburse travel expenses unless expressly permitted within the scope. If travel expense reimbursement is permitted within the scope, reimbursement for transportation and subsistence costs shall be in accordance with MTS Board Policy No. 44-C.

6.26. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

6.27. PROMPT PROGRESS PAYMENT AND RETENTION

Contractor or Subcontractor shall pay any Subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS. No retainage will be held by MTS from progress payments due to the Contractor. Any retainage kept by the Contractor or by a Subcontractor must be paid in full to the Subcontractor in seven (7) business days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of a progress payment or retainage to the Subcontractor over 30 calendar days may take place only for good cause and with MTS's prior written approval. Failure to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including,

but not limited to, prime contractor not being 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. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late or nonpayment by the Contractor, deficient Subcontractor performance or noncompliance by a Subcontractor.

Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at <https://www.sdmts.com/business-center/procurement>. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The prime contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

6.28. RECORDS RETENTION

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

6.29. WARRANTIES-GUARANTEES

Contractor warrants that the goods shall be new, free from liens and defects in design, materials, workmanship, and title, and shall conform in all respects to the terms of this Agreement and to the drawings issued for manufacture by Contractor, and shall be of the best quality, if no quality is specified. Unless the warranty period is otherwise extended, the warranty shall apply. If, within one year from the date of commercial operation for the purpose for which the goods were purchased, or 18 months from the date of final delivery, whichever comes first, it appears that the goods, or any part thereof, do not conform to these warranties, and MTS so notifies Contractor within a reasonable time after its discovery, Contractor shall thereupon promptly correct such nonconformity to the satisfaction of MTS, at Contractor's sole expense, failing which MTS may reject and cover by purchasing substitute goods or MTS may proceed to make corrections or accomplish Contractor's performance by the most expeditious means available, the costs of cover or correction shall be for Contractor's account.

6.30. INTELLECTUAL PROPERTY WARRANTY

MTS shall advise the Contractor of any impending patent suit related to this Contract against MTS and provide all information available. The Contractor shall defend any suit or proceeding brought against MTS based on a claim that any services or goods furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages against MTS. In case said services or good, or any part thereof, is in such suit held to constitute infringement and use of said services or goods is enjoined, the Contractor shall, at its own expense and at its option, either procure for MTS the right to continue using said services or goods, or replace same with non-infringing services or goods, or modify it so it becomes non-infringing.

6.31. DATA RIGHTS

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. It includes the proprietary rights of the following:

- Shop drawings and working drawings
- Technical data including manuals or instruction materials, computer or microprocessor software
- Patented materials, equipment, devices or processes
- License requirements

MTS shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow MTS to utilize such information. In the event that the Contractor no longer provides the information, MTS has the right to reverse engineer patented parts and software.

MTS reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

6.32. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

6.33. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and

sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

6.34. LANGUAGE AND MEASURE UNITS

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

6.35. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND OTHER SMALL BUSINESS PARTICIPATION

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation (DOT) Financial Assistance Programs." MTS' DBE program has an aspirational goal of 2.9% participation by certified DBE's over Federal Fiscal years 2019 to 2021 (October 1, 2018 – September 30, 2021) time period. There is no specific DBE contract goal for this project.

In order to help MTS achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in MTS DOT-assisted contracts. It is also our policy to:

- A. Ensure nondiscrimination in the award and administration of all MTS contracts and subcontracts; Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted contracts;
- B. Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*;
- C. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- D. Help remove procurement and contracting barriers, which impede DBE participation in MTS DOT-assisted contracts;
- E. Monitor and enforce contractors' compliance in meeting established goal objectives and program requirements;
- F. Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program;
- G. Ensure MTS contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives.

To ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all Proposers and successful Contractors are required to:

- Complete MTS's Designation of Subcontractors and DBE Program - Information for MTS's Bidder List.

MTS encourages the proposer to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 CFR 26). Contractor's attention is directed to the following matters:

- A. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, manufacturer, regular dealer or trucking company. DBE participation will be counted toward MTS's overall DBE goal per the DOT Regulations stated in 49 CFR 26.55.
- B. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- C. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: To view the CUCP statewide DBE Directory, please use the following link: http://dot.ca.gov/hq/bep/find_certified.htm.
- D. If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification.
- E. The contractor must promptly notify MTS whenever a DBE subcontractor performing work related to this contract is terminated, substituted or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTS.

6.36. AMERICANS WITH DISABILITIES ACT

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; as well as all applicable regulations and guidelines issued pursuant to the ADA.

6.37. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation to the extent applicable to this Contract, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

6.37.1. CONTRACTORS CERTIFICATION:

Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.

6.37.2. INDEMNIFICATION OF MTS:

Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.

6.37.3. SURVIVAL OF MTS' INDEMNIFICATION RIGHTS:

The rights and obligations contained in section, "Indemnification of MTS", will survive any termination or expiration of this Agreement.

6.37.4. FAILURE TO COMPLY WITH DRUG AND ALCOHOL TESTING OBLIGATIONS MAY RESULT IN TERMINATION OF CONTRACT:

If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

6.38. EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

6.38.1. MTS'S EEO PROGRAM:

MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' EEO Program for Employees and Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board).

6.38.2. CONTRACTOR'S EEO PLAN:

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an EEO Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. 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.

6.38.3. COMPLIANCE WITH REGULATIONS:

Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

6.39. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, MTS shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

6.40. CALIFORNIA POLITICAL REFORM ACT

Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as MTS, may be deemed to be a "public official" subject to the Act if the Contractor advises MTS on decisions or actions to be taken by MTS. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

6.41. PUBLIC WORKS

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to enter into a contract to perform public work must be registered with the Department of Industrial Relations. No contract will be entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

LABOR

Hours of Work: Eight (8) hours of work shall constitute a legal day's work. Contractor and each subcontractor shall forfeit, as penalty to MTS, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of MTS and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

Prevailing Rates of Wages: The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from

the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at MTS's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold MTS, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

The Contractor shall forfeit as a penalty to MTS not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

Payroll Records: Pursuant to Labor Code Section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

If not subject to paragraph (a), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to MTS for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

Employment of Apprentices: Contractor's attention is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the

Contractor or any subcontractor. Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Nondiscrimination: Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Labor Certification I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract code.

7. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

As a Federal Transit Administration (FTA) grantee, the San Diego Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor and any Subcontractor of the following information:

7.1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. 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 MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

7.2. FEDERAL CHANGES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

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 MTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

7.3. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

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 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 the FTA.

7.4. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

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 Contract. 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. 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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.5. ACCESS TO RECORDS, REPORTS AND SITES

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Contract as reasonably may be required. The Contractor shall also permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

7.6. DEBARMENT AND SUSPENSION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$25,000)

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f)

Disqualified from participation in any federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

7.7. RESTRICTIONS ON LOBBYING

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000)

The Contractor and their subcontracts at every tier certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor and their subcontracts at every tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

7.8. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS EXCEEDING \$100,000)

The Contractor and any Subcontractor agrees: 1) It will not use any violating facilities; 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" 3) It will report violations of use of prohibited facilities to FTA; and 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

7.9. ENERGY CONSERVATION

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

7.10. RECYCLED PRODUCTS

(APPLICABLE TO OPERATIONS, CONSTRUCTION AND GOODS CONTRACTS AND SUBCONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PURCHASE PRICE OF THE ITEM EXCEEDS \$10,000 OR THE VALUE OF THE QUANTITY ACQUIRED DURING THE PRECEDING FISCAL YEAR EXCEEDED \$10,000)

The Contractor and any Subcontractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the State Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and

resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

7.11. ENVIRONMENTAL PROTECTIONS

(APPLICABLE TO ALL CONTRACTS)

7.11.1. GENERAL

Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.

7.11.2. NATIONAL ENVIRONMENTAL POLICY ACT

An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

7.11.3. ENVIRONMENTAL JUSTICE

Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

7.11.4. OTHER ENVIRONMENTAL FEDERAL LAWS

Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973,

Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."

7.11.5. USE OF CERTAIN PUBLIC LANDS

Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.

7.11.6. HISTORIC PRESERVATION

The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.

7.11.7. INDIAN SACRED SITES

The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

7.12. ADA ACCESS

(APPLICABLE TO ALL CONTRACTS)

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d), which prohibit discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act.

7.13. CIVIL RIGHTS

(APPLICABLE TO ALL CONTRACTS)

7.13.1. SUBCONTRACT

The Contractor shall include these requirements in each subcontract entered into as part thereof.

7.13.2. NONDISCRIMINATION

In accordance with 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, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

7.13.3. RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

7.13.4. AGE

In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

7.13.5. DISABILITIES

In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

7.14. VETERANS EMPLOYMENT

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

7.15. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

Apart from inconsistent requirements imposed by federal statute or regulations, MTS shall comply with the requirements of 49 U.S.C. § 5323 (h)(2) by refraining from using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

7.16. CONTRACTOR ASSURANCE

(APPLICABLE TO ALL CONTRACTS)

The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

7.17. SAFE OPERATION OF MOTOR VEHICLES

(APPLICABLE TO ALL CONTRACTS)

7.17.1. SEAT BELT USE

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or MTS

7.17.2. DISTRACTED DRIVING.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging

while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

7.18. GEOGRAPHIC RESTRICTIONS

(APPLICABLE TO ALL CONTRACTS AND SUBCONTRACTS)

MTS shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by federal procurement rules.

7.19. BUY AMERICA

(APPLICABLE TO PURCHASE OF MORE THAN \$150,000 OF IRON, STEEL, MANUFACTURED GOODS OR ROLLING STOCK)

The Contractor's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 C.F.R. Part 661). Information on "Buy America" requirements (49 C.F.R. Part 661) is available for review at the MTS office. Contractor agrees to comply with 49 U.S.C. 5323(j), as amended by the FAST Act, and FTA regulations 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content. Contractor shall submit to MTS with its Bid the appropriate Buy America certification included as part of the Bid Documents and Forms, except those subject to a general waiver. MTS will reject as nonresponsive Bids or offers that are not accompanied by a completed Buy America certification. This requirement does not apply to lower tier subcontractors.

7.20. CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION

(NONCONSTRUCTION (TURNKEY, ROLLING STOCK) THAT EMPLOY LABORERS OR MECHANICS OVER \$ 100,000)

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours

on the job. The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

8. FORMS

The following forms/information are required to be submitted with your bid as a matter of responsiveness. All bids (and accompanying information) must be received by MTS' Procurement Department prior to the scheduled time and date as specified in the Calendar of Events. Submit the bid following instructions as specified in Submission Requirements Section.

- ☐ Addenda Acknowledgement Form
- ☐ Contact Information Form
- ☐ Bid Forms
- ☐ Designation of Subcontractors
- ☐ DBE Program - Information for MTS's Bidder List
- ☐ Certification Regarding Debarment, Suspension and Other Ineligible and Voluntary Exclusions
Lower-Tier Covered Transactions Contractor and Subcontractor's Statement of Eligibility Form
and Questionnaire
- ☐ Equal Opportunity Program Workforce Report
- ☐ Equal Opportunity Program Workforce Report Continued
- ☐ Status of Current and Past Contracts Form
- ☐ Financial Questionnaire Form
- ☐ California Public Records Act Acknowledgement Form
- ☐ Noncollusion Declaration Form
- ☐ Iran Contracting Act Certification Form
- ☐ Safety Department Standard Operating Procedures and Form
- ☐ Public Works Contractor Registration Certificate Form
- ☐ Buy America Form
- ☐ Certification of Restrictions on Lobbying Form

ADDENDA ACKNOWLEDGEMENT FORM

Submitting the table with the amendment date and initials, confirms the bidder acknowledges the receipt of the following addenda.

Addendum	Date	Initials
ADDENDUM NO. 1		
ADDENDUM NO. 2		
ADDENDUM NO. 3		
ADDENDUM NO. 4		
ADDENDUM NO. 5		
ADDENDUM NO. 6		

CONTACT INFORMATION

Read attached General Provisions carefully. They are a part of your bid. Unit prices will prevail regardless of extensions submitted by the Bidder.

Company Information:

The Official, Legal Name of Bidding Firm:

Doing Business As:

Legal Structure (Corp./Partner/Proprietor):

Company Mailing Address:

Street

City

State

Zip

Person Authorized to sign:

Point of Contact:

Title:

E-Mail Address:

Phone Number:

Accounts Receivable

Point of Contact:

Title:

E-Mail Address:

Phone Number:

Labor Compliance

Point of Contact:

Title:

E-Mail Address:

Phone Number:

BID FORM

Refer to Attachment: ATT 1 Bid Form

Bidder shall submit pricing for all the work described in the Scope of Work section. In preparing a cost bid, Bidders are requested to provide a total all-inclusive cost for each year of service. Estimated quantities are for bid purposes only. The quantities do not reflect guaranteed usage by MTS and may be more or less than indicated.

Read attached General Provisions carefully. **They are a part of your bid.** Unit prices will prevail regardless of extensions submitted by the Bidder.

All bidders must complete bid forms as provided, failure to do so will deem the bid non-responsive.

Bidder accepts responsibility for accuracy and presentation of the numbers included in the cost/price form.

Submit the bid following instructions as specified in Submission Requirements section.

BID FORM (continued)

Bidder Name: _____

#	Description	Qty.	Unit Price	Extended Price
1	Hourly Labor Rate (Qty in hours)	160	\$	\$
2	Option Hours (as requested by MTS) Hourly Labor Rate (Qty in hours)	16	\$	\$
3	Mobilization & Transportation Fees (Qty in occurrences)	2	\$	\$
Year 1 Total:				\$

#	Description	Qty.	Unit Price	Extended Price
1	Hourly Labor Rate (Qty in hours)	160	\$	\$
2	Option Hours (as requested by MTS) Hourly Labor Rate (Qty in hours)	16	\$	\$
3	Mobilization & Transportation Fees (Qty in occurrences)	2	\$	\$
Year 2 Total:				\$

#	Description	Qty.	Unit Price	Extended Price
1	Hourly Labor Rate (Qty in hours)	200	\$	\$
2	Option Hours (as requested by MTS) Hourly Labor Rate (Qty in hours)	16	\$	\$
3	Mobilization & Transportation Fees (Qty in occurrences)	3	\$	\$
Year 3 Total:				\$

RETURN THIS FORM WITH YOUR BID

#	Description	Qty.	Unit Price	Extended Price
1	Hourly Labor Rate (Qty in hours)	200	\$	\$
2	Option Hours (as requested by MTS) Hourly Labor Rate (Qty in hours)	16	\$	\$
3	Mobilization & Transportation Fees (Qty in occurrences)	3	\$	\$
Year 4 Total:				\$

#	Description	Qty.	Unit Price	Extended Price
1	Hourly Labor Rate (Qty in hours)	200	\$	\$
2	Option Hours (as requested by MTS) Hourly Labor Rate (Qty in hours)	16	\$	\$
3	Mobilization & Transportation Fees (Qty in occurrences)	3	\$	\$
Year 5 Total:				\$

Overall Bid Summary	
Total Year 1:	\$
Total Year 2:	\$
Total Year 3:	\$
Total Year 4:	\$
Total Year 5:	\$
Grand Total (Basis of Award):	\$

DESIGNATION OF SUBCONTRACTORS

List Subcontractor participants below. If 100% of item is not to be performed or furnished by subcontractor, describe exact portion of item to be performed or furnished by subcontractor. The successful bidder must execute and return this form even if no subcontractor.

Subcontractor 1

Company Name:

Contractor License or Certificate Number

DBE, DVBE LGBT, MBE, SB, WBE:

% of Work:

Department of Industrial Relations (DIR)
Number:

Point of Contact

Email:

Phone Number:

Address:

Street

City

State

Zip

Description of Work:

RETURN THIS FORM WITH YOUR BID

COPY THIS FORM IF NEEDED FOR ADDITIONAL SUBCONTRACTORS.

Subcontractor

Company Name:

Contractor License or Certificate Number

DBE, DVBE LGBT, MBE, SB, WBE:

% of Work:

Department of Industrial Relations (DIR)

Number:

Point of Contact

Email:

Phone Number:

Address:

Street

City

State

Zip

Description of Work:

DBE PROGRAM – INFORMATION FOR MTS’S BID LIST

Per U.S. Department of Transportation’s (DOT’s) DBE Regulation 49 CFR 26.11, MTS must obtain the following information about contractors and subcontractors whom bid on MTS’s federally assisted contracts: company name; company address; company’s status as a DBE or non-DBE; age of firm; and the annual gross receipts of the company. This information will be maintained in MTS’s bidder list. The purpose for maintaining a bidder list is to derive data on the relative availability of DBEs in the local market. MTS may use this data in the future to help set MTS’s overall DBE participation goals on federally assisted contracts.

INSTRUCTIONS: Each prime contractor and each subcontractor bidding on a MTS federally assisted contract is required to complete this form as part of their bid.

1. What is your company’s name? _____
 2. What is your company’s address? _____
 3. What type of work does your company perform ?
(list NAICS Codes if known) _____
- Is your company a certified DBE WBE, DVBE, SB or LGBT? If yes, please check the applicable box and state the corresponding certification number.
- | | |
|------------------------------|-------------------------------|
| <input type="checkbox"/> DBE | <input type="checkbox"/> DVBE |
| <input type="checkbox"/> MBE | <input type="checkbox"/> SB |
| <input type="checkbox"/> WBE | <input type="checkbox"/> LGBT |
5. How many years has your company been in business? _____
 6. What are the annual gross receipts of your company (please check the applicable bracket)?

<input type="checkbox"/> Less than \$1,000,000
<input type="checkbox"/> \$1,000,001 – \$15,000,000
<input type="checkbox"/> \$15,000,001 - \$23,980,000*
<input type="checkbox"/> \$23,980,001– \$50,000,000
<input type="checkbox"/> \$50,000,001 - \$100,000,000
<input type="checkbox"/> Greater than \$100,000,000

The DOT annually decides the amount of average annual gross receipts a firm must have to be eligible to become a DBE. Currently, if your company in the previous 3 fiscal years has had average annual gross receipts below \$23,980,000, your company may be eligible for DBE Certification.

7. Do you want MTS to provide your company additional guidance on how to become DBE certified?

<input type="checkbox"/> Yes
<input type="checkbox"/> No

ACKNOWLEDGED AND AGREED

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Print Name: _____
 Title : _____
 Signature: _____
 Date: _____

PRIME CONTRACTOR

Print Name: _____
 Title : _____
 Signature: _____
 Date: _____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBLE AND VOLUNTARY EXCLUSIONS LOWER THAN TIER COVERED TRANSACTIONS

CONTRACTOR AND SUBCONTRACTOR'S STATEMENT OF ELIGIBILITY

(Provide one completed Form for the Prime Contractor and any Subcontractors)

MTS may not permit a contractor or subcontractor to bid on, be awarded, or perform work on a public works project if the contractor or subcontractor is ineligible to bid on, be awarded or perform work on a public works project pursuant to California Labor Code sections 1777.1 or 1777.7.

In addition, MTS may not award any federally funded contract over \$25,000 to a contractor or subcontractor that is excluded or disqualified pursuant to 2 CFR Part 180 Subpart C.

The prime/subcontractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification.

QUESTIONNAIRE

Has the Contractor, or any officer, principal, affiliates or employee of the Contractor ever been debarred, suspended, proposed for debarment, declared ineligible or otherwise prevented from bidding on, or completing a federal, state, or local government project? ☐ **Yes** ☐ **No**

If the answer is yes, or where the prime/subcontractor is unable to certify any of the statements in the above certifications, such prime/subcontractor shall attach an explanation (i.e. date, background, resolution) with this form.

Note: Failure to provide this form at the time of Bid/Bid will not result in a finding of a non-responsive bid/bid. Submittal of this form for The Prime Contractor and all Subcontractors is required for a Bidder to be deemed "Responsible." MTS encourages Bidders to complete and submit all forms at the time of bid/bids.

SUBCONTRACTOR

(Copy this form if needed for additional subcontractors)

Business Name: _____
License No. _____
(if applicable): _____
DUNS No.: _____

PRIME CONTRACTOR

Business Name: _____
License No. _____
(if applicable): _____
DUNS No.: _____

ACKNOWLEDGED AND AGREED

Print Name: _____
Title: _____
Signature: _____
Date: _____

Print Name: _____
Title: _____
Signature: _____
Date: _____

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT

Metropolitan Transit System (MTS) enforces an Equal Opportunity (EEO) program established under MTS policies and procedures No. 25. This program prohibits discrimination in employment and requires MTS Contractors to be equal opportunity employers. You may submit a copy of the **Employer Information Report, EEO-1**, in lieu of this form.

COMPLETE ALL SECTIONS OF THIS FORM:

1. The Official, Legal Name of Bidding Firm: _____
2. Doing Business As: _____
3. Legal Structure (Corp./Partner/Proprietor): _____
4. Address of Establishment in San Diego County: _____

Street

City
State
Zip
5. If there is no office in San Diego County, or if there are less than 15 employees in that office, include an address for your regional office that will oversee the work under MTS' contract: _____

Street

City
State
Zip

Employment Data - Include the employees located in San Diego County only, unless your firm employs fewer than fifteen (15) people locally. In the event, you should list the workforce of the regional office that will oversee the work under MTS' contract. Report all permanent full-time and part-time employees including apprentices and on-the-job trainees. Blank spaces will be considered as zeros

ACKNOWLEDGED AND AGREED

6. Name, Address, and Phone Number of Person to Contact Regarding this Report:

Name of Signee: _____

Title: _____

Phone Number: _____

Address: _____

Street

City
State
Zip

Name of Signee: _____

Authorized Signature: _____

Date: _____

EQUAL OPPORTUNITY PROGRAM WORKFORCE REPORT CONTINUED

OCCUPATIONAL CATEGORY	African American		Hispanic		Asian or Pacific Islander		Native American		Other		Overall Total	
	M	F	M	F	M	F	M	F	M	F	M	F
Executive/Managerial												
Engineers/Architects/ Surveyors												
Professionals (N.E.C.)												
Technicians												
Sales												
Administrative Support												
Protective Services												
Services (N.E.C.)												
Craft Workers (Skilled)												
Machine Operators, Assemblers & Inspectors												
Transportation and Material Moving												
Laborers (Unskilled)												
TOTALS FOR EACH COLUMN												

Indicate by gender and ethnic code the number of the above workforce, which are persons with disabilities:

DISABLED												
----------	--	--	--	--	--	--	--	--	--	--	--	--

ETHNIC IDENTIFICATION

African American: (NOT OF HISPANIC ORIGIN): All persons having origins in any of the black racial groups of Africa.

Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area, includes, China, Japan, Korea, the Philippine Islands, and Samoa.

Native American: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition

Other: Caucasian and others not falling into one of the designated categories.

DISABLED DEFINITION

Any person who 1) has a physical or mental condition which limits one or more of such person's major life activities, 2) has a history of such a condition, or 3) is regarded as having such a condition. For purposes of this definition, "major life activity" means any mental or physical function or activity, which if impaired, creates a substantial barrier to employment.

OCCUPATIONAL CATEGORY LIST

Executive/Managerial

Executive, Management Related

Engineers/Architects/Surveyors

Professionals (N.E.C.)*

Mathematical and Computer Scientists

Natural Scientists

Health Diagnosing

Health Assessment and Treating

Teachers, Postsecondary

Teachers, except Postsecondary

Counselors, Educational and Vocational

Librarians, Archivists, Curators

Social Scientists and Urban Planners

Social, Recreation and Religious Workers

Lawyers and Judges

Writers, Artists Entertainers & Athletes

Technicians

Health Technologists and Technicians

Engineering and Related Technologists and Technicians

Science Technicians

Technicians, Except Health, Engineering, and Service

Sales

Supervisors and Proprietors

Sales Representatives, Finance, and Business

Services

Sales Representatives, Commodities except Retail

Sales Workers, Retail, and Personal Services

Other Sales Related

Administrative Support

Supervisors of Administrative Support

Computer Equipment Operators

Secretaries, Stenographers, Typists

Information Clerks

Records Processing, Except Financial

Financial Records Processing

Duplicating and Other Office Machine Operators

Communications Equipment Operators

Mail and Message Distributing

Material Recording and Distributing Clerks

Adjusters and Investigators

Other Office/Clerical

*N.E.C.: Not Elsewhere Classified

Protective Services

Supervisors of Protective Services

Firefighting and Fire Prevention

Police and Detectives

Guards & Other Protective Services

Services (N.E.C.)*

Private Households

Food Preparation and Services

Health Services

Cleaning and Building Services

Personal Services

Craft Workers (Skilled)

Supervisors of Mechanics and Repairers

Vehicle and Mobile Equipment Mechanics and Repairers

Heating, Air Conditioning, Refrigeration, Mechanics

Other Mechanics and Repairers

Supervisors of Construction Trades

Construction Trades, Except Supervisors

Extractive Occupations

Precision Production Occupations

Machine Operators, Assemblers & Inspectors

Metalworking and Plastic Working Machine Operator

Metal and Plastic Processing Machine Operators

Woodworking Machine Operators

Printing Machine operators

Textile, Apparel, and furnishing Machine Operators

Machine Operators, Assorted Materials

Fabricators, Assembler and Hand Working Occupations

Production Inspector, Tester, Sampler, Weigher

Transportation and Material Moving

Motor Vehicle Operators

Rail Transportation Occupations

Water Transportation Occupations

Material Moving Equipment Operators

Laborers (Unskilled)

Handlers

Equipment Cleaners

Helpers & Laborers

STATUS OF CURRENT AND PAST CONTRACTS

Bidders shall list the status of **at least two (2)** current and past contracts where the scope of work has been performed within the past five years.

Bidder shall provide an accurate contact name, telephone number, and e-mail of each contract and indicate the terms and scope of the contract and the original contract value. The Bidder must indicate if the contract has been completed or still in progress. The Bidder must also indicate if the contract was terminated by either the procuring agency or by the contractor for cause or convenience. If the contract was terminated, list the reason for termination. The Bidder must identify and state the status of any litigation, claims, or settlement agreements related to any of the contracts.

Submitting the three reference forms the bidder is confirming that the information provided is true and accurate.

REFERENCE NO.1

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

B. Identify Claims / Litigation or Settlements Associated with each Contract:

REFERENCE NO.2

Company Name:

Point of Contact:

Phone:

Email:

Project Award Date:

Original Contract Value:

Status of Contract:

A. Terms and Scope of Contract

B. Identify Claims / Litigation or Settlements Associated with each Contract:

FINANCIAL QUESTIONNAIRE FORM

1. This organization is organized under the laws of the State of: _____

2. Principal Financial institution. The information bellow will be used to assess financial responsibility.

Name of Bank: _____

Address: _____

Street

City State Zip

Telephone: _____

Officer Familiar with Bidder's Account: _____

3. Business License

NOTE: The representations regarding the Bidder's license are made under penalty of perjury.

Bidder's Business License No.: _____

Original Date Issued: _____

Expiration Date: _____

Bidder's DUNS No.: _____

Expiration Date: _____

Bidder's System for Award
Management (SAM) No.: _____

Expiration Date: _____

RETURN THIS FORM WITH YOUR BID

4. The date of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this bid are as follows:

5. All current and prior DBAs, alias, and/or fictitious business names for any principal having an interest in this bid are as follows:

6. Has Bidder ever failed to complete any work awarded to it? If so, when, where, and why?

7. Identify any conditions bankruptcy, pending litigation, planned office closures, impending merger:

CALIFORNIA PUBLIC RECORD ACT (CPRA) ACKNOWLEDGEMENT

I/We hereby represent, acknowledge, and agree as follows:

1. MTS is a California public agency established by California Public Utilities Code, Section 120000. et seq. , and is subject to the California Public Records Act (Government Code sec. 6250 et seq.) which provides generally that all records relating to a public agency's business are open to public inspection unless exempted from disclosure by law.
2. The bid I/we have submitted to MTS is open to public inspection under CPRA unless it is exempted from disclosure by law.
3. To the extent the bid includes materials that I/we believe are exempt from disclosure under CPRA, I/we understand that I/we must provide a letter identifying the materials that I/we believe are exempt from disclosure and explaining the basis for exemption.
4. Any materials not identified as exempt from disclosure are open to public inspection, and I/we waive any right to subsequently claim exemption from disclosure for such materials.
5. MTS at all times retains the right to make the final determination regarding what, if any, portion of a bid is subject to disclosure under CPRA.
6. Use of headers/footers bearing designations such as "confidential", "proprietary", or "trade secret" on all or nearly all of a bid which would prohibit or limit public inspection is not acceptable and may deem the bid non-responsive and may be rejected; labeling a page as such does not prohibit MTS from disclosing the page in response to a Public Records Act (PRA) response or in the ordinary cause of business if MTS concludes it is obligated to so by applicable law.
7. To defend and indemnify MTS in any action on a PRA request for any of the contents of a Bid marked TRADE SECRET, CONFIDENTIAL or PROPRIETARY.
8. Marking a document as "confidential" or "proprietary" without the express written permission of MTS does not exempt a document from disclosure to third parties under state or federal law, or in the normal course of MTS's business operations. MTS has no obligation to get a respondent's permission before producing such documents.
9. The bid I/we have submitted (*check one of the following*) materials **INCLUDES** ☐
that we believe are exempt from disclosure under CPRA. **DOES NOT INCLUDE** ☐

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

NONCOLLUSION DECLARATION

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH OFFER

(23 U.S.C. § 112(c) and California Public Contract Code § 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing offer.

The offer is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The offer is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham offer. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham offer, or to refrain from submitting an offer. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the offer price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the offer price, or of that of any other bidder. All statements contained in the offer are true. The bidder has not, directly or indirectly, submitted his or her offer price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, offer depository, or to any member or agent thereof, to effectuate a collusive or sham offer, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of the bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(date), at _____(city), _____(state).

ACKNOWLEDGED AND AGREED

Name of Contractor:

Signature:

Date:

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

1. The Contractor is not:
 - a. identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - b. a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran. ☐
2. MTS has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, MTS will be unable to obtain the goods and/or services to be provided pursuant to the Contract. ☐
3. The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000. ☐

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

ACKNOWLEDGED AND AGREED

Company Name: _____

Title: _____

Signature: _____

Date: _____

SAFETY DEPARTMENT STANDARD OPERATING PROCEDURES

FOR CONTRACTORS SAFETY AND HEALTH REQUIREMENTS

(SAF 016-03)

January 2003

SAF 016-03

Purpose: To establish environmental, safety and health requirements for the San Diego Metropolitan Transit System (MTS) Contractors.

Background: MTS is committed in providing and maintaining a safe work place, safe plant and equipment, and a safe and competent workforce as required by legislation and best industrial practice for our employees, customers, visitors, and general public.

To support this commitment, we require our Contractors to provide adequate leadership and safety training for their employees and require the same of their sub-Contractors.

Objectives: This SOP requires all MTS Contractors to:

- Comply with the environmental, safety and health requirements of the contract as per FTA, OSHA, Cal OSHA, and San Diego Metropolitan Transit System (MTS).
- Assign a competent person the responsibility for the implementation of the safety regulations, personal protective equipment usage, and compliance with hazardous materials/environmental policies, and drug and alcohol program.
- Ensure that all Contractor employees and sub-Contractors are trained and educated in safety and support on-site Contractors on safe work and MTS safety programs.
- Sign the MTS Contractual Agreement with Outside Agencies (Safety Rules).

MTS Representatives are required to:

- Pro-actively monitor the Contractors' workplace to identify all occupational health and safety hazards – Departmental/Safety representative.
- Safety and contract requirements compliance – Audit/Inspection conducted and documented (schedule and spot check) by Quality Assurance Department.

NOTE: Copies of both MTS Illness and Injury Prevention Program (IIPP) and the MTS Maintenance Department Code of Safe Practices are available in the Safety Department's office. MTS handles the Engineering/Construction site safety plans.

SAFETY DEPARTMENT SAFETY RULES

MTS Contractual Agreement with Outside Agencies

Work on MTS Premises

A. Safety Rules

These safety rules apply specifically to Contractors, Contractor's employees, or sub-Contractors working on Metropolitan Transit System (MTS) property. Any loss or damage, including death, resulting from Contractors, Contractor's employees, or subcontractor's negligence shall hold MTS management and employees harmless from any such loss. No work shall be performed on MTS property without approval and proper permits, when required. Requirements:

1. Comply with Cal OSHA, state, local and MTS' safety, and environmental policies.
2. Observe and follow all posted facilities safety regulations.
3. Use the proper Personal Protective Equipment required for the job.
4. No illegal drugs or alcohol will be consumed on site or off the premises while working for MTS.

B. Use of Tools and Equipment (when required)

1. Required Tools and Equipment must be in good condition, safe for use and calibrated (if required).
2. Follow safe engineering work practices/procedures.
3. Wear the required personal protective equipment when using tools.

C. Machinery and Vehicles (when required)

1. Do not attempt to operate MTS machinery or equipment without special permission.
2. Only licensed operators may operate Forklift Trucks and other equipment on MTS occupied spaces.

D. Contractor Requirements (when required)

1. Valid Contractor's license number.

ACKNOWLEDGED AND AGREED

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATE FORM

In accordance with California Labor Code, 1725.5, a contractor and its subcontractors shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless currently registered and qualified by the Department of Industrial Relations (DIR) to perform a public work project.

In accordance with California Labor Code, 1771.1, a bid shall not be accepted nor any contract or subcontract entered into without proof of contractor's and subcontractor's current registration to perform public work.

The Prime Contractor certifies the truthfulness and accuracy of the contents of this certification and understands that the provisions of California Labor Code, 1725.5 are applicable.

PRIME CONTRACTOR

Business Name: _____

Registration No.: _____

Print Name: _____

Title: _____

Date: _____

BUY AMERICA

ALTERNATIVE A

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder hereby certifies that it will comply with the requirements of Section 49 U.S.C. 5323 (j)(1) and the applicable regulations in 49 C.F.R. 661.

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____

CERTIFICATE FOR NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

ALTERNATIVE B

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7.

ACKNOWLEDGED AND AGREED

Print Name: _____

Signature: _____

Date: _____

Complete the form on the next page if you select Alternative B.

NOTE: COMPLETE EITHER ALTERNATIVE A OR B - DO NOT COMPLETE BOTH.

BUY AMERICA**ADDITIONAL INFORMATION FOR BUY AMERICA CERTIFICATE - ALTERNATIVE B**

The Bidder hereby certifies that it cannot comply with the requirements of Section 49 U.S.C. 5323 (j)(1), but it may qualify for an exception to the requirement pursuant to Section 49 U.S.C. 5323 (j)(2), and the applicable regulations in 49 C.F.R. 661.7.

Item No.	Description	Type of Waiver Requested by No.(1)	Indicate Rolling Stock or Nonrolling Stock	Description of Foreign Components of Items	Unit Procurement Cost of Foreign Components of Items

Notes: (1) For "Type of Waiver Requested," See Buy America, Section 7-5.8. List 1, 2, 3 or 4.

(2) Bidder must complete either Alternative A or B, Buy America Certificate.

CERTIFICATE OF RESTRICTIONS ON LOBBYING

The CONTRACTOR hereby certifies 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 any 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. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
3. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
Check one of the following Boxes.

Does NOT Apply	<input type="checkbox"/>
Applies	<input type="checkbox"/>

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. 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.

Executed this _____ day of _____, 20____.

ACKNOWLEDGED AND AGREED

Name of Contractor: _____

Signature: _____

Date: _____

SAMPLE PROMPT PAYMENT CERTIFICATION FORM

SAN DIEGO METROPOLITAN TRANSIT SYSTEM **PROMPT PAYMENT CERTIFICATION FORM**

PURPOSE: This certification is used to monitor compliance by prime contractors to promptly pay its subcontractors. In accordance with DOT's DBE Regulations and MTS's DBE Program, prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS. Any delay or postponement of payment over thirty (30) days must be for good cause and after receipt of prior written approval from a MTS Project Manager.

INSTRUCTIONS: Please complete the below Prompt Payment Certification Form and return to MTS within **14 days** after receipt of payment from MTS at the following email address: antonio.monreal@sdmts.com. If there is more than one subcontractor on the contract, please complete a separate Prompt Payment Certification Form for each subcontractor.

1. CONTRACTOR INFORMATION

Contractor Name: _____ Contract No. _____ Work Order No. _____

Telephone No. _____ Email Address _____

2. PAYMENT INFORMATION

a) Name of Subcontractor: _____

b) Type of Services or Materials Provided by Subcontractor (state NAICS code if known) _____

c) Date Last Payment Received from MTS? _____

d) Was any of that payment for services/materials provided by the subcontractor? If YES, please answer questions e-g. If NO, proceed to Part 3 Certification. _____

e) When was the Subcontractor paid for the services/materials it provided? * Prime contractors must pay its subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of payment from MTS* _____

f) If payment was delayed or postponed over thirty (30) days, was the reason for good cause? (Explain) _____

g) If payment was delayed or postponed over thirty (30) days, **who** at MTS pre-authorized the delay or postponement and **when** was such pre-authorization given? _____

3. CERTIFICATION

The contractor hereby certifies that the foregoing Prompt Payment Certification Form is true and correct.

Signature _____ Title _____ Date _____

***** FOR MTS USE ONLY *****

Date Certification Received _____ Contractor Compliant _____
Contract Administrator _____ Date Reviewed _____