

REQUEST FOR PROPOSAL

DEEP CLEANING FOR FIXED ROUTE BUSES

FOR THE

ERIE METROPOLITAN TRANSIT AUTHORITY

Legal Notice
Erie Metropolitan Transit Authority
Request for Proposal No. 06282018

DEEP CLEANING FOR FIXED ROUTE BUSES

The Erie Metropolitan Transit Authority (“EMTA”) is seeking competitive cost proposals from eligible firms interested in providing a one-time deep cleaning service for its approximately 77 fixed route vehicles. Qualified firms that are willing to enter into a cleaning contract with EMTA and that are able to meet the specifications set forth in this Request for Proposals may submit “Proposals” for EMTA’s consideration.

To receive a copy of the proposal document, contact Amy Majczyk, Grants/Planning Manager at 814-454-4012, ext. 119; or by e-mail: amajczyk@ride-the-e.com.

Proposals must be received by 2:00 p.m., prevailing time, July 25th, 2018 at the Authority's office,
127 East 14" Street, Erie, PA, 16503.

The resulting contract may be subject to financial assistance grants between the Authority, the U.S. Department of Transportation and the Pennsylvania Department of Transportation. The negotiation process and the performance of requested services will be in accordance with the guidelines and regulations of the Federal Transit Administration (FTA) "Third Party Contracting Guidelines" FTA Circular 4220. 1F, the Authority's Procurement Procedures and all other applicable federal, state and local laws and regulations.

The Authority hereby notifies all potential proposers that it will affirmatively ensure that certified disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this RFP and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

The Erie Metropolitan Transit Authority reserves the right to reject any and all proposals.

1. GENERAL INFORMATION

1.1. Introduction

The Erie Metropolitan Transit Authority (“EMTA”) is seeking competitive proposals from eligible firms to provide a deep cleaning service for fixed route buses. Qualified firms that are willing to enter into a Cleaning Service contract with EMTA and that are able to meet the specifications and requirements set forth in this Request for Proposals may submit “Proposals” for EMTA’s consideration.

1.2. Definitions

Throughout this RFP, the following definitions shall apply:

“Contract” means the negotiated contract between the Authority and Contractor to perform the Contract Services.

“Contractor” means the Proposer selected by the Authority to provide the Contract Services.

“Authority” means the Erie Metropolitan Transit Authority, 127 East Fourteenth Street, Erie, PA 16503-1062.

“Contract Services” means the scope of services as described in this RFP and as finalized, through negotiations, and incorporated into the Contract.

“DBE” means Disadvantaged Business Enterprise as defined in 49 CFR, Part 26. “FTA” means Federal Transit Administration.

“Procurement Procedures” means the Authority's procurement procedures as set forth in Part III of the Authority's Procurement Handbook.

“Proposer” means a person, partnership, limited liability company, corporation, or other entity, which submits a proposal to the Authority, in response to this RFP, seeking to be selected as the Contractor. The term “Proposer” shall have the same meaning as the term “Offeror” in the Procurement Procedures.

“RFP” means this Request for Proposals.

1.3. Regulations

This project may be funded by a combination of sources including the U.S. Department of Transportation Federal Transit Administration, the Pennsylvania Department of Transportation, local sources, and the Authority. As such, the Contract and resulting services and documents developed pursuant to this RFP shall be subject to all regulations and any review requirements by those respective agencies.

1.4. Proposal Submission Schedule

Proposals shall be submitted as indicated in Section 1.5, below, and must be received by the time and date stipulated for receipt of proposals. Proposals not received by the time and date stipulated shall not be considered by the Authority and shall be returned unopened to the Proposer. A Solicitation Schedule is provided in Section 1.5, below.

This RFP and any subsequent written addenda will serve as the sole basis upon which Proposers may submit proposals.

1.5. Solicitation Schedule

Advertisement for Proposals	June 28, 2018
Last Day for Written Questions	July 12, 2018
Answers to Questions	July 18, 2018
Proposals Due to the Authority	July 25, 2018
Anticipated Contract Award	August 8, 2018
Anticipated Notice to Proceed	August 22, 2018

The Authority may unilaterally change this schedule by written notice.

1.6. RFP as Exclusive Basis for Proposal

This RFP represents the most comprehensive and definitive statement that the Authority is able to make at this time as to the requirements, terms and conditions for the Contract Services. Any information or understandings, verbal or written, which are not contained either in this RFP, or in subsequent written addenda to this RFP, will not be considered in evaluating proposals.

This procurement is being carried out in accordance with Section 2.2 of the Procurement Procedures. To the extent that the provisions of the Procurement Procedures differ from the provisions of this RFP, the provisions of this RFP will prevail.

All questions relating to clarifications of this RFP must be in writing or via e-mail. No telephone questions or inquiries will be accepted. If any question submitted makes necessary the issuance of a written addendum, the addendum will be furnished to all parties who have requested a copy of the RFP from the Authority. All questions relating to this RFP must be addressed to:

Amy Majczyk, Grants/Planning Manager
Erie Metropolitan Transit Authority
127 E 14th Street
Erie, PA 16503
Fax: (814) 456-9032
amajczyk@ride-the-e.com

The Authority will not respond to questions received after 4:00 p.m. on July 12, 2018

1.7. Invitation to Propose; Clarifications; Irregularities

Any party able to meet the requirements of this RFP is invited to respond to this RFP.

Proposers will be bound by the provisions contained in this RFP, unless the Authority formally issues a written waiver or deviation via written addendum.

As part of the process leading to the selection of the Contractor, the Authority may request additions or clarifications to a proposal. It is the intent of the Authority not to renegotiate substantive portions of a Proposer's proposal and to rely on the information submitted in the proposals in awarding the Contract.

The Authority reserves the right to waive any minor irregularities in any proposal submitted in response to this RFP and to reject any or all proposals, at the Authority's option.

1.8. Withdrawal of Proposals

Prior to the due date for Proposals set forth in Section 1.5, above, a Proposer may withdraw a proposal already received by the Authority by submitting, in the same manner as the original proposal to the Authority, a written request for withdrawal from an individual legally authorized to bind the Proposer. By submitting a proposal, and not properly withdrawing it prior to the due date for proposals, a Proposer agrees that it shall keep its proposal open and shall not withdraw its proposal for the period prescribed in this RFP or any agreed upon extension thereof.

This provision may not be utilized by a Proposer as means to submit a later proposal and does not alter the Authority's right to reject a proposal.

1.9. Form of Contract

The Authority's standard contract terms (Part IV of the Authority's Procurement Handbook) are contained in the proposal package. The Contractor shall be expected to execute formal documentation establishing the entirety of the terms and conditions of the Contract before any notice to proceed is issued.

1.10. Costs of Proposer

The Authority shall not be liable for any cost incurred by a Proposer in preparing, submitting and/or negotiating a Proposal.

1.11. Adverse Interest Law

This RFP is subject to the Commonwealth of Pennsylvania Adverse Interest Law, 71 P.S. §776.1 et. seq. It is the obligation of potential Proposers to perform their own determinations on this matter prior to submitting a proposal.

1.12. Interested Parties

No member or delegate of the United States Congress, Pennsylvania General Assembly, Erie County, local governments, member, officer, or employee of the United States Department of Transportation and Pennsylvania Department of Transportation or the Erie Metropolitan Transit Authority shall have any benefit or interest, direct or indirect, arising from the Contract developed pursuant to this RFP.

1.13. Proposal Ownership and Disclosure

All proposals submitted shall become the property of the Authority. Except as may otherwise be required by law, cost and price information will not be disclosed except for the successful proposal, which shall be publicly available after a Contract is negotiated and before award by the Authority's Board of Directors.

1.14. RFP Availability

Copies of this RFP shall be made available to any interested party.

1.15. Proposer Qualifications

All Proposers will be required to demonstrate that they are a responsible Proposer by submitting a complete proposal as required by this RFP and by submitting evidence and information sufficient for the Authority to determine if the Proposer has the qualifications, experience, and financial resources to provide the Contract Services.

1.16. Firm Commitment

All proposals must remain valid for ninety (90) days from the final submission date specified in Section 1.5, above.

1.17. Contractor Responsibility

The Contractor shall be responsible for management, direction, integration, scheduling, control, review and approval of all subcontractor work and services, if any. Moreover, the Contractor shall be responsible for assuring that all subcontract work is in conformance with the Authority's policies, standards and criteria. All subcontracts will be subject to the review and approval of the Authority. Subcontracts shall include all relevant provisions identified in the Contract.

1.18. Protests

Protests with respect to any aspect of this procurement proceeding must be submitted in accordance with Section 6 of the Procurement Procedures and the Authority's Protest Procedures (Part V of the Authority's Procurement Handbook).

1.19. Disadvantaged Business Enterprises (DBE) Requirements

DBE requirements are included in the Authority's Procurement Procedure. The Authority's overall program goal is 1%.

Additional information on the Authority's DBE program can be obtained by contacting:

Amy Majczyk, DBE Officer
Erie Metropolitan Transit Authority
127 East 14th Street
Erie, PA 16503
Telephone: (814) 454-4012 x. 119
Fax: (814) 456-9032
Email: amajczvk@ride-the-e.com

1.20. Insurance Requirements

1.21.1 General: Contractor shall procure, before the Contract Services are commenced hereunder, and maintain at its own cost and expense, during the entire period of the performance under the Contract, the following types and amounts of insurance listed with insurance companies authorized to operate in Pennsylvania and which are acceptable to the Authority.

1.21.1.A. General. Before the execution of a Contract, Provider must provide the City with certificates of insurance evidencing the coverage required acceptable to the City, as described below. Have all policies endorsed to contain the following clause: "Thirty (30) days written notice of any cancellation, non-renewal, limit or coverage reduction is to be sent to the City by Certified Mail." The preceding is subject to existing Commonwealth of Pennsylvania statutory cancellation provisions relating to non-payment of premium and misrepresentation by the insured. Maintain the insurance described herein for the entire duration of the Contract. All insurance policies must be

written by an Insurance Company licensed and/or authorized to do business in Pennsylvania and acceptable to the City having an A.M. Best's rating of no less than A- with a financial size category of IX, or better. Have all insurance policies and certificates signed by a resident Pennsylvania Agent of the issuing Company. However, in the case of an eligible surplus lines insurer, have all policies and certificates also signed by a party duly authorized to bind, on behalf of the eligible surplus lines insurer, the certified coverage's.

1.21.1.B. Worker's Compensation and Employer's Liability Insurance. Worker's Compensation Insurance policy as required by Pennsylvania law with statutory limits of not less than \$100,000 bodily injury each accident, \$500,000 bodily injury by disease, and \$100,000 bodily injury by disease each employee.

1.21.1.C. Commercial General Liability Insurance. Commercial general liability insurance (CGL) with limits not less than \$3,000,000 each occurrence. If the CGL contains a general aggregate limit, it shall apply separately each site or location. CGL insurance shall be written on the Insurance Services Office Inc. (ISO) occurrence form CG 00 01 12 07 (or substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under contract (including the tort liability of another assumed in a business contract but not including breach of contract damages).

1.21.1.D. Business Auto Liability Insurance. Business auto liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability, including bodily injury or death and property damage, arising out of any auto (including owned, hired, and non-owned autos). Business auto coverage shall be written on the current ISO form or a substitute form providing equivalent liability coverage.

1.21.1.E. Professional Liability Insurance. Insurance coverage for Errors and Omissions (Professional Liability Insurance) in an amount not less than \$5,000,000. Insurance shall be provided on a form acceptable to EMTA.

1.21.1.F. Additional Insured -All Commercial General Liability and Automobile Liability insurance provided hereunder shall name the EMTA as an additional insured party.

1.21.2. Valuable Papers: Coverage in an amount sufficient to assure restoration of any plans, drawings, field notes, records, or other similar data relating to work covered by this Agreement in the event of their loss or destruction

2. PROPOSAL SELECTION PROCESS

The selection process shall be in accordance with FTA requirements and Section 2.2 of the Procurement Procedures. The Contract shall be awarded in accordance with Section 2.2 of the Procurement Procedures.

Evaluation Criteria

An Evaluation Committee consisting of selected personnel will be established to evaluate the proposals and to recommend the apparent successful Offeror. The following evaluation criteria have been established by EMTA for this procurement. The criteria are presented to allow EMTA to analyze proposals received on an equal basis and to afford all Offerors the opportunity to know the basis upon which their proposals will be evaluated.

Award will be made to the Offeror whose final offer is most beneficial to EMTA, including the level of service, experience and ability to perform the scope of services after evaluation in accordance with these criteria.

EVALUATION CRITERIA	MAXIMUM POINTS
QUALIFICATION AND EXPERIENCE	40
This factor will look mainly at the capability and reputation of the firm as presented in the proposal or as is determined by review of information available from references or other resources. The evaluation may look at the firm's overall organizational capabilities and consider key components such as organizational structure.	
COST OF SERVICES	50
This factor will look primarily to the cost information provided by the Offeror.	
REFERENCES	10
We will contact provided references to verify performance history of the offeror	
TOTAL POSSIBLE POINTS	100

Presentations/Interviews/Written Responses

Proposers that have been determined to be responsive may be scheduled for a presentation and interview prior to final selection. In this case, selected Proposers will be informed as to the exact date and time of the interview. This presentation shall be at the Proposer's own expense.

3. SCOPE OF SERVICES

3.1. BACKGROUND:

- A. The Erie Metropolitan Transit Authority is a municipal authority formed by Erie County and the City of Erie under the Municipality Authorities Act of 1945. EMTA was incorporated in 1967.

3.2. COST PROPOSAL REQUIREMENTS:

- A. The offeror is to provide EMTA with a cost proposal in regards to a one-time deep cleaning service of its approximate 77 fixed route buses.
- B. The offeror must provide a fee schedule and/or describe the fee structure for the cleaning service, including any start-up fees, or termination fees associated with the products or services.

3.3. TECHNICAL SPECIFICATIONS:

- A. Supply all cleaning equipment, supplies and materials (including but not limited to, trash bags, gloves, cleaners, soaps, brushes, mops, rags, scrapers, squeegees, towels, hose nozzles, etc.) needed to accomplish cleaning duties
 - B. Be versed in the handling of hazardous waste and Bio hazard types of materials.
 - C. Clean the inside of all windows and mirrors, (such that they are streak free)
 - D. Ensure that all aisles and area under seats are free of all debris, and dust.
 - E. Ensure all surfaces, fixtures, and furniture (i.e., floors, walkways, lights, mats, seats, etc.) which comprise the interior shall be clean and free of foreign matter and odors and have a clean uniform, and polished appearance.
 - Buses may have vinyl and/or cloth seats
 - F. Wipe down hand rails and driver steering wheel with antiseptic cleaner, cleaning dash board area.
 - G. Remove Graffiti from all surfaces
 - H. Maintain a service log of all vehicles cleaned
- 3.4. The Proposer shall provide three (3) references that are similar contracts. Include the company name, contact person, date of contract, address, email address, and phone number. The Authority may contact these references to verify past performance.

DEBARMENT CERTIFICATION

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

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

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

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

_____ (name of firm) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official: _____

Date: _____

LOWER-TIER PARTICIPANT CERTIFICATION

CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Lower Tier Participant (potential sub-recipient under an FTA project, potential third party contractor, or **potential subcontractor under a major third party contract**),

(name of firm) certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower Tier Participant (potential sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract),

(name of firm) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this bid.)

The Lower Tier Participant (potential sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract),

(name of firm) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official: _____

Date: _____

CERTIFICATION REGARDING LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-- **LLL**, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

Commonwealth of Pennsylvania Nondiscrimination/Sexual Harassment Clause

During the term of this contract, the contractor agrees to the following provisions:

1. In the hiring of any employee(s) for the manufacturer of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency of the Bureau of Contract Administration and Business Development.
6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.
7. EMTA may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility Files.

Signature: _____

Date: _____

ERIE METROPOLITAN TRANSIT AUTHORITY

DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE

FORM SECTION A

(To be completed by all Bidders)

1. This Assurance accompanies a Bid Form submitted to the Erie Metropolitan Transit Authority ("EMTA") by _____ (insert name of Bidder. The undersigned is authorized by the Bidder to make and execute this assurance.)
 2. The undersigned hereby certifies that the undersigned has read that part of EMTA's Procurement Standards which is applicable to Disadvantaged Business Enterprise ("DBE") participation in EMTA procurement contracts.
 3. The Bidder hereby certifies that it:

is

_____ is not _____ (check the appropriate box)

a Disadvantaged Business Enterprise.

SECTION B

(INSTRUCTIONS: Complete Paragraphs 4 through 7 only if: (1) you have checked the "is not" box in Paragraph 3 and (2) a DBE will participate with you in the contract for which the Bid Form is submitted.)

4. The Bidder certifies that _____ (insert name of participant) will participate with the Bidder in the contract for which the Bid Form is submitted.

5. The Bidder certifies that _____ (insert name of participant) -

_____ is

_____ is not (check appropriate box)

a Disadvantaged Business Enterprise.

6. As a result of the participation of _____ (insert name of participant) with the Bidder, as specified in Paragraphs 4 and 5 above, _____ (insert name of participant) will be entitled to receive, as consideration for work performed and/or materials supplied, the sum of \$ _____, which is _____ % of the Bidder's bid price as specified on the Bidder's Bid Form.

(INSTRUCTIONS: Attach a copy of the Bidder's contract or agreement with the participating DBE which sets forth the terms of participation arrangement with the DBE).

7. The Bidder hereby agrees to supply to EMTA, within ten days of the awarding of the Contract to the Bidder, documentation sufficient to establish that the DBE participant is a bona fide DBE. Failure to provide such documentation may result in the cancellation of the Contract by EMTA.

SECTION C

{INSTRUCTIONS: This section is applicable only if (1) you have checked the "is not" box in Paragraph 3; and a DBE will not participate with you in the contract for which the Bid Form is submitted).

8. Section C is applicable to my situation. _____ Yes.
9. The Bidder hereby certifies that the Bidder is not a Disadvantaged Business Enterprise and that a Disadvantaged Business Enterprise will not be participating in the Contract for which the Bid Form is submitted.
10. The Bidder hereby certifies that the Bidder has made reasonable, good faith efforts to secure DBE participation in the contract for which the Bid Form is submitted, in conformity with the requirements of Paragraph 15 of EMTA's Procurement Standards. The bidder hereby agrees to supply to EMTA such documents and/or other information as may be requested by EMTA to substantiate this certification.

{INSTRUCTIONS: Such substantiating information must be attached to this Assurance Form if EMTA has established a specific DBE participation goal for this particular procurement proceeding in the Instructions to Bidders and the Bidder has failed to meet such goal. Such substantiating information must conform with the requirements of Paragraphs 4.7 and 5.1 of the EMTA Procurement Standards).

The undersigned, an authorized representative of the Bidder, herewith states that the statements set forth in above are true and correct to the best of his information, knowledge and belief.

These statements are made subject to the penalties of 18 Pa.d.S. S4904 relating to unsworn falsification to authorities and 18 Pa.C.S. S4107.2, relating to deception in the certification of minority business enterprises.

Authorized Representative of Bidder

Date

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this bid/ proposal. According to the Pennsylvania Antibid-Rigging Act, 73 P.S. 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. In the case of a corporation or other business entity, this Non-Collusion Affidavit must be executed by the member, partner, officer or employee of the bidder who makes the final decision on prices and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition, and the making of false statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself/herself that each statement is true and accurate, making diligent inquiry as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation approval or submission of the bid.
4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary bid" as used in the Affidavit has the meaning commonly associated with that term in the bidding/proposal process, and includes the knowing submission of bids/proposals higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions may result in disqualification of the bid.

NON-COLLUSION AFFIDAVIT
(Individual)

Bid RFP #

I state that:

1. The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid/proposal, and neither the approximate price(s) nor approximate amount of this bid/proposal, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid/proposal opening.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding/submitting proposal on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid/proposal, or to submit any other form of complementary bid/proposal.
4. This bid/proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid/proposal.
5. I am not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows: (If none, state "None," attach additional sheets if necessary).
6. I understand and acknowledge that the above representations are material and important, and will be relied on by the Erie Metropolitan Transit Authority in awarding the contract(s) for which this bid/proposal is submitted. I understand that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Erie Metropolitan Transit Authority of the true facts relating to the submission of bids/proposals for this contract.

The statements made in this affidavit are made subject to the penalties contained in 18 P.A.C.S.A. 4904, relating to unsworn falsification to authorities.

Name: _____

NON-COLLUSION AFFIDAVIT
(Corporation or Other Business Entity)

Bid
#

RFP

I state that I am _____ of _____
(Title) _____ (Name of my firm)
and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid/proposal.

I state that:

1. The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of the bid, and neither the approximate prices(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid/proposal opening.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid, or to submit any other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
5. _____ * its affiliates, subsidiaries, owners, officers, directors (Name of firm)
and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows: (If none, state "None", Attach additional sheets if necessary).

6. I state that _____ understands and acknowledges that the
(Name of firm)

above representations are material and important, and will be relied on by the Erie Metropolitan Transit Authority in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Erie Metropolitan Transit Authority of the true facts relating to the submission of bids for this contract.

The statements made in this affidavit are made subject to the penalties contained in 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Name of firm: _____

By: _____

Name and Company Position: _____

CONTRACTOR CODE OF CONDUCT

Failure to follow the Contractor Code of Conduct by any contractor doing or seeking to do business with EMTA, shall be sufficient cause for EMTA to decline to do business with the bidder, proposer, contractor, or any of its subcontractors or consultants.

All contractors doing or seeking to do business with EMTA are prohibited from:

- real or potential conflicts of interest;
- making of false or misleading representations regarding any aspect of the contract and/or performance of the contract;
- intentional breach of any contract term;
- misuse of EMTA information;
- misuse of EMTA staff;
- obtaining information that would provide a real or perceived competitive advantage
- offering, giving, promising to offer or give directly or indirectly, any gift (unless de minimis) to any EMTA Board Member or employee;
- offering future employment or business opportunities to any EMTA employee, Board Member or family members if such offer of employment is conditioned expressly or impliedly on the awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by EMTA;
- unauthorized disclosure of confidential and/or proprietary information;
- participating as a proposer or sub-proposer if the contractor participated in the development of scope of work, solicitation documents, contractual instruments, technical specifications or other activity that would be a conflict of interest or provide a competitive advantage (In rare circumstances, this provision may be waived by the Executive Director if there is good cause.);
- prohibited from collusive behavior; and/or
- altering, fabricating, destroying, misrepresenting, or forging contracts or documents. All

contractors are:

- responsible for the performance of its staff and subcontractors;
- responsible for maintaining professional, safe and productive environment;
- required to disclose in writing to EMTA any real or potential conflicts of interest before or during a contract;
- required to report any changes in the company's financial holdings, newly developed contractual or other relationships, or those of its parents, subsidiaries, and affiliates that relate to real or potential conflicts of interest;
- required to comply with all applicable laws and regulations in connection with the EMTA procurement process and the work performed pursuant to any agreement with the EMTA;
- required to report any real or potential Code of Conduct violations; and/or
- required to obtain a written statement from any contractor personnel working on the project whose conduct is governed by a professional code of responsibility that he/she will comply with its rules on all EMTA related work.

EMTA encourages good faith reporting and as such, all reports will be thoroughly investigated before making any decision to impose any sanction or penalty. Sanctions or penalties will be determined on case by case basis and can include disbarment, rescinding, voiding and terminating the contact. Any sanction or penalty will be made in writing and the contractor will have an opportunity to respond. Actual or potential conflict of interests may be resolved by full disclosure as well as making appropriate arrangements that dearly mitigate the conflict of interest.

If a violation of EMTA's Code of Conduct has been established prior to the award of the contract, EMTA shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

ORGANIZATIONAL CONFLICTS OF INTEREST PROHIBITION AND NON-CONFLICT CERTIFICATION
DUTY TO DISCLOSE

EMTA prohibits Organizational Conflicts of Interest and as such, all contractors and potential contractors are required to provide in writing to EMTA any real or apparent Organizational Conflict of Interest (OCI).

An OCI interest occurs when any of the following circumstances arise with respect to a potential contractor:

- (a) The contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to EMTA, due to other activities, relationships, contracts, or circumstances;
- (b) A contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract;
- (c) During an earlier procurement, the contractor established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Contractors are required to disclose any financial, close personal relationship, and / or any offer of employment with a Board Member or member or his or her staff and / or an EMTA employee.

The Bidder / Proposer warrants that, to the best of his / her / its knowledge and belief, and except as otherwise disclosed (detailed in an attachment with this certification) that there are no relevant circumstances which could be an OCI. If an OCI is discovered after award, the Bidder / Proposer will immediately notify EMTA. If EMTA determines that an OCI exists and it cannot be mitigated, EMTA at its discretion may cancel the contract. If EMTA determines that the Bidder / Proposer was aware of the OCI prior to award, EMTA may terminate the contact for default. The contractor is responsible for ensuring that this OCI statement is provided to subcontractors and properly executed.

ORGANIZATIONAL CONFLICTS OF INTEREST PROHIBITION AND NON-CONFLICT CERTIFICATION

BIDDER/PROPOSER SIGNATURE AND DATE

TITLE

COMPANY NAME AND ADDRESS

**ERIE METROPOLITAN TRANSIT
AUTHORITY PROCUREMENT HANDBOOK**

PART III

PROCUREMENT PROCEDURES

TABLE OF CONTENTS

	Page
I. GENERAL PROVISIONS	I
I. General Provisions	I
1.1 Scope and Applicability.....	I
1.1.1 Generally	I
1.1.2 Modification	I
1.1.3 Incorporation by Reference into Bid Packages and Proposal Packages.....	I
1.1.3.I Competitive Bid and Competitive Proposal Procurements.....	I
1.1.3.2 Other Methods of Procurement	I
1.1.4 No Third Party Beneficiaries.....	I
1.1.5 Compliance with Federal Law	I
1.2 Definitions.....	2
1.2.1 Award	2
1.2.2 Bid.....	2
1.2.3 Bidder.....	2
1.2.4 Bid Fann	2
1.2.5 Bid Package	2
1.2.6 Competitive Bid Procurement	2
1.2.7 Competitive Proposal Procurement	2
1.2.8 Contract; Contract Documents	3
1.2.9 Contractor	3
1.2.10 Disadvantaged Business Enterprise	3
1.2.11 DOT	3
1.2.12 EMTA	3
1.2.13 FTA	3
1.2.14 Instructions to Bidders	4
1.2.15 Invitation for Bids	4
1.2.16 Micro Purchase	4
1.2.17 Micro Purchase Threshold	4
1.2.18 Notice of Award	4
1.2.19 Offeror	4
1.2.20 Person	4
1.2.21 Procurement Proceeding	4
1.2.22 Proposal	4
1.2.23 Proposal Package	4
1.2.24 Protest Procedures	5
1.2.25 Request for Proposals	5
1.2.26 Simplified Acquisition Threshold	5
1.2.27 Small Business Concern.....	5
1.2.28 Small Purchase	5
1.2.29 Specifications	5
1.2.30 Standard Contract Terms	5
1.2.31 State Act	5
1.2.32 Subcontractor	5
1.3 Construction	5
1.4 Captions	6
1.5 Governing Law	6
1.6 Submissions by Bidders and Offerors Made Subject to 18 Pa.C.S.A. § 4904	6
II. PROCUREMENT PROCEDURES AND CONTRACT FORMATION	6
2. Procurement Procedures and Contract Formation	6
2.1 Competitive Bid Procurement	6
2.1.1 Nature of Competitive Bid Procurement	6

2.1.2	<u>Bid Package</u>	7
2.1.2.1	<u>Generally</u>	7
2.1.2.2	<u>Amendments to Bid Package</u>	7
2.1.3	<u>Form and Content of Bids</u>	7
2.1.4	<u>Bid Security</u>	7
2.1.5	<u>Receipt and Opening of Bids</u>	8
2.1.5.1	<u>Generally</u>	8
2.1.5.2	<u>Bid Opening</u>	8
2.1.5.3	<u>Postponement of Date for Receipt and/or Opening of Bids</u>	8
2.1.6	<u>Binding Effect of Bids</u>	8
2.1.7	<u>Withdrawal of Bids</u>	8
2.1.7.1	<u>Prior to Opening of Bids</u>	8
2.1.7.2	<u>Following Opening of Bids</u>	8
2.1.8	<u>Waiver of Defects; Clarification and/or Modification of Bids</u>	8
2.1.8.1	<u>Waiver of Defects</u>	8
2.1.8.2	<u>Clarification and/or Modification of Bids</u>	9
2.1.8.3	<u>Definition of "Prejudicial"</u>	9
2.1.9	<u>Rejection of Bids</u>	9
2.1.10	<u>Contract Award</u>	9
2.1.10.1	Award of Contract; Revocation of Award	9
2.1.10.2	<u>Execution of Contract Documents; Delivery of Bonds</u>	9
2.1.10.3	<u>Form of Execution Documents</u>	10
2.1.10.4	Contracts for Construction or Reconstruction, etc. in Excess of \$50,000	10
2.1.11	<u>Modification of Procedures for Competitive Bid Procurements</u>	10
2.2	<u>Competitive Proposal Procurement</u>	10
2.2.1	<u>Nature of Competitive Proposal Procurement</u>	10
2.2.2	<u>Proposal Package</u>	11
2.2.2.1	<u>Generally</u>	11
2.2.2.2	<u>Amendments to Proposal Package</u>	11
2.2.3	<u>Form and Content of Proposals</u>	11
2.2.4	<u>Proposal Security</u>	11
2.2.5	<u>Receipt and Opening of Proposals</u>	11
2.2.5.1	<u>Generally</u>	11
2.2.5.2	<u>Opening of Proposals</u>	12
2.2.6	<u>Binding Effect of Initial Proposals</u>	12
2.2.7	<u>Withdrawal of Proposals</u>	12
2.2.8	<u>Waiver of Defects; Clarification and/or Modification of Proposals</u>	12
2.2.8.1	<u>Waiver of Defects</u>	12
2.2.8.2	<u>Clarification and/or Modification of Proposals</u>	12
2.2.8.3	<u>Definition of "Prejudicial"</u>	13
2.2.9	Rejection of Proposals	13
2.2.10	<u>Award of Contract Without Negotiation</u>	13
2.2.11	Competitive Negotiations	13
2.2.11.1	<u>Discussions with Offerors in the Competitive Range</u>	13
2.2.11.2	<u>Information Not Provided to Offerors During Discussions</u>	13
2.2.11.3	Best and Final Offers	13
2.2.12	<u>Contract Award</u>	14
2.2.12.1	Award of Contract	14
2.2.12.2	Execution of Contract Documents: Delivery of Bonds	14
2.2.13	<u>Modification of Procedures for Competitive Proposal Procurements</u>	14
2.3	<u>Other Procurement Methods</u>	15
2.3.1	Purchase Orders	15
2.3.2	<u>Sole Source Procurement</u>	15
2.3.3	<u>Multi-step Sealed Bidding</u>	15
2.3.4	<u>Contract Formation For Other Than Competitive Bid and Proposal Procurements</u>	15
2.4	<u>Particular Procurements - Selection of Architects and Engineers</u>	15

III. BONDING REQUIREMENTS	16
3. <u>Bonding Requirements</u>	16
3.1 <u>Bonding Requirements for Construction Contracts</u>	16
3.1.1 <u>Generally</u>	16
3.1.2 <u>Performance Bond</u>	16
3.1.2.1 <u>Bond Requirements</u>	16
3.1.2.2 <u>Financial Security in Lieu of Performance Bond</u>	16
3.1.3 <u>Payment Bond</u>	17
3.1.3.1 <u>Bond Requirements</u>	17
3.1.3.2 <u>Financial Security in Lieu of Payment Bond</u>	17
3.2 <u>Other Bonding Requirements</u>	17
IV. CERTIFICATIONS	18
4. <u>Certifications</u>	18
4.1 <u>Buy America Certifications</u>	18
4.1.1 <u>General Requirements</u>	18
4.1.2 <u>Noncompliance</u>	18
4.1.3 <u>Form of Certification</u>	18
4.1.4 <u>Waiver</u>	18
4.2 <u>Certifications Relating to State Restrictions on Imported Products</u>	18
4.2.1 <u>Steel Products</u>	18
4.2.2 <u>Compliance with Motor Vehicle Procurement Act, 62 Pa.C.S.A. §§ 3731-3736</u>	19
4.3 <u>Certifications with Respect to Federal Public Works Projects</u>	19
4.3.1 <u>Definition</u>	19
4.3.2 <u>Applicability</u>	19
4.3.3 <u>Certification</u>	19
4.3.4 <u>Criminal Liability</u>	19
4.3.5 <u>Notice</u>	19
4.3.6 <u>Restrictions on Contract Award</u>	20
4.3.7 <u>Restrictions on Subcontracts</u>	20
4.3.8 <u>Solicitations to Subcontractors; Subcontract Provisions</u>	20
4.4 <u>Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion</u>	20
4.4.1 <u>General Certification</u>	20
4.4.2 <u>Certification Requirements for Certain Contracts</u>	20
4.4.3 <u>Inability to Make Certification</u>	20
4.5 <u>Certifications with Respect to Lobbying</u>	21
4.5.1 <u>Generally</u>	21
4.5.2 <u>EMTA Contracts in Excess of \$100,000</u>	21
4.5.3 <u>Subcontracts in Excess of \$100,000</u>	21
4.6 <u>Non-Collusion Affidavit</u>	21
4.7 <u>Disadvantaged Business Enterprise Certifications</u>	21
V. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM	22
5. <u>Disadvantaged Business Enterprises</u>	22
5.1 <u>Disadvantaged Business Enterprise Program</u>	22
VI. PROTESTS	23
6. <u>Protests</u>	23
6.1 <u>EMTA Protest Procedures, Nature of Remedy, Exhaustion of Administration Remedies</u>	23
6.2 <u>Submission of Protest</u>	24
6.3 <u>Withholding of Notice of Awards</u>	24
6.4 <u>Conformity with FTA Circular 4220.1F; FTA Protest Policies</u>	24
6.5 <u>EMTA's Responsibility to Notify FTA</u>	24

I. GENERAL PROVISIONS

1. General Provisions.

1.1 Scope and Applicability.

1.1.1 Generally, The EMTA Procurement Procedures govern the procedures and terms under which EMTA awards Contracts for materials, labor, supplies, services and/or other items pursuant to: (1) Competitive Bid Procurements; (2) Competitive Proposal Procurements; and (3) other methods of procurement (purchase order, sole source procurement, and so forth) which, by their own terms, are specifically made subject to these Procurement Procedures.

1.1.2 Modification. The EMTA Procurement Procedures are intended to be standard requirements of general applicability. EMTA reserves the right to waive, modify, or supplement these Procurement Procedures, from time to time, with respect to any particular Procurement Proceeding.

1.1.3 Incorporation by Reference into Bid Packages and Proposal Packages.

1.1.3.1 Competitive Bid and Competitive Proposal Procurements. Except to the extent otherwise provided in the relevant Bid Package or Proposal Package, the terms and conditions of the EMTA Procurement Procedures are incorporated by reference into every Procurement Proceeding conducted by EMTA pursuant to a Competitive Bid Procurement or a Competitive Proposal Procurement.

1.1.3.2 Other Methods of Procurement. The terms and conditions of the EMTA Procurement Procedures shall be incorporated into Procurement Proceedings using methods of procurement other than Competitive Bid Procurement and Competitive Proposal Procurement, to the extent that EMTA provides that the EMTA Procurement Procedures are incorporated therein.

1.1.4 No Third Party Beneficiaries. The EMTA Procurement Procedures have been promulgated by EMTA solely for the purposes of: (1) assuring compliance by EMTA with Federal and state law in the procurement of materials, labor, supplies, services and/or other items; (2) establishing fair, efficient, and cost-effective procedures for carrying out EMTA Procurement Proceedings and entering into procurement Contracts; and (3) providing for fair, efficient and cost-effective Contract administration. Nothing in these Procurement Procedures shall be construed as conferring any rights upon any third party (including, but not limited to, any prospective or disappointed Bidder or Offeror).

1.1.5 Compliance with Federal Law. By submitting its Bid or Proposal to EMTA, a Bidder/Offeror acknowledges and agrees that EMTA is the recipient of funding which is made available by the United States and which is administered by FTA. The Bidder/Offeror further acknowledges and agrees that the terms and conditions set forth in these Procurement

Procedures: (I) are intended to comply with the third-party contracting requirements applicable to EMTA as an FTA grantee; and (2) are for the benefit of both EMTA and FTA and may be enforced by either or both of them. The Bidder/Offeror agrees that the Bidder/Offeror shall comply with all applicable Federal statutes, regulations and other directives governing procurement by EMTA, regardless of whether such requirements are specifically incorporated herein. Such requirements include, but are not limited to: (1) FTA Circular 4220.I F, and any amendments or revisions thereto as may be promulgated by FTA from time to time; and (2) Executive Order 12549, "Debarment and Suspension," Executive Order 12689, "Debarment and Suspension," and the rules and regulations implementing such Orders.

1.2 Definitions. Unless the context clearly requires otherwise, the terms set forth in Sections 1.2.1 through 1.2.32, below, shall have the meanings set forth therein.

1.2.1 Award. The term "Award" means a resolution of the EMTA Board approving a Contract award to a particular Bidder or Offeror and authorizing appropriate officers of EMTA to issue a Notice of Award and to execute appropriate Contract documents. In those cases, where approval of the EMTA Board is not required, "Award" means the determination by an appropriate EMTA officer that EMTA should award a Contract to a particular third party. Such determination shall take the form of a written determination signed by an official of EMTA who is authorized to award such Contract.

1.2.2 Bid. The term "Bid" means an offer to supply materials, labor, supplies, services and/or other items to EMTA which is submitted in response to an Invitation for Bids issued by EMTA in connection with a Competitive Bid Procurement.

1.2.3 Bidder. The term "Bidder" means any person who submits a Bid to EMTA in connection with a Competitive Bid Procurement.

1.2.4 Bid Form. The term "Bid Form" means the form of Bid designated by EMTA for use in a particular Competitive Bid Procurement.

1.2.5 Bid Package. The term "Bid Package" means all written documentation, including addenda and amendments, issued by EMTA in connection with a particular Competitive Bid Procurement. A Bid Package will normally include (but not necessarily be limited to) the following documents: (I) Invitation for Bids; (2) Instructions to Bidders; (3) Bid Form; (4) Bidder's checklist and/or forms/certifications required to be submitted with a Bid; (5) Specifications; (6) these Procurement Procedures; and (7) EMTA Standard Contract Terms.

1.2.6 Competitive Bid Procurement. The term "Competitive Bid Procurement" means a Procurement Proceeding which has been identified as such by EMTA. The nature of a Competitive Bid Procurement is more specifically described in Section 2.1.1, below.

1.2.7 Competitive Proposal Procurement. The term "Competitive Proposal Procurement" means a Procurement Proceeding which has been identified as such by EMTA.

The nature of a Competitive Proposal Procurement is more specifically described in Section

2.2.1, below.

1.2.8 Contract; Contract Documents. Unless otherwise specifically provided therein, any "Contract" entered into by EMTA pursuant to a Competitive Bid Procurement or a Competitive Proposal Procurement shall consist of: (1) the document executed by the Contractor and EMTA and containing the written obligation(s) entered into by the Contractor and EMTA as a result of a particular Competitive Procurement Proceeding, (2) EMTA's Competitive Invitation for Bids or Request for Proposals; (3) EMTA's Instructions to Bidders or Offerors (if applicable); (4) Specifications; (5) EMTA Standard Contract Terms; (6) the Contractor's Bid Form or Proposal submission, including any documents submitted in conjunction therewith; (7) the Contractor's DBE Assurance Form; (8) the Contractor's Non-Collusion Affidavit; (9) EMTA's Notice of Award; (10) all certifications submitted by the Contractor; and (11) such other documents as are incorporated within the above by reference. The documents set forth in this Section 1.2.8 are also referred to generally as the "Contract Documents."

1.2.9 Contractor. The term "Contractor" means the person that has been awarded an EMTA Contract in a particular Procurement Proceeding, has executed the appropriate Contract Documents evidencing the Contract, and has provided any required bonds and/or other financial security.

1.2.10 Disadvantaged Business Enterprise. The terms "Disadvantaged Business Enterprise" and "DBE" mean any concern which meets the definition of a Disadvantaged Business Enterprise as set forth in 49 C.F.R. Part 26. In general terms, a DBE is defined therein as a Small Business Concern (defined in Section 1.2.27 below): (1) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a corporation, 51% of the stock of which is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own such concern. "Socially and economically disadvantaged individuals" are individuals who are: (1) citizens of the United States (or lawfully admitted permanent residents); and (2) women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans or any other minorities or individuals found to be disadvantaged by the Small Business Administration, or by EMTA on a case-by-case basis. Note that if an individual's personal net worth (excluding his or her principal residence and his or her interest in the applicable firm) exceeds \$1,320,000, such individual is not an eligible DBE owner.

1.2.11 DOT. The terms "DOT" and "U.S. DOT" mean the United States Department of Transportation. Authority.

1.2.12 EMTA. The term "EMTA" means the Erie Metropolitan Transit

1.2.13 FTA. The term "FTA" means the Federal Transit Administration of the United States Department of Transportation.

1.2.14 Instructions to Bidders. The term "Instructions to Bidders" means the

written directions addressed to prospective Bidders which are identified by that name and which are issued by EMTA in connection with a particular Competitive Bid Procurement.

1.2.15 Invitation for Bids. The term "Invitation for Bids" means a written solicitation for Bids which is identified by that name and which is issued by EMTA in connection with a particular Competitive Bid Procurement.

1.2.16 Micro Purchase. The term "Micro Purchase" means the procurement of materials, labor, supplies, services and/or other items at a total cost which is less than the Micro Purchase Threshold.

1.2.17 Micro Purchase Threshold. The term "Micro Purchase Threshold" means the monetary limit established by FTA for procurements which may be made in accordance with FTA's Micro Purchase requirements.

1.2.18 Notice of Award. The term "Notice of Award" means written notification from EMTA to a Bidder or Offeror that the Board of EMTA (or, if appropriate, an authorized officer of EMTA) has authorized the execution of a Contract between the Bidder or Offeror and EMTA with respect to the Procurement Proceeding in question.

1.2.19 Offeror. The term "Offeror" means a person that has submitted a Proposal in response to a Request for Proposals issued by EMTA.

1.2.20 Person. The term "person" means an individual, corporation, partnership, limited liability company, limited liability partnership, or other legal entity, as the context may require.

1.2.21 Procurement Proceeding. The term "Procurement Proceeding" means the process by which, in a particular instance, EMTA procures materials, labor, supplies, services and/or other items. A Procurement Proceeding shall normally encompass one of the following methods of procurement: (1) Competitive Bid Procurement; (2) Competitive Proposal Procurement; (3) procurement by written purchase order; or (4) sole source procurement.

1.2.22 Proposal. The term "Proposal" means the submission of an Offeror in response to a Request for Proposals issued by EMTA in connection with a Competitive Proposal Procurement.

1.2.23 Proposal Package. The term "Proposal Package" means all written documentation, including addenda and amendments, issued by EMTA in connection with a particular Competitive Proposal Procurement. A Proposal Package will normally include (but not necessarily be limited to) the following documents: (1) Request for Proposals; (2) Offeror's checklist and/or forms/certifications required to be submitted with a Proposal; (3) Specifications, if appropriate; (4) these Procurement Procedures; and (5) EMTA Standard Contract Terms.

1.2.24 Protest Procedures. The term "Protest Procedures" means the written procedures which are established by the Board of EMTA for the handling of protests or complaints with respect to EMTA Procurement Proceedings.

1.2.25 Request for Proposals. The term "Request for Proposals" means a written solicitation for Proposals which is identified by that name and which is issued by EMTA in connection with a particular Competitive Proposal Procurement.

1.2.26 Simplified Acquisition Threshold. The term "Simplified Acquisition Threshold" means the monetary limit established by FTA for procurements which may be made in accordance with FTA's Small Purchase requirements.

1.2.27 Small Business Concern. The term "Small Business Concern" means a business entity meeting the definition set forth in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 C.F.R. part 121) that also does not exceed the cap on average annual gross receipts specified in 49 C.F.R. § 26.65(b).

1.2.28 Small Purchase. The term "Small Purchase" means the procurement of materials, labor, supplies, services and/or other items at a total cost which is less than the Simplified Acquisition Threshold.

1.2.29 Specifications. The term "Specifications" means a document which is identified by that name and which sets forth contractual terms, conditions, statements of work, performance requirements, quality requirements, design requirements, warranty requirements and/or other requirements pertaining to a particular EMTA Procurement Proceeding, and which is issued by EMTA in connection with such Procurement Proceeding.

1.2.30 Standard Contract Terms. The term "Standard Contract Terms" means the document of that name which has been adopted by the Board of EMTA and sets forth the standard terms and conditions included in Contracts awarded by EMTA pursuant to Competitive Bid Procurement, Competitive Proposal Procurement, and (where made applicable to such Procurement Proceeding) to Procurement Proceedings conducted by other methods.

1.2.31 State Act. The term "State Act" means the Pennsylvania Municipality Authorities Act, as amended and codified by Act 22 of 2001 at 53 Pa.C.S.A. § 5601 *et seq.*

1.2.32 Subcontractor. The term "Subcontractor" means any person from whom a Contractor purchases, leases, or otherwise acquires materials, labor, or equipment used in the performance of the Contractor's obligations under its Contract with EMTA.

1.3 Construction. For purposes of this EMTA Procurement Handbook, the singular shall include the plural and the plural the singular, and each gender shall include every other gender, as the context may require.

1.4 Captions. Captions used in this Procurement Handbook are for convenience only and shall not be construed as expanding, contracting or otherwise modifying the text of a Section. References to Section numbers shall be construed as including all subsidiary Sections, *i.e.*, for example, a reference to Section 3.1 would be deemed to include Sections 3.1.1, 3.1.2, 3.1.2.1, 3.1.2.2, 3.1.3, 3.1.3.1, and 3.1.3.2.

1.5 Governing Law. These Procurement Procedures shall be construed in accordance with the laws of the Commonwealth of Pennsylvania (without reference to any applicable principle of conflict of laws which would direct the application of the laws of another jurisdiction) and, to the extent relevant, applicable Federal law, Federal regulations, and FTA circulars, guidelines and procedures.

1.6 Submissions by Bidders and Offerors Made Subject to 18 Pa.C.S.A. § 4904. Every representation made to EMTA by a Bidder or Offeror and every Bid, Proposal, or other document submitted by a Bidder or Offeror to EMTA in connection with or in any way relating to an EMTA Procurement Proceeding, is made or submitted subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities. Notwithstanding the foregoing, nothing herein shall be construed as affecting or otherwise limiting the liability of a Bidder or Offeror under any other provision of law.

II. PROCUREMENT PROCEDURES AND CONTRACT FORMATION

2. Procurement Procedures and Contract Formation.

2.1 Competitive Bid Procurement.

2.1.1 Nature of Competitive Bid Procurement. A Competitive Bid Procurement is a competitive procurement methodology which is generally appropriate when the items and/or services to be procured are of such a nature, and can be described with such specificity, that competition primarily on the basis of price alone is both a feasible and reasonable method of procurement. A Competitive Bid Procurement generally lends itself to a firm fixed price (i.e. a lump sum or unit price) contract where discussions with two or more bidders after bids have been submitted are expected to be unnecessary as the award of the contract will be made based on price or price-related factors alone. This procurement methodology is appropriate if there are two or more responsible bidders willing and able to compete effectively for the business. A Competitive Bid Procurement generally contemplates that: (1) Specifications describing the items to be procured will be prepared; (2) an Invitation for Bids, Instructions to Bidders and other appropriate documents will be prepared and issued as part of the Bid Package to an adequate number of known suppliers; (3) sealed Bids will be received and publicly opened at a designated time and place; and (4) an Award of a Contract will be made to the lowest responsive and responsible Bidder.

2.1.2 Bid Package.

2.1.2.1 Generally, an appropriate Bid Package will be prepared and issued by EMTA with respect to a Competitive Bid Procurement. The Bid Package must include any specifications and pertinent attachments, describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid. The Bidders must be allowed sufficient time to prepare bids before the date of bid opening. It is the responsibility of a prospective Bidder to assure that it has a complete Bid Package. Bid Packages shall be provided to any prospective Bidder that requests a Bid Package. EMTA may, in its discretion, charge a reasonable copying fee for Bid Packages. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting or otherwise restricting the right of EMTA to furnish Bid Packages to prospective Bidders that

EMTA has reason to believe may be interested in submitting a Bid with respect to the Competitive Bid Procurement in question.

2.1.2.2 Amendments to Bid Package. EMTA reserves the right to amend or otherwise modify any part of the Bid Package at any time prior to the time designated for the opening of Bids. Such amendments or modifications shall be in writing and may be issued in the form of amendments, addenda, additional Bid Package documents or any combination thereof. A Bid Package may not be amended or modified other than by a writing issued by an authorized representative of EMTA. EMTA shall not be bound by, and a Bidder may not rely upon, amendments or modifications which are verbal or do not otherwise meet the requirements of this Section 2.1.2.2. All amendments and modifications to a Bid Package shall be provided to each prospective Bidder that: (1) had previously requested and/or received a Bid Package; or (2) was previously furnished a Bid Package by EMTA.

2.1.3 Form and Content of Bids. The form and content of a Bid must comply with all requirements set forth in the Bid Package. In particular, a Bidder must: (1) furnish all information requested by the Bid Package; and (2) sign and submit all Bid Forms, certifications and affidavits included in, or required by, the Bid Package. The failure of a Bidder to comply with the requirements of this Section 2.1.3 and the Bid Package may cause the Bid submitted by the Bidder to be considered non-responsive, and consequently rejected, by EMTA.

2.1.4 Bid Security. A Bidder shall include and submit with its Bid, Bid security in an amount equal to not less than five percent (5%) of the amount of its Bid (but not less than Two Hundred Dollars and 00/100 (\$200.00)). Bid security shall be in the form of: (1) a bank certified check; (2) a bank cashier's or treasurer's check; or (3) the Bidder's written undertaking or Bid bond, to which a corporation authorized to act as surety in the Commonwealth of Pennsylvania shall be surety, to be held and bound to EMTA, all conditioned that if EMTA shall determine to accept the Bidder's Bid and award it the Contract, the Bidder shall deliver any performance and payment bonds required and shall enter into and perform the Contract to which its Bid Form pertains; however, if the Contract shall be awarded to and entered into with another party, then the Bid security shall be null and void, but otherwise shall remain in full force and effect. Any written undertaking or Bid bond must be in a form acceptable to EMTA from a surety which is acceptable to EMTA.

2.1.5 Receipt and Opening of Bids.

2.1.5.1 Generally, Bids must be sealed and submitted to EMTA in conformity with the requirements of the Bid Package. Bids must be submitted to EMTA at the place designated in the Bid Package for their receipt and must be delivered to EMTA no later than the time designated in the Bid Package for their receipt by EMTA. The Bidder shall be solely responsible for the timely delivery of a complete and responsive Bid. EMTA shall in no way be responsible for delays in the delivery of the mail or delays in delivery caused by any other occurrence. Bids received after the time specified for their receipt by EMTA shall not be opened and shall be returned to the Bidder in question.

2.1.5.2 Bid Opening. Bids shall be publicly opened by EMTA at the place and time so designated in the Bid Package. All Bids shall be available for public inspection. EMTA reserves the right to make an abstract of the Bids submitted and to furnish

such abstract and/or other information regarding the Bids received to FTA, the media and other interested parties.

2.1.5.3 Postponement of Date for Receipt and/or Opening of Bids.

EMTA reserves the right to postpone: (1) the time designated for the receipt of Bids by EMTA; and (2) the time for the opening of the Bids. EMTA shall give notice of any such postponement to each prospective Bidder that: (1) had previously requested and/or received a Bid Package; or

(2) was previously furnished a Bid Package by EMTA.

2.1.6 Binding Effect of Bids. Subject to the provisions of Sections 2.1.7 and

2.1.10.4 below, and applicable law, a Bid shall be binding on the Bidder for sixty (60) days from the date fixed for its receipt in the Bid Package, unless the Bid Package explicitly specifies a different period of time. The binding effect of a Bid may be extended beyond the date set for the expiration of the Bid upon the mutual consent of EMTA and the Bidder.

2.1.7 : Withdrawal of Bids.

2.1.7.1 Prior to Opening of Bids. A Bid may be withdrawn by a Bidder at any time prior to the opening of Bids by EMTA.

2.1.7.2 Following Opening of Bids. A Bid may not be withdrawn by the Bidder following the opening of Bids. Notwithstanding the foregoing, a Bidder may withdraw a Bid to the extent permitted by, and upon compliance with the requirements of, the Act of January 23, 1974, P.L. 9, No. 4 (73 P.S. §§ 1601-1608).

2.1.8 Waiver of Defects; Clarification and/or Modification of Bids.

2.1.8.1 Waiver of Defects. EMTA reserves the right to waive defects in a Bid which are not prejudicial to other Bidders. EMTA reserves the right to impose such conditions or restrictions on any such waiver as are necessary and appropriate to assure that such waiver is not prejudicial to other Bidders.

2.1.8.2 Clarification and/or Modification of Bids. Except as may otherwise be provided by law or this Section 2.1.8.2, a Bidder may not clarify and/or modify its Bid after the opening of Bids by EMTA. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting or restricting EMTA, in its sole discretion, from requesting or considering clarifications and/or modifications of a Bid so long as such clarification and/or modification is not prejudicial to other Bidders.

2.1.8.3 Definition of "Prejudicial". For purposes of this Section 2.1.8, the term "prejudicial" refers to any waiver, clarification and/or modification which would confer an unfair advantage on one Bidder over another, or which would otherwise impair the integrity of EMTA's Competitive Bid Procurement.

2.1.9 Rejection of Bids. EMTA reserves the right, in its discretion and for any

reason, to reject all Bids and to: (1) re-initiate the Procurement Proceeding in question;(2) abandon the Procurement Proceeding in question altogether; or (3) re-initiate the Procurement Proceeding in question in a different scope, form, manner or otherwise.

2.1.10 Contract Award.

2.1.10.1 Award of Contract; Revocation of Award. A Contract shall be awarded pursuant to a resolution of the EMTA Board or, when approval of the EMTA Board is not required, by a determination by an authorized EMTA official. The successful Bidder will be notified in writing of the Award of the Contract through the issuance of a Notice of Award. EMTA shall have no contractual obligations whatsoever to a Bidder prior to the issuance of a Notice of Award and the execution of the appropriate formal Contract Documents by the Bidder and EMTA. Subject to the provisions of 62 Pa.C.S. § 3911 (regarding construction contracts in excess of Fifty Thousand Dollars (\$50,000)), a Notice of Award will be issued at such time as is determined appropriate by EMTA, but in no event prior to the expiration of the period for filing a protest following the Award of a Contract, as provided in the EMTA Protest Procedures. EMTA reserves the right to revoke any Award, without any liability whatsoever on the part of EMTA, at any time prior to the execution of the appropriate Contract Documents by the Bidder and EMTA, and regardless of whether a Notice of Award has been or has not been issued by EMTA.

2.1.10.2 Execution of Contract Documents; Delivery of Bonds. All Contract Awards are conditioned upon the Bidder's execution of any required Contract documents and delivery of any required bonds and/or other financial security within ten (10) working days of the issuance of EMTA's Notice of Award. EMTA reserves the right to extend the date for the execution of Contract Documents and/or the delivery of required bonds or financial security: *Provided, however,* that such extension shall not be effective unless: (1) the extension is in writing; (2) the extension is signed by an appropriate EMTA official; and (3) the extension specifies a date certain on which the Contract documents and/or bonds must be executed and/or delivered. All Bonds furnished by a Bidder must: (1) comply with the provisions of Article III, below; (2) be maintained for at least the duration of the project (excepting Bid security); and (3) to the extent applicable comply with the requirements of the

Public Works Contractors' Bond Law of 1967 (8 P.S. §§ 191-202), as amended. The failure of the Bidder to execute the appropriate Contract Documents, to supply all required bonds and/or to otherwise comply with the requirements of this Section 2.1.10.2, shall result in the forfeiture of the Bidder's Bid security, shall constitute a material breach of the Contract, and shall render the Bidder liable to such other damages, and such other remedies, as EMTA may be entitled at law or in equity.

2.1.10.3 Form of Execution Documents. The Contract Documents to be executed by the successful Bidder shall be in such form as is determined by EMTA to appropriately and properly evidence the Contract: *Provided, however,* that such execution documents shall not materially modify any of the contractual obligations of the parties as reflected in the Bid Package and the successful Bidder's Bid Form.

2.1.10.4 Contracts for Construction or Reconstruction, etc. in Excess of

\$50,000. Notwithstanding any other provision of these Procurement Procedures, Contracts exceeding Fifty Thousand Dollars (\$50,000) for the construction, reconstruction, alteration

or repair of any public building or other public work or public improvement, including heating or plumbing contracts, under the terms of which the Contractor is required to give a performance bond and labor and material payment bond as provided by the Public Works Contractors' Bond Law of 1967, shall be subject to the provisions of 62 Pa.C.S.A. § 3912, as amended, regarding the time for executing Contract documents.

2.1.11 Modification of Procedures for Competitive Bid Procurements. The provisions of this Section 2.1 are intended to set forth the general procedures, terms and conditions under which EMTA awards Contracts pursuant to a Competitive Bid Procurement. These procedures, terms and conditions may be modified and/or supplemented by EMTA, in its discretion, with respect to any particular Competitive Bid Procurement. Such modifications and/or supplements shall be set forth in the Invitation for Bids, the Instructions to Bidders, the Specifications and/or other documents constituting the Bid Package with respect to the Competitive Bid Procurement in question. To the extent that the provisions of this Section 2.1 may conflict with the provisions of other documents constituting a part of the Bid Package, the terms and conditions of such other documents shall prevail.

2.2 Competitive Proposal Procurement.

2.2.1 Nature of Competitive Proposal Procurement. A Competitive Proposal Procurement is a competitive procurement methodology which may be appropriate when competition on the basis of price alone is not a feasible method of procurement or otherwise is not in the best interests of EMTA due to the nature of the items and/or services being procured. A Competitive Proposal Procurement generally contemplates that: (1) Offerors shall submit Proposals to EMTA which shall be evaluated in accordance with criteria set forth in the Request for Proposals issued by EMTA; (2) discussions or competitive negotiations shall take place between EMTA and one or more Offerors whose Proposals are in the "competitive range"; and (3) a Contract shall be awarded to the Offeror whose final Proposal is most advantageous to EMTA with price and other factors considered.

2.2.2 Proposal Package.

2.2.2.1 Generally, an appropriate Proposal Package will be prepared and issued by EMTA with respect to a Competitive Proposal Procurement. Proposal Packages shall be provided to any prospective Offeror that requests a Proposal Package. EMTA may, in its discretion, charge a reasonable copying fee for Proposal Packages. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting or otherwise restricting the right of EMTA to furnish Proposal Packages to prospective Offerors that EMTA has reason to believe may be interested in submitting a Proposal with respect to the Competitive Proposal Procurement in question.

2.2.2.2 Amendments to Proposal Package. EMTA reserves the right to amend or otherwise modify any part of a Proposal Package at any time prior to the time designated for the receipt of Proposals. Such amendments or modifications shall be in writing and may be issued in the form of amendments, addenda, additional Proposal Package documents or any combination thereof. A Proposal Package may not be amended or modified other than by a writing

issued by an authorized representative of EMTA. EMTA shall not be bound by, and an Offeror may not rely upon, amendments or modifications which are verbal or do not otherwise meet the requirements of this Section 2.2.2.2. All amendments and modifications to a Proposal Package shall be provided to each prospective Offeror that: (1) had previously requested and/or received a Proposal Package; or (2) was previously furnished a Proposal Package by EMTA.

2.2.3 Form and Content of Proposals. The form and content of a Proposal must comply with all requirements set forth in the Proposal Package. In particular, an Offeror must: (!) furnish all information requested by the Proposal Package; and (2) sign and submit all forms, certifications and affidavits included in, or required by, the Proposal Package. Failure of an Offeror to comply with the requirements of this Section 2.2.3 and the Proposal Package may cause the Proposal submitted by the Offeror to be considered non-responsive, and consequently rejected by EMTA.

2.2.4 Proposal Security. Unless otherwise specified in the Proposal Package, an Offeror shall not be required to submit security with its Proposal.

2.2.5 Receipt and Opening of Proposals.

2.2.5.1 Generally, Proposals must be sealed and submitted to EMTA in conformity with the requirements of the Proposal Package. Proposals must be submitted to EMTA at the place designated in the Proposal Package for their receipt and must be delivered to EMTA no later than the time designated in the Proposal Package for their receipt by EMTA. The Offeror shall be solely responsible for the timely delivery of a complete and responsive Proposal. EMTA shall in no way be responsible for delays in the delivery of the mail or delays in delivery caused by any other occurrence. Proposals received after the time specified for their receipt by EMTA may be considered non-responsive by EMTA and rejected. In such case, the Proposal shall not be opened and shall be returned to the Offeror in question. Notwithstanding

the foregoing, EMTA may, in its discretion, consider a late Proposal if EMTA determines: (1) consideration of the late Proposal will not confer an unfair advantage on the Offeror as compared to other Offerors; (2) consideration of the late Proposal will not impair the integrity of EMTA's Competitive Proposal Procurement; and (3) consideration of the late Proposal is in the best interests of EMTA.

2.2.5.2 Opening of Proposals. As described in Section 2.2.11, below, it is generally contemplated that an Award of a Contract shall be made on the basis of competitive negotiations with one or more Offerors. Accordingly, unless the Proposal Package otherwise specifies, the contents of a Proposal shall not be publicly disclosed and shall not be disclosed to other Offerors. Notwithstanding the foregoing, nothing in this Section 2.2.5.2 or the Proposal Package shall be construed as prohibiting the disclosure of documents and/or information which EMTA may otherwise be required to disclose pursuant to applicable law.

2.2.6 Binding Effect of Initial Proposals. Unless otherwise provided in the Proposal Package, the initial Proposal submitted by an Offeror to EMTA shall be binding upon the Offeror for a period of sixty (60) days from the date fixed for its receipt in the Proposal Package. The initial Proposal shall remain binding on the Offeror as provided in this Section

2.2.6 regardless of whether EMTA enters into competitive negotiations with the Offeror in question and/or other Offerors, as contemplated in Section 2.2.11, below. The binding effect of such Proposal may be extended beyond the date set for the expiration of a Proposal upon the mutual consent of EMTA and the Offeror in question.

2.2.7 Withdrawal of Proposals. Unless otherwise provided in the Proposal Package, the initial Proposal of an Offeror may not be withdrawn following the date fixed for the receipt of Proposals in the Proposal Package. Such Proposal shall remain in effect for the period specified in Section 2.2.6, above.

2.2.8 Waiver of Defects; Clarification and/or Modification of Proposals.

2.2.8.1 Waiver of Defects. EMTA reserves the right to waive defects in a Proposal which are not prejudicial to other Offerors. EMTA reserves the right to impose such conditions or restrictions on any such waiver as are necessary and appropriate to assure that such waiver is not prejudicial to other Offerors.

2.2.8.2 Clarification and/or Modification of Proposals. Subject to the provisions of Sections 2.2.6 and 2.2.7, above, regarding the binding effect and withdrawal of initial Proposals, it is generally contemplated that Offerors shall be permitted to make clarifications and modifications to their Proposal for purposes of negotiation during the competitive negotiation process, as contemplated by Section 2.2.11, below. Notwithstanding the foregoing, EMTA reserves the right to decline to permit a clarification or modification of an Offeror's initial Proposal if to do so would confer an unfair advantage upon the Offeror in question or would otherwise impair the integrity of EMTA's Competitive Proposal Procurement.

2.2.8.3 Definition of "Prejudicial". For purposes of this Section 2.2.8, the term "prejudicial" refers to any waiver, clarification and/or modification which would confer an unfair advantage on one Offeror over another, or which would otherwise impair the integrity of EMTA's Competitive Proposal Procurement.

2.2.9 Rejection of Proposals. EMTA reserves the right, in its discretion and for any reason, to reject all Proposals and to: (I) re-initiate the Procurement Proceeding in question; (2) abandon the Procurement Proceeding in question altogether; or (3) re-initiate the Procurement Proceeding in question in a different scope, form, manner, or otherwise.

2.2.10 Award of Contract Without Negotiation. Notwithstanding the provisions of Section 2.2.11, below, EMTA may, in its discretion, make an award of a Contract to the Offeror whose Proposal is most advantageous to EMTA without entering into competitive negotiations, conducting any written or oral discussions with any Offerors, or soliciting BAFOs, as described in Section 2.2.11, below. In such case, the Award shall be made by the issuance of a Notice of Award in the manner specified in Section 2.2.12.1, below.

2.2.11 Competitive Negotiations.

2.2.11.1 Discussions with Offerors in the Competitive Range. Offerors

whose proposals are found by EMTA to be in the competitive range will be notified of such in writing. If deemed helpful or necessary to facilitate the Proposal evaluation process, EMTA may pose questions or request clarifications regarding the Proposals of Offerors found to be within the competitive range. Each such Offeror may be invited for a private meeting(s) with EMTA to discuss any facet of the Offeror's proposal, to provide answers to written or oral questions, and to offer clarifications regarding a Proposal and/or the Competitive Proposal Procurement in question. In the event that a Proposal contains any conditions, exceptions or reservations related to any term found in the Proposal Package, such conditions and/or exceptions may be negotiated during these meetings. However, EMTA reserves the right to reject any and all such conditions and/or exceptions, and to instruct the Offeror to amend its Proposal and remove said conditions and/or exceptions. The failure of any Offeror to comply with such instructions shall be cause for EMTA to find such Proposal to be outside the competitive range.

2.2.11.2 Information Not Provided to Offerors During Discussions. No information concerning an Offeror's Proposal, financial or otherwise, will be provided to any other Offeror. Offerors will not be given a specific price, or specific financial requirements, that must be met in order to gain further consideration by EMTA; however, EMTA may provide information to the effect that an Offeror's proposed price is unacceptable, or that it is too high with respect to the market value of such goods or services. Offerors will not be told of their respective rankings.

2.2.11.3 Best and Final Offers. After all meetings between Offerors in the competitive range and EMTA have been completed, each of such Offerors will be notified by EMTA of the opportunity to amend its initial Proposal and submit to EMTA a Best and Final Offer ("BAFO"). EMTA shall establish a common date and time for submission of written BAFOs. If Offerors do not submit a BAFO, their immediate previous Proposal will be construed as their BAFO. Any modifications to an initial Proposal shall be identified by an Offeror in its BAFO. BAFOs will be evaluated by EMTA according to the same requirements and criteria as initial Proposals.

2.2.12 Contract Award.

2.2.12.1 Award of Contract. A Contract shall be awarded pursuant to a resolution of the EMTA Board of Directors or, when approval of the EMTA Board of Directors is not required, by a determination by an authorized EMTA official. The successful Offeror will be notified in writing of the Award of the Contract through the issuance of a Notice of Award. EMTA shall have no contractual obligation whatsoever to an Offeror prior to the issuance of a Notice of Award and the execution of the appropriate Contract Documents by the Offeror and EMTA. A Notice of Award will be issued at such time as is determined appropriate by EMTA, but in no event prior to the expiration of the period for filing a protest following the Award of a Contract, as provided in the EMTA Protest Procedures. EMTA reserves the right to revoke any Award, without any liability whatsoever on the part of EMTA, at any time prior to the execution of the appropriate Contract Documents by the Offeror and EMTA, and regardless of whether a Notice of Award has been or has not been issued by EMTA.

2.2.12.2 Execution of Contract Documents; Delivery of Bonds.

All Contract Awards are conditioned upon the Offeror's execution of any required Contract Documents and delivery of any required bonds and/or other financial security within ten (10) working days of the issuance of EMTA's Notice of Award. EMTA reserves the right to extend the date for the execution of Contract Documents and/or the delivery of required bonds or financial security: *Provided, however,* that such extension shall not be effective unless: (1) the extension is in writing; (2) the extension is signed by an appropriate EMTA official; and (3) the extension specifies a date certain on which the documents and/or bonds must be executed and/or delivered. All Bonds furnished by an Offeror must: (1) comply with the provisions of Article III, below; (2) be maintained for at least the duration of the project; and (3) comply with the requirements of the Public Works Contractors' Bond Law of 1967 (8 P.S. §§ 191-202), as amended. The failure of the Offeror to execute the appropriate Contract documents, to supply all required bonds, and/or to otherwise comply with the requirements of this Section 2.2.12.2 shall result in the forfeiture of the Offeror's Proposal security, if any, shall constitute a material breach of the Contract, and shall render the Offeror liable to such other damages, and such other remedies, as EMTA may be entitled at law or in equity.

2.2.13 Modification of Procedures for Competitive Proposal Procurements. The provisions of this Section 2.2 are intended to set forth the general procedures, terms and conditions under which EMTA awards Contracts pursuant to a Competitive Proposal Procurement. These procedures, terms and conditions may be modified and/or supplemented by EMTA, in its discretion, with respect to any particular Competitive Proposal Procurement. Such modifications and/or supplements shall be set forth in the Request for Proposals, the Specifications and/or other documents constituting the Proposal Package with respect to the Competitive Proposal Procurement in question. To the extent that the provisions of this Section

2.2 may conflict with the provisions of other documents constituting a part of the Proposal Package, the terms and conditions of such other documents shall prevail.

2.3 Other Procurement Methods.

2.3.1 Purchase Orders. In accordance with the terms of Sections 3.1 and 3.2 of EMTA Procurement Policies, Part II of the EMTA Procurement Handbook, from time to time EMTA's Executive Director may issue a written purchase order, which is an offer to a potential Contractor to buy supplies or services at a specified price. The Contractor accepts the offer made by EMTA in its purchase order (1) by signing the purchase order, if so required by the purchase order, or (2) by actually performing in accordance with the terms of the purchase order. An accepted offer made pursuant to a purchase order becomes an enforceable contract, and the accepting Contractor is legally bound to comply with the terms and conditions of the purchase order and all terms and conditions referenced therein. Every purchase order issued by EMTA and financed in whole or in part using Federal funds shall be deemed to incorporate, and shall be subject to, all contract provisions required by Federal statutes and executive orders and their implementing regulations.

2.3.2 Sole Source Procurement. EMTA may engage in sole source (noncompetitive) procurements when the award of a Contract is infeasible under small purchase procedures, Competitive Bid or Proposal Procurement, and when certain other restrictions apply, as set forth in Section 4.1 of EMTA Procurement Policies, Part II of the EMTA Procurement

Handbook. Sole source procurement Contracts are formed following negotiation and agreement between EMTA and the Contractor with regard to price and key requirements of the Procurement Proceeding, and upon execution of a written Contract or acceptance by the Contractor of an EMTA purchase order. Sole source procurements shall be administered in accordance with the terms and conditions of the EMTA Procurement Policies.

2.3.3 Multi-step Sealed Bidding. Multi-step sealed bidding is a two phase procurement process designed to obtain the benefit of competitive bidding by award of a Contract to the lowest responsive, responsible bidder, and, at the same time, to obtain the benefit of the competitive proposal method of procurement through soliciting technical offers and conducting discussions to determine the acceptability of the technical offers. EMTA's policy with regard to multi-step sealed bidding is set forth in Section 4.2 of EMTA Procurement Policies, Part II of the EMTA Procurement Handbook. Multi-step sealed bidding procurements shall be administered in accordance with the terms and conditions of the EMTA Procurement Policies.

2.3.4 Contract Formation for Other Than Competitive Bid and Proposal Procurements. Irrespective of the type of Contract, no Contract shall be effective until executed in writing by the appropriate EMTA official(s) or authorized personnel.

2.4 Particular Procurements - Selection of Architects and Engineers. EMTA shall encourage architectural and engineering firms to submit annually a statement of qualifications and performance data. For each proposed project which requires architectural and engineering

services, as that term is defined in 40 U.S.C. § 1101, EMTA shall evaluate the current statements of qualifications and performance data of architectural and engineering firms on file with EMTA, together with statements submitted by other firms regarding the proposed project. EMTA shall conduct discussions with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services. From the firms with which discussions have been conducted, EMTA shall select, in order of preference, at least three firms that EMTA considers to be highly qualified to provide the services required. Selection shall be based on criteria established and published by EMTA. If EMTA is unable to negotiate a satisfactory contract with the firm, EMTA shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If EMTA is unable to negotiate a satisfactory contract with any of the selected firms, EMTA shall select additional firms in order of their competence and qualification and continue negotiating in accordance with this Section 2.4 until an agreement is reached. EMTA shall negotiate a contract for architectural and engineering services at compensation which EMTA determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, EMTA shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered. The provisions of this Section 2.4 are intended to reflect, and shall be applied in accordance with, the Brooks Act, 40 U.S.C. § 1102 *et seq.*

III. BONDING REQUIREMENTS

3. Bonding Requirements.

3.1 Bonding Requirements for Construction Contracts.

3.1.1 Generally, Pursuant to the State Act, EMTA shall only enter into Contracts for construction or improvement or repair of a project with Contractors who provide an undertaking or undertakings with a qualified surety approved by EMTA, and in an amount fixed by EMTA, for the faithful performance of the relevant Contract. Each Contractor entering into a Contract for construction with EMTA shall agree to pay for all materials furnished and services rendered for the performance of the Contract, and to secure such obligations by providing performance and payment bonds as set forth below.

3.1.2 Performance Bond.

3.1.2.1 Bond Requirements. The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price. EMTA may require additional performance bond protection when a Contract price is increased pursuant to a change order or amendment to the Contract. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. EMTA may secure such additional protection by directing the Contractor (I) to increase the penal amount of its existing bond, or (2) to obtain an additional bond.

3.1.2.2 Financial Security in Lieu of Performance Bond. In lieu of the performance bond required pursuant to Section 3.1.2.1, above, EMTA may accept, in specified

Procurement Proceedings, such other financial security as is acceptable to and approved by EMTA and which conforms with the requirements of Section 3.1 of the Public Works Contractors' Bond Law of 1967 (8 P.S. § 193.1), as amended. The willingness of EMTA to accept other financial security, and the manner in which such other financial security shall be accepted and approved by EMTA, are set forth in the Instructions to Bidders, Request for Proposals, and/or the Specifications. In the event that the Instructions to Bidders, Request for Proposals, and Specifications do not provide that EMTA is willing to accept other financial security in lieu of a performance bond, the provisions of this Section 3.1.2.2. shall not apply and the successful Bidder or Offeror shall be required to post a performance bond as provided in Section 3.1.2.1 above.

3.1.3 Payment Bond.

3.1.3.1 Bond Requirements. The penal amount of payment bonds for the protection of persons supplying labor and material to the Contractor shall be one hundred percent (100%) of the original Contract price, to secure the prompt payment for material furnished and labor performed in connection with the Contract. EMTA may require additional payment bond protection when a Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. EMTA may secure such additional protection by directing the Contractor (I) to increase the penal amount of its existing bond, or (2) to obtain an additional bond.

3.1.3.2 Financial Security in Lieu of Payment Bond. In lieu of the payment bond required pursuant to Section 3.1.3.1, above, EMTA may accept, in specified

Procurement Proceedings, such other financial security as is acceptable to and approved by EMTA and which conforms with the requirements of Section 3.1 of the Public Works Contractors' Bond Law of 1967 (8 P.S. § 193.1), as amended. The willingness of EMTA to accept other financial security and the manner in which such other financial security shall be accepted and approved by EMTA, are set forth in the Instructions to Bidders, Request for Proposals, and/or the Specifications. In the event that the Instructions to Bidders, Request for Proposals, and Specifications do not provide that EMTA is willing to accept other financial security in lieu of a performance bond, the provisions of this Section 3.1.3.2 shall not apply and the successful Bidder or Offeror shall be required to post a payment bond as provided in Section 3.1.3.1, above.

3.2 Other Bonding Requirements. EMTA, in its sole discretion, may require additional security from the Contractor with regard to particular Contracts. Such requirements shall be set forth in the Instructions to Bidders, Request for Proposals, and/or the Specifications.

IV. CERTIFICATIONS

4. Certifications.

4.1 Buy America Certifications.

4.1.1 General Requirements. Notice is given that as required by Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 53230), and as supplemented by United States Federal Transit Administration regulations, 49 C.F.R. Part 661, all steel, iron and manufactured products used in any EMTA project must be produced in the United States. Any person who by Bid, Proposal, or other method intends to make a Contract with EMTA shall submit with such person's Bid or Proposal a certificate indicating that such person will comply with the aforesaid statutory and regulatory requirements.

4.1.2 Noncompliance. If the Bidder or Offeror is unable to provide the certification required by Section 4.1.1, the Bidder or Offeror must submit a statement of noncompliance to EMTA to that effect. Such Bidder may further state facts that it believes support a waiver of the requirements of Section 165 of the Surface Transportation Assistance Act of 1982, as set forth in the regulations at 49 C.F.R. § 661.7. EMTA reserves the right to reject any Bid or Proposal which fails to contain the certification required by Section 4.1.1 if FTA determines the project does not qualify for a waiver under 49 C.F.R. § 661.7. Notwithstanding the provisions of this Section 4.1.2, nothing herein shall be construed as exempting or otherwise relieving a Bidder, Offeror, or Contractor of its obligations under Sections 4.2.1 and 4.2.2 below.

4.1.3 Form of Certification. Any certification made pursuant to this Section 4.1 shall conform to the requirements of 49 C.F.R. Part 661 with respect to the wording of such certifications. Failure to submit the required certification may result in the Bid or Proposal being considered non-responsive. A false certification is a criminal violation.

4.1.4 Waiver. The requirements of this Section 4.1 shall not apply to any Procurement Proceeding for which a current and valid waiver is in effect. Such waivers include (but are not limited to) any public interest waivers for micro-purchases and/or small purchases.

4.2 Certifications Relating to State Restrictions on Imported Products.

4.2.1 Steel Products. Unless the requirements of this Section 4.2 are specifically waived by EMTA in writing, all steel products used or supplied in the performance of any Contract (and any subcontracts thereunder) for construction, reconstruction, etc. of public works as contemplated by Section 5614(g) of the State Act or Section 4(a) of the Steel Products Procurement Act (73 P.S. §§ 1881-1887), shall be from steel made in the United States. By submitting a Bid or Proposal on any EMTA Procurement Proceeding for the construction, reconstruction, etc. of public works, the Bidder or Offeror shall be deemed to have certified to EMTA that it has complied, and shall comply, with the requirements of Section 5614(g) of the State Act and the Steel Products Procurement Act (73 P.S. §§ 1881-1887).

4.2.2 Compliance with Motor Vehicle Procurement Act, 62 Pa.C.S.A. §§ 3731-

3736. Unless the requirements of this Paragraph 4.2.2 are specifically waived by EMTA in writing, all motor vehicles procured by EMTA shall have been manufactured in North America, i.e., a substantial majority of the principal components shall have been assembled into the final product in an assembly plant in North America. By submitting a Bid or Proposal on any EMTA Procurement Proceeding for motor vehicles, the Bidder or Offeror shall be deemed to have certified to EMTA that it has complied, and shall comply, with the requirements of this Paragraph 4.2.2 and the Motor Vehicle Procurement Act, 62 Pa.C.S. §§ 3731-3736.

4.3 Certifications with Respect to Federal Public Works Projects.

4.3.1 Definition. The definitions pertaining to this Section 4.3 are those that are set forth in Section 1.2 of these Procurement Procedures and 49 C.F.R. §§ 30.7-30.9.

4.3.2 Applicability. Unless otherwise provided in the Instructions to Bidders, Request for Proposals, or the Specifications, the provisions of this Section 4.3 shall be applicable to all EMTA Procurement Proceedings which qualify as a Federal public works project within the meaning of 49 C.F.R. Part 30.

4.3.3 Certification. By submitting its Bid or Proposal, the Bidder or Offeror certifies that with respect to its Bid or Proposal, and any resultant Contract, the Bidder or Offeror

(i) Is not a contractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (U.S.T.R.);

(ii) Has not entered into any contract or subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; and

(iii) Has not entered into any subcontract for any product to be used on the public works project in question that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

4.3.4 Criminal Liability. The certification made pursuant to this Section 4.3 concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

4.3.5 Notice. The Bidder or Offeror shall provide immediate written notice to EMTA if, at any time prior to or following the Contract Award, the Bidder or Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4.3.6 Restrictions on Contract Award. No Contract will be awarded to a Bidder or Offeror: (1) that is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or (2) whose subcontractors are owned or controlled by one or more citizens or nationals

of a foreign country on such U.S.T.R. list or (3) that will or intends to incorporate in the public works project any product of a foreign country on such U.S.T.R. list, unless a waiver to these restrictions is granted by the President of the United States or the United States Secretary of Transportation.

4.3.7 Restrictions on Subcontracts. A Contractor shall not knowingly enter into any subcontract under an EMTA Contract: (1) with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or (2) for the supply of any product for use on the public works project under an EMTA Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

4.3.8 Solicitations to Subcontractors; Subcontract Provisions. The Bidder or Offeror agrees that, if awarded an EMTA Contract, it will incorporate in any subcontract, for the furnishing of services or products to be used in the public works project in question, the provisions of 49 C.F.R. §§ 30.13 and 30.15. Copies of the relevant provisions of 49 C.F.R. §§ 30.13 and 30.15 are available from EMTA upon request.

4.4 Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

4.4.1 General Certification. Unless an explanation to the contrary is attached to a Bidder's Bid or an Offeror's Proposal as set forth in Section 4.4.3, below, every Bidder or Offeror in an EMTA Procurement Proceeding certifies, by submission of its Bid or Proposal, that neither it nor its principals (as defined in 2 C.F.R. Part 180), or any Subcontractors are presently debarred, declared ineligible, or voluntarily excluded from participation in any Federally assisted transactions or any Procurement Proceedings by any Federal department or agency.

4.4.2 Certification Requirements for Contracts Equal to or in Excess of \$25,000. In accordance with 2 C.F.R. Part 180, 2 C.F.R. Part 1200, and 48 C.F.R. Chapter 1, Part 9.4, in any EMTA Contract for an amount equal to or in excess of \$25,000, a Bidder or Offeror shall submit with its Bid or Proposal, a written certification certifying that neither it nor its principals (as defined in 2 C.F.R. Part 180) or any Subcontractors are presently debarred, declared ineligible, or voluntarily excluded from participation in any Federally assisted transactions or any Procurement Proceedings by any Federal department or agency.

4.4.3 Inability to Make Certification. If a Bidder or Offeror is unable to make the certifications required by Sections 4.4.1 and/or 4.4.2, above, such Bidder or Offeror shall attach an explanation thereof to its Bid or Proposal. Such explanation shall be prominently identified and shall be set forth as a separate document in the Bidder's or the Offeror's submission to EMTA.

4.5 Certifications with Respect to Lobbying.

4.5.1 Generally. Federal law prohibits the use of any Federal appropriated funds for lobbying activities with respect to any Federal contract, grant, loan, or cooperative agreement. If the contractor, grantee, borrower, or participant in a cooperative agreement uses non-Federal funds to conduct such lobbying activities, such party is required to disclose the lobbying activities on

Standard Form - **LLL**, "Disclosure Form to Report Lobbying." Each contractor, grantee, borrower, or participant in a cooperative agreement with the Federal government must certify compliance with the foregoing restrictions. Such certifications must likewise be obtained from all subcontractors and subgrantees, at any tier, whose subcontract or subgrant exceeds \$100,000. Accordingly, the provisions of this Section 4.5 shall apply to all EMTA Contracts in excess of \$100,000.

4.5.2 EMTA Contracts in Excess of \$100,000. Each Bidder or Offeror for an EMTA Contract in excess of \$100,000 shall submit with its Bid or Proposal a certification with respect to lobbying in the form required by 49 C.F.R. Part 20, Appendix A.

4.5.3 Subcontracts in Excess of \$100,000. Each EMTA Contractor shall obtain from every Subcontractor whose subcontract exceeds \$100,000 a certification with respect to lobbying in the form required by 49 C.F.R. Part 20, Appendix A. Such certification shall be obtained by the Contractor before execution of the subcontract in question, and shall be submitted to EMTA within five (5) business days after execution of the subcontract.

4.6 Non-Collusion Affidavit. Every Bidder or Offeror on an EMTA Contract shall submit with its Bid or Proposal a "Non-Collusion Affidavit" in a form prescribed by, or otherwise acceptable to, EMTA. The affidavit shall contain, *inter alia*, a certification that the Bidder or Offeror has not discussed its Bid or Proposal with other potential Bidders or Offerors, or otherwise participated in collusive activities with other potential Bidders or Offerors for the purpose of impairing or defeating the purposes of EMTA's Competitive Procurement Proceedings.

4.7 Disadvantaged Business Enterprise Certifications. EMTA recognizes that any percentage goals established pursuant to the Disadvantaged Business Enterprise Program discussed in Article V below may not be attainable in each and every one of the Contracts it shall let, but expects the utmost cooperation and good faith from all persons to whom such Contracts may be let. EMTA's Bid Package or Proposal Package shall include the form of an "Assurance" to be executed under oath by each Bidder or Offeror whereon such Bidder or Offeror shall affirm that it is or is not a Disadvantaged Business Enterprise, and if not, whether it has made a good faith effort to procure Disadvantaged Business Enterprise participation in the Contract for which the Bid or Proposal is made. The Assurance shall detail: (!) whether a Disadvantaged Business Enterprise will be participating in the Contract, and if not, why not, setting forth any good faith efforts of the Bidder or Offeror to procure Disadvantaged Business Enterprise Contract participation; (2) if a Disadvantaged Business Enterprise is participating, the identity thereof and, expressed in dollars and as a percentage of the Bidder's or Offeror's actual Bid or Proposal, the extent of the participation by the Disadvantaged Business Enterprise; (3) that the Bidder or

Offeror knows of no circumstances which would make any of the facts set forth in the Assurances untrue or misleading to EMTA; and (4) that the Bidder or Offeror acknowledges that if a Contract Award is made to the Bidder or Offeror by EMTA, it will be made in partial reliance upon the Assurance given. Any person intending to submit a Bid or Proposal to EMTA may, in writing addressed to EMTA's Executive Director and received not less than seven (7) days prior to the date on which a Bid or Proposal is to be submitted to EMTA, request a pre-bid or pre-proposal conference with EMTA so as to secure access to further details pertaining to EMTA's Disadvantaged Business Enterprise Program.

Each disadvantaged individual seeking certification for his or her firm must also submit a notarized certification of disadvantage and a statement of personal net worth. If an individual's personal net worth (excluding his or her principal residence and his or her interest in the applicant firm) exceeds \$1,320,000, the person is not an eligible DBE owner.

V. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

5. Disadvantaged Business Enterprises.

5.1 Disadvantaged Business Enterprise Program. In compliance with Federal law, including the Surface Transportation Assistance Act of 1982, as supplemented by the DOT regulations, 49 C.F.R. Part 26, EMTA has adopted its Disadvantaged Business Enterprise Program, a copy of which may be examined at EMTA's offices. In connection with this Program, EMTA from time to time establishes goals of expending not less than a specified percentage of the total amount of Federal funds allocated to its third party contracts for Contract participation by Disadvantaged Business Enterprises.

A Disadvantaged Business Enterprise is defined as:

a for-profit small business concern (a) which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of a corporation, 51 percent of the stock of which is owned by one or more such individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The term "socially and economically disadvantaged individuals" means individuals who are citizens (or lawfully admitted permanent residents) of the United States and who are:

- (!) individuals whom EMTA finds, on a case-by-case basis, to be socially and economically disadvantaged; or
- (2) individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) Black Americans;
 - (ii) Hispanic Americans;
 - (iii) Native Americans;
 - (iv) Asian-Pacific Americans;
 - (v) Subcontinent Asian Americans;

- (vi) Women; and
- (vii) Any individual groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.

EMTA reserves the right with respect to particular procurement proceedings to establish specific participation goals for Disadvantaged Business Enterprises. Such specific participation goals shall be set forth in the Instructions to Bidders or Request for Proposals for the particular Procurement Proceeding in question. Failure to attain the specified level of Disadvantaged Business Enterprise participation in a particular Procurement Proceeding may result in a determination that the Bid or Proposal is non-responsive. Any Bid or Proposal which fails to meet a specific participation goal, as set forth in the Instructions to Bidders or Request for Proposals, must be accompanied by sufficient information to permit EMTA to determine whether the Bidder or Offeror has made good faith efforts to comply with EMTA's Disadvantaged Business Enterprise program and to attain the specified participation goal.

VI. PROTESTS

- 6. Protests.

6.1 EMTA Protest Procedures. Nature of Remedy, Exhaustion of Administration Remedies. The Board of EMTA has established written procedures for the handling of protests or complaints with respect to EMTA Procurement Proceedings. The Protest Procedures are intended to provide an administrative remedy to Interested Parties (as defined in the EMTA Protest Procedures) who may wish to protest any aspect of an EMTA Procurement Proceeding. The EMTA Protest Procedures are not intended to limit or otherwise restrict any other remedies that an Interested Party may have at law or in equity (including the right to seek redress by filing suit in the Erie County Court of Common Pleas), except to the extent that the failure of an Interested Party to avail itself of the remedies provided by the EMTA Protest Procedures may be considered to constitute a failure to exhaust administrative remedies. EMTA specifically reserves the right to assert in any proceeding that the failure of an Interested Party to avail itself of the remedies provided by the EMTA Protest Procedures constitutes a failure to exhaust

administrative remedies and that the Interested Party's claims are therefore barred and/or unenforceable.

6.2 Submission of Protest. A Bidder or Offeror who wishes to protest any aspect of an EMTA procurement proceeding may do so in accordance with the EMTA Protest Procedures, as adopted by the Board of Directors of EMTA. EMTA may refuse to consider protests which are not submitted in accordance with the requirements of the EMTA Protest Procedures. A copy of the EMTA Protest Procedures may be obtained by contacting the Executive Director of EMTA.

6.3 Withholding of Notice of Awards. When a protest has been timely filed with EMTA before a Notice of Award has been issued, EMTA shall not issue a Notice of Award prior to five (5) working days after the resolution of the protest, or if a protest has been timely filed with FTA, during the pendency of that protest, unless EMTA determines that:

- (1) the items to be procured are urgently required;
- (2) delivery or performance will be unduly delayed by failure to issue the Notice of Award promptly; or
- (3) failure to issue the Notice of Award promptly will otherwise cause undue harm to EMTA or the Federal Government.

6.4 Conformity with FTA Circular 4220.I F; FTA Protest Policies. The EMTA Protest Procedures are issued in conformity with the provisions of FTA Circular 4220.I F, Chapter VII, and are intended to be applied in a manner consistent therewith. A Protester (as defined in the EMTA Protest Procedures) must exhaust all administrative remedies available through the EMTA Protest Procedures before FTA will consider a protest. Chapter VII of FTA Circular 4220. I F describes the limited circumstances in which FTA will review a protest and the procedures for such review. As set forth in Chapter VII, FTA will only review protests by an Interested Party (as defined in the EMTA Protest Procedures) regarding an alleged failure of EMTA to follow the EMTA Protest Procedures, or to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the Interested Party knew or should have known of the violation. Allegations of violations of specific Federal regulations (for example, the Buy America Requirements, 49 C.F.R. Part 661) will be handled in accordance with that Federal regulation. Copies of FTA Circular 4220.I F may be obtained from EMTA upon request.

6.5 EMTA's Responsibility to Notify FTA. The EMTA shall notify FTA when it receives a protest to which FTA Circular 4220.I F applies and shall keep FTA informed about the status of the protest as required by FTA Circular 4220.IF.

(Originally adopted 2/25/02.) (Revised and restated 8/12/13)

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ERIE METROPOLITAN TRANSIT AUTHORITY

PROCUREMENT HANDBOOK

PART IV

STANDARD CONTRACT TERMS

TABLE OF CONTENTS

I. GENERAL PROVISIONS	I
I. General Provisions	I
I.I <u>Scope and Applicability</u>	I
I.I.I <u>Incorporation by Reference into Contracts</u>	I
1.1.2 <u>Modification</u>	I
I .I.3 No Third Party Beneficiaries	I
I.I.4 <u>Compliance with Federal Law</u>	I
I.2 <u>Definitions</u>	2
II. FEDERAL LAW REQUIREMENTS	2
2. Federal Law Requirements.....	2
2.I <u>Generally</u>	2
2.2 <u>Federal Requirements of General Applicability</u>	2
2.2.1 <u>Civil Rights</u>	2
2.2.2 <u>Disadvantaged Business Enterorise</u>	4
2.2.2.1 <u>General Requirements</u>	4
2.2.2.2 Prompt Payment Requirement.....	4
2.2.3 <u>Buy America</u>	4
2.2.3.1 General Requirements.....	4
2.2.3.2 <u>Waiver</u>	4
2.2.4 <u>Cargo Preference</u>	4
2.2.5 Fly America.....	5
2.2.6 <u>Environmental Requirements</u>	5
2.2.6.1 <u>Energy Conservation</u>	5
2.2.6.2 Clean Air.....	5
2.2.6.3 <u>Clean Water</u>	6
2.2.6.4 Recycled Products	6
2.2.6.5 <u>Enviromental Violations</u>	6
2.2.7 <u>Federal Changes</u>	6
2.2.8 <u>Maintenance of and Access to Records</u>	6
2.2.9 <u>Debarment and Suspension</u>	7
2.2.I0 <u>Restrictions on Lobbying</u>	7
2.2.10.1 Generally	7
2.2.10. EMTA Contracts in Excess of \$100.000	7
2 Subcontracts in Excess of \$100.000.....	8
2.2.10. Program Fraud and False or Fraudulent Statements	8
3 <u>No Federal Obligations to Third Parties</u>	8
2.2.11	
2.2.12	

2.2.13	Interests of Members of Congress	9
2.2.14	Work Laws and Safety Standards	9
2.2.14.1	<u>Construction Contracts - Overtime Provisions</u>	9
2.2.14.2	<u>Construction Contracts - Hours and Safety Standards</u>	10
2.2.14.3	<u>Non-Construction Contracts - Payrolls and Basic Records</u>	10
2.3	<u>Construction Contracts</u>	II
2.3.1	Generally	11
2.3.2	<u>Davis-Bacon Minimum Wage Act</u>	II
2.3.3	Copeland Anti-Kickback Act.	11
2.3.4	Seismic Safety	11
2.3.5	<u>Restrictions on Federal Public Works Projects</u>	12
2.4	Rolling Stock	12
2.4.1	Generally	12
2.4.2	<u>Pre-Award and Post-Award Delivery Audit Requirements</u>	12
2.4.2.1	<u>Buy America Requirements</u>	12
2.4.2.2	<u>Solicitation Specification Requirements</u>	13
2.4.2.3	Federal Motor Vehicle Safety Standards (FMVSS)	13
2.4.3	Bus Testing	13
III.	OTHER REQUIREMENTS.....	13
3.	<u>Other Requirements</u>	13
3.1	<u>State Law Restrictions on Acquisition of Imported Products</u>	13
3.1.1	Steel Products	13
3.1.2	<u>Compliance With Motor Vehicle Procurement Act (62 Pa.C.S.A. §§ 3731-3736)</u>	14
3.2	<u>Submissions Made Subject to 18 Pa.C.S. § 4904</u>	14
3.3	<u>Contractor Bonds</u>	14
IV.	TERMINATION.....	14
4.	<u>Termination</u>	14
4.1	<u>Termination by EMTA for Convenience</u>	14
4.1.1	Termination	14
4.1.2	<u>Submission of Final Termination Settlement Proposal</u>	15
4.1.3	<u>Failure to Agree on Final Termination Settlement Proposal</u>	15
4.1.4	<u>Deductions from Payment to Contractor</u>	16
4.1.5	<u>5 Limitation on Payment to Contractor</u>	16
4.1.6	Sole Remedy	16
4.2	<u>Termination by EMTA for Default</u>	16
4.2.1	Termination	16
4.2.2	<u>Remedies</u>	16
4.2.2.1	<u>General Provision</u>	16
4.2.2.2	<u>Construction Contracts</u>	17
4.2.3	<u>Wrongful Termination for Default</u>	17
V.	CONTRACT ADMINISTRATION AND CONSTRUCTION.....	17
5.	Contract Administration and Construction	17
5.1	<u>Statutory and Regulatory References</u>	17
5.2	<u>Number and Gender</u>	17
5.3	Governing Law	17
5.4	Successors in Interest	17
5.5	Captions.....	18
5.6	<u>Entire Contract</u>	18
5.7	Contract Modifications or Amendments	18
5.8	Claims by Contractor	18
5.8.1	Definition.....	18
5.8.2	Time Limits on Claims; Notice; Waiver	19
5.8.3	<u>Continued Contract Performance</u>	19

5.8.4	<u>Resolution of Claims</u>	19
5.8.4.1	Review of Claims	19
5.8.4.2	<u>Condition Precedent: Waiver</u>	19
5.9	Consent as to Jurisdiction and Venue.....	19
5.10	<u>Damages Recoverable by EMTA upon Default by Contractor; Other Remedies</u>	19
5.10.1	Generally.....	19
5.10.2	Liquidated Damages	20
 i		
5.10.3	Damages to Include Enforcement and/or Defense Costs	20
5.10.4	<u>Right of Setoff</u>	20
5.11	Limitation of Liability of EMTA	20
5.11.1	<u>Exclusion of Certain Damages</u>	20
5.11.2	<u>Limitation on Amount</u>	21
APPENDIX A	22
APPENDIX B	29
APPENDIX C	35

I. GENERAL PROVISIONS

1. General Provisions.

1.1 Scope and Applicability.

1.1.1 Incorporation by Reference into Contracts. Except to the extent otherwise provided in the relevant Bid Package or Proposal Package, these EMTA Standard Contract Terms are incorporated by reference into every Contract awarded by EMTA pursuant to a Competitive Bid Procurement or a Competitive Proposal Procurement. These Standard Contract Terms shall likewise be incorporated into Contracts awarded pursuant to methods of procurement other than Competitive Bid Procurement and Competitive Proposal Procurement, to the extent that EMTA Procurement Documents provide that the EMTA Standard Contract Terms are incorporated therein.

1.1.2 Modification. These Standard Contract Terms are intended to have general applicability with regard to those EMTA Contracts which are subject to the Standard Contract Terms. EMTA reserves the right to waive, modify, or supplement these Standard Contract Terms from time to time with respect to particular procurement proceedings.

1.1.3 No Third Party Beneficiaries. The EMTA Standard Contract Terms have been promulgated by EMTA solely for the purposes of: (1) assuring compliance by EMTA with Federal and state law in the procurement of materials, labor, supplies, services and/or other items; (2) establishing fair, efficient, and cost-effective procedures for carrying out EMTA Procurement Proceedings and entering into procurement Contracts; and (3) providing for fair, efficient and cost-effective Contract administration. Nothing in these Standard Contract Terms shall be construed as conferring any rights upon any third party (including, but not limited to, any prospective or disappointed Bidder or Offeror).

1.1.4 Compliance with Federal Law. By entering into a Contract with EMTA, the Contractor acknowledges and agrees that EMTA is the recipient of funding which is made available by the United States and which is administered by PTA. The Contractor further acknowledges and agrees that these Standard Contract Terms: (1) are intended to comply with the third-party contracting requirements applicable to EMTA as an PTA grantee; and (2) are for the benefit of both EMTA and PTA and may be enforced by either or both of them. The Contractor agrees that the Contractor shall comply with all applicable federal statutes, regulations and other directives governing procurement by EMTA, regardless of whether such requirements are specifically incorporated herein. Such requirements include, but are not limited to: (1) PTA Circular 4220.1F, and any amendments or revisions thereof as may be promulgated by PTA from time to time; and (2) Executive Order Nos. 12549 and 12689, "Debarment and Suspension," and the rules and regulations implementing such Orders.

1.2 Definitions. Unless the context clearly otherwise requires, terms used herein shall have the same meaning assigned to those terms as in the EMTA Procurement Policies, the EMTA Procurement Procedures and/or the EMTA Protest Procedures, as amended from time to time.

II. FEDERAL LAW REQUIREMENTS

2. Federal Law Requirements.

2.1 Generally, as a condition of receiving funds from FTA, certain specific Federal requirements must be met by EMTA and its Contractors, and in some cases, by subcontractors. Failure to comply with such requirements may result in a loss of Federal funds. The Contract includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, and any other amendments or revisions thereof as may be promulgated by FTA from time to time, are hereby incorporated by reference. FTA Circular 4220.1F, Appendix D-1, attached hereto as Appendix A, contains a matrix of the required provisions as well as references to applicable regulations and guidance materials. In addition, all Contracts must contain in full form the contractual provisions required by FTA to be in full form in the Contract. Such required full form contractual provisions and model clauses are set forth in FTA Circular 4220.1F and Appendix A.1 of the Best Practices Procurement Manual, as may be amended from time to time, and are posted on the FTA website. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any EMTA requests which would cause EMTA to be in violation of the Federal or FTA terms and conditions. The Contractor shall at all times comply with all applicable Federal and FTA regulations, policies, procedures and directives; failure to so comply shall constitute a material breach of the Contract.

2.2 Federal Requirements of General Applicability.

2.2.1 Civil Rights. The following requirements apply to the Contract and flow down to all third party contractors and their contracts at every tier:

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

(2) Equal Employment Opportunity & The following equal employment opportunity requirements apply to the Contract:

(a) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.* (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive

Order 11246 Relating to Equal Employment Opportunity, " 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of performing the Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FIA may issue.

(b) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FIA may issue.

(c) Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirement of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, " 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FIA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

2.2.2 Disadvantaged Business Enterprise.

2.2.2.1 General Requirements. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. 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 the Contract, which may result in the termination of the Contract or such other remedy as EMTA deems appropriate. The Contractor shall ensure that these requirements are included in each subcontract related to the Contract.

2.2.2.2 Prompt Payment Requirement. The Contractor shall pay subcontractors for satisfactory performance of their obligations under the Contract no later than 30 days from the date of receipt by the Contractor of each and every payment from EMTA. The Contractor shall return retainage to subcontractors within 30 days after the subcontractor's Contract work is satisfactorily completed. A delay in prompt payment to subcontractors may take place only for good cause, following EMTA's written approval. At EMTA's sole discretion, payment to the Contractor for work performed by subcontractors may be withheld until the Contractor demonstrates to EMTA's satisfaction that subcontractors shall be promptly paid for work performed under the

Contract.

2.2.3 Buy America.

2.2.3.1 General Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. Separate Buy America 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 not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content. The Contractor is responsible for ensuring that lower tier contractors and subcontractors are in compliance with the requirements of this Section 2.2.3.

2.2.3.2 Waiver. The requirements of Section 2.2.3 shall not apply to any Contract for which a current and valid waiver is in effect. Waivers include (but are not limited to) public interest waivers for micro-purchases and/or small purchases (currently less than One Hundred Thousand Dollars (\$100,000)). General waivers are listed in 49 C.F.R. § 661.7.

2.2.4 Cargo Preference. To the extent the Contract involves equipment, materials, or commodities which may be transported by ocean vessels, the Contractor agrees: (1) to use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Contract to the extent such vessels are available at fair and reasonable rates for United States- Flag commercial vessels; (2) to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in this paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to EMTA (through the Contractor in the case of a subcontractor' s bill-of-lading); and (3) to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

2.2.5 Fly America. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds (such as EMTA) and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section 2.2.5 in all subcontracts that may involve international air transportation.

2.2.6 Environmental Requirements.

2.2.6.1 Energy Conservation. The Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321, *et seq.*).

2.2.6.2 Clean Air. The following Clean Air requirements apply to all Contracts and subcontracts exceeding One Hundred Thousand Dollars (\$100,000), including indefinite quantities where the amount is expected to exceed One Hundred Thousand Dollars (\$100,000) in any year. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Air Pollution Prevention and Control Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Air Pollution Prevention and Control Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to EMTA and understands and agrees that EMTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by FTA.

2.2.6.3 Clean Water. The following Clean Water requirements apply to all Contracts and subcontracts exceeding One Hundred Thousand Dollars (\$100,000). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant Section 508 of the Water Pollution Prevention and Control Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Water Pollution Prevention and Control Act, as amended, 33 U.S.C. §§ 1251 through 1377. The Contractor agrees to report each violation to EMTA and understands and agrees that EMTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by FTA.

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

2.2.6.5 Environmental Violations. For all Contracts and subcontracts exceeding One Hundred Thousand Dollars (\$100,000), the Contractor agrees to comply with all applicable environmental standards, orders, or requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; Council on Environmental Quality regulations pertaining to compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; Section 306 of the Clean Air Act, 42 U.S.C. § 7606; Section 508 of the Clean Water Act, 33 U.S.C. § 1368; Executive Order 11738; Environmental Protection Agency regulations which prohibit the use, under nonexempt Federal contracts, grants or loans, of facilities included on

the EPA List of Violating Facilities; and FHWA/FTA joint regulations, "NEPA and Related Procedures for Transportation Decision-making, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774. The Contractor shall report all violations or suspected violations to FTA and to the Assistant Administrator for Enforcement of the Environmental Protection Agency.

2.2.7 Federal Changes. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between EMTA and FTA, as they may be amended or promulgated from time to time during the term of the Contract. The Contractor's failure to so comply shall constitute a material breach of the Contract.

2.2.8 Maintenance of and Access to Records. If the Contract contemplates the provision of goods and/or services in excess of Four Thousand Dollars (\$4,000), the

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

2.2.9 Debarment and Suspension. Executive Order Nos. 12549 and 12689, as implemented by 2 C.F.R. Parts 180 and 1200, prohibit FTA recipients and sub-recipients such as EMTA from contracting for goods and services from contractors or subcontractors that have been suspended or debarred from receiving Federally-assisted contracts. As part of its Bid or Proposal, the Contractor has submitted a certification to the effect that the Contractor is not currently suspended or debarred, and will not enter into contracts with suspended or debarred contractors or subcontractors. The Contractor hereby re-affirms said certification, and shall provide immediate written notice to EMTA if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor shall obtain similar certifications from subcontractors and material suppliers seeking to provide goods or services under the Contract, and shall require that such subcontractors and material suppliers provide, to the extent applicable, the same immediate updated notice to the Contractor.

2.2.10 Restrictions on Lobbying.

2.2.10.1 Generally, appropriated funds for lobbying activities cooperative agreement.

Federal law prohibits the use of any Federal with respect to any Federal contract, grant, or

2.2.10.2 EMTA Contracts in Excess of \$100,000. In accordance with Section 4.5.2 of the EMTA Procurement Procedures, each Bidder or Offeror for an EMTA Contract in excess of One Hundred Thousand Dollars (\$100,000) is required to submit with its Bid or Proposal a certification with respect to lobbying in the form required by 49 C.F.R. Part 20, Appendix A, "Certification Regarding Lobbying." If a Bidder or Offeror is awarded a Contract, and such Contractor uses non-Federal funds to conduct such lobbying activities, then the Contractor is required to disclose the lobbying activities on Standard Form - LLL "Disclosure of Lobbying Activities," set forth in Appendix B of 49 C.F.R. Part 20, as

amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1412-13, and to provide such Form to EMTA.

2.2.10.3 Subcontracts in Excess of \$100,000. Each EMTA Contractor shall obtain from every subcontractor whose subcontract exceeds One Hundred Thousand Dollars (\$100,000) a certification with respect to lobbying in the form required by 49 C.F.R. Part 20, Appendix A, "Certification Regarding Lobbying." Such certification shall be obtained before execution of the subcontract in question, and shall be submitted to EMTA within five (5) business days after execution of the subcontract.

2.2.11 Program Fraud and False or Fraudulent Statements. 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 the Contract. Upon execution of the 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 Contract or the FTA assisted project for which the 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. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49

U.S.C. § 5307(n)(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.2.12 No Federal Obligations to Third Parties. EMTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Contract, absent express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to EMTA, the Contractor, or any other party (whether or not a party to the

Contract) pertaining to any matter resulting from the Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2.2.13 Interests of Members of Congress. No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of any EMTA Contract or to any benefit arising therefrom.

2.2.14 Work Laws and Safety Standards.

2.2.14.1 Construction Contracts - Overtime Provisions. The provisions in Sections 2.2.14.1 and 2.2.14.2 apply to all construction Contracts in excess of One Hundred Thousand Dollars (\$100,000). (1) No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (2) In the event of any violation of the clause set forth in Section (1) the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Section (1), in the sum of Ten Dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section (1). (3) EMTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Section (2). (4) The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section 2.2.14.1 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Section 2.2.14.1. (5) In any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1, the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of 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 classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The Contractor shall be responsible for inserting in any subcontract a

clause providing that records to be maintained under this Section 2.2.14.1 shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the EMTA and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

2.2.14.2 Construction Contracts - Hours and Safety Standards. (1) The Contractor shall comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701 *et seq.*, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor shall not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions. (2) The Contractor shall also include the requirements of this Section 2.2.14.2 in every subcontract. The term "subcontractor" under this Section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a Contract for construction, alteration or repair. A person who undertakes to perform a portion of a Contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this Section if the work in question involves the performance of construction work and is to be performed: (i) directly on or near the construction site, or (ii) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this Section

2.2.14.2 do not apply to Contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

2.2.14.3 Non-Construction Contracts - Payrolls and Basic Records. The following provisions apply to all turnkey, rolling stock and operational Contracts (excluding Contracts for transportation services) for which the cost to EMTA exceeds Two Thousand Dollars (\$2,000). Payrolls and basic records relating to the Contract shall be maintained by the Contractor during the course of the work and preserved for a period of no less than three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which

show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the

apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2.3 Construction Contracts.

2.3.1 Generally, General procurement standards applicable to construction contracts are set forth in FTA Circular 4220. IF, dated November 1, 2008, and any amendments or revisions thereof or may be promulgated by FTA from time to time, which is hereby incorporated by reference. The following Federal provisions are applicable to EMTA construction Contracts and subcontracts, as indicated.

2.3.2 Davis-Bacon Minimum Wage Act. A person with whom EMTA shall make a Contract for construction, reconstruction, etc. as contemplated by Section 5614 of the State Act which requires EMTA's payment of in excess of Two Thousand Dollars (\$2,000), shall comply with the provisions of the Davis-Bacon Act, as amended, 40 U.S.C. § 3141 *et seq.* as supplemented by United States Department of Labor ("U.S. DOL") regulations, 29 C.F.R. Part 5, and FTA 's enabling legislation requiring compliance with the Davis-Bacon Act, 49 U.S.C. § 5333(a). The Contractor shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages determined by the Secretary of Labor, which payment shall be made not less often than once a week. The Contractor shall comply in all respects with the requirements of the Davis-Bacon Act, which are set out more fully in Appendix B to this Part IV of the EMTA Procurement Handbook.

2.3.3 Copeland Anti-Kickback Act. Any Contractor awarded a Contract for construction, reconstruction, etc., as contemplated by Section 5614 of the State Act and which requires EMTA's payment of an amount exceeding One Hundred Thousand Dollars (\$100,000) shall comply with the provisions of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, as supplemented by U.S. DOL regulations, 29 C.F.R. Part 3, incorporated by reference in the Contract, which prohibits the Contractor and any subcontractors from inducing any person to give up any part of the compensation to which he or she is otherwise entitled. Any such Contractor shall report all suspected or reported violations of this provision to EMTA's Board Chairman or Executive Director.

2.3.4 Seismic Safety. The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41; Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note; pursuant to the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, pertaining to seismic

safety in DOT assisted construction projects; and hereby certifies compliance to the extent required by such statutes, order and regulations. The Contractor also agrees to ensure that all work performed under the Contract, including work performed by a subcontractor, is in compliance with the standards set forth in this Section 2.3 .4.

2.3.5 Restrictions on Federal Public Works Projects. Any Contractor

awarded a Contract to perform construction, reconstruction, etc., on a Project which qualifies as a Federal public works project within the meaning of 49 C.F.R. Part 30 shall comply in all respects with the provisions of 49 C.F.R. Part 30. The Contractor shall provide immediate written notice to EMTA if, at any time following Contract Award, the Contractor learns that its certification submitted pursuant to Section 4.3.3 of Part III of the EMTA Procurement Handbook was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor will incorporate in any subcontract for the furnishing of services or products to be used in the public works project in question, the provisions of 49 C.F.R. §§ 30.13 and 30.15, and shall not knowingly enter into any subcontract under an EMTA Contract: (1) with a subcontractor of a foreign country included on the list of countries that discriminate against United States firms published by the U.S.T.R.; or (2) for the supply of any product for use on the public works project under an EMTA Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against United States firms published by the U.S.T.R.

2.4 Rolling Stock.

2.4.1 Generally, Pursuant to the provisions of 49 C.F.R. Part 663, EMTA is required to conduct pre-award and post-delivery audits of all procurements of rolling stock to assure compliance with: (1) the Buy America requirements for rolling stock; (2) the Specifications issued by EMTA; and (3) the Federal Motor Vehicle Safety Standards which are applicable to the vehicle in question. The failure of the Contractor to meet the Buy America requirements, the Specifications, and/or any applicable Federal Motor Vehicle Safety Standards such that EMTA is unable to make the certifications required of EMTA under 49 C.F.R. Part 663, shall constitute a material breach of the Contract.

2.4.2 Pre-Award and Post-Award Delivery Audit Requirements. A Contractor providing rolling stock to EMTA shall cooperate with EMTA to the fullest extent necessary to enable EMTA to conduct pre-award and post-delivery audits in conformity with the requirements of 49 C.F.R. Part 663. Such Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the pre- award certifications and post-delivery certifications set forth below.

2.4.2.1 Buy America Requirements. In Contracts exceeding the small purchase threshold for Federal assistance programs, the Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America provisions located at 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661. If the Contractor certifies compliance

with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

2.4.2.2 Solicitation Specification Requirements. A Contractor shall

submit evidence that it will be capable of meeting the Specifications.

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

2.4.3 Bus Testing. The Contractor/manufacturer shall comply with 49 U.S.C. § 5318(e) and PTA Regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations which may be promulgated. A Contractor/manufacturer shall perform the following: (1) A Contractor/manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to EMTA at a point in the procurement process specified by EMTA which will be prior to EMTA's final acceptance of the first vehicle. (2) A Contractor/manufacturer who releases a report under subsection 1 above shall provide notice to the operator of the testing facility that the report is available to the public. (3) If the Contractor/manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to EMTA prior to EMTA's final acceptance of the first vehicle. If the configuration or components are not identical, the Contractor/manufacturer shall provide a description of the change and the Contractor/manufacturer's basis for concluding that it is not a major change requiring additional testing. (4) If the Contractor/manufacturer represents that the vehicle is "grandfathered" (has been used in public transportation service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the Contractor/manufacturer shall provide the name and address of a recipient of such a vehicle and the details of that vehicle's configuration and major components.

III. OTHER REQUIREMENTS

3. Other Requirements.

3.1 State Law Restrictions on Acquisition of Imported Products.

3.1.1 Steel Products. Unless the requirements of this Section 3.1.1. are specifically waived by EMTA in writing, in accordance with 73 P.S. § 1884(b), the Contractor agrees that all steel products used or supplied in the performance of the Contract (and any

subcontracts hereunder) for construction, reconstruction, etc. of public works as contemplated by Section 5614(g) of the State Act or Section 4(a) of the Steel Products Procurement Act (73 P.S. §§ 1881-1887), shall be from steel made in the United States, and that the Contractor shall comply in all respects with the requirements of Section 5614(g) of the State Act and the Steel Products Procurement Act (73 P.S. §§ 1881-1887).

3.1.2 Compliance with Motor Vehicle Procurement Act (62 Pa.C.S.A. §§ 3731-3736). Unless the requirements of this Section 3.1.2. are specifically waived by EMTA in writing, in accordance with 62 Pa.C.S. § 3734(b) because it is inconsistent with public policy or the cost is unreasonable, all motor vehicles procured by EMTA under this Contract shall have been manufactured in North America, *i.e.*, a substantial majority of the principal components shall have

been assembled into the final product in an assembly plant in North America. The Contractor shall comply in all respects with the requirements of this Section 3.1.2. and the Motor Vehicle Procurement Act (62 Pa.C.S.A. §§ 3731-3736).

3.2 Submissions Made Subject to 18 Pa.C.S. § 4904. Every representation made to EMTA by a Contractor and every document submitted to EMTA by a Contractor in connection with or in any way relating to an EMTA Contract, is made or submitted subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. Notwithstanding the foregoing, nothing herein shall be construed as affecting or otherwise limiting the liability of the Contractor under any other provision of law.

3.3 Contractor Bonds. The Contractor shall maintain performance, payment and any other bonds required by EMTA or applicable law for at least the duration of the project, or as otherwise set forth in the Contract Documents or as mutually agreed upon in writing. Should the Contract price increase due to change order(s) or amendment(s) to the Contract, the Contractor shall increase the penal amount of its bonds, or secure additional bonds, in an amount equal to one hundred percent (100%) of the increase in the Contract price.

IV. TERMINATION

4. Termination.

4.1 Termination by EMTA for Convenience.

4.1.1 Termination. EMTA may terminate performance of work under this Contract in whole or, from time to time, in part if it is determined by EMTA, in EMTA's sole discretion, that a termination is in EMTA's interest. EMTA shall terminate the Contract by delivering to the Contractor a notice specifying the extent of termination and the effective date (the "Notice of Termination"). After receipt of a Notice of Termination, and except as otherwise directed by EMTA, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due the Contractor under this Section 4.1: (1) stop work as specified in the Notice of Termination; (2) place no further subcontracts or orders (referred to as "subcontracts" in this Section 4 .1) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any; (3) except as otherwise directed by EMTA, terminate all subcontracts to the extent they relate to the work terminated; (4) as and to the extent directed by EMTA, assign to EMTA all right, title, and interest of the Contractor under the terminated subcontracts; (5) with approval or ratification to the extent required by EMTA, settle all outstanding liabilities and claims arising from the termination of subcontracts; (6) as directed by EMTA, transfer title and deliver to EMTA (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to EMTA; (7) complete performance of the work not terminated, if any; and (8) take any action that may be necessary, or that EMTA may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which EMTA has or may acquire an interest. The

Contractor shall take all such actions as are reasonable and appropriate under the circumstances to minimize the termination costs payable by EMTA to the Contractor under this Section 4 .1.

4.1.2 Submission of Final Termination Settlement Proposal. After termination, the Contractor shall promptly submit a final termination settlement proposal to EMTA. If EMTA accepts the terms of the Contractor's final termination settlement proposal, EMTA shall pay the amount specified in the proposal to the Contractor in full settlement of any and all claims, of any nature, that the Contractor had, has, or will have against EMTA arising out of the performance or termination of the Contract. If the Contractor fails to submit the proposal within a reasonable amount of time, EMTA may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay to the Contractor the amount so determined.

4 .1.3 Failure to Agree on Final Termination Settlement Proposal. If the Contractor and EMTA fail to agree on the amount to be paid because of the termination of work, the Contractor shall be entitled to receive only the following amounts, but without duplication of any amounts agreed on by the Parties, or previously paid by EMTA: (1) the Contract price for completed supplies or services accepted by EMTA; (2) reasonable costs incurred by the Contractor in the performance of the terminated work; (3) reasonable costs incurred by the Contractor in terminating and winding up the terminated work; and (4) a sum, as profit on work satisfactorily completed and accepted by EMTA, that is determined by EMTA to be fair and reasonable: *Provided, however,* that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no amount for profit shall be allowed under this Section 4 .1.3, and the amount due the Contractor under this Section 4 .1.3 shall be reduced to reflect the indicated rate of loss.

4.1.4 Deductions from Payment to Contractor. In arriving at the amount due the Contractor under this Section 4.1, there shall be deducted: (1) all advance or other payments to the Contractor under the terminated portion of the Contract; and (2) any claim(s) which EMTA has against the Contractor under the Contract or under any other contract with the Contractor.

4.1.5 Limitation on Payment to Contractor. Notwithstanding any other provision of this Section 4.1, in no event shall the amount paid to the Contractor arising out of the termination of the Contract pursuant to this Section 4.1 exceed the Contract price, less amounts already paid to the Contractor under the Contract.

4.1.6 Sole Remedy. The remedies provided in this Section 4.1 are the sole remedies of the Contractor in the event that EMTA terminates the Contract pursuant to this Section 4.1, or is deemed to have terminated the Contract under this Section 4.1, as provided in Section 4.2.3, below.

4.2 Termination by EMTA for Default.

4.2.1 Termination. EMTA, by Notice of Termination or other written notice of default to the Contractor, may terminate this Contract in whole or in part if the Contractor commits a material breach of the Contract. A material breach includes, but not is limited to, the Contractor's (1) failure to deliver the supplies or to perform the services within the time specified in the Contract or any extension thereof; (2) failure to make progress, so as to endanger performance of the Contract;

(3) failure to perform any of the other provisions of the Contract; (4) failure to promptly cure any breach of the Contract after receiving notice of such breach from EMTA; (5) failure to provide EMTA adequate written assurance of future performance within ten (10) business days after having received a written request therefor from EMTA, or (6) submission of a false certification related to with the Contract.

4.2.2 Remedies.

4.2.2.1 General Provision. Upon termination of the Contract due to the Contractor's default, EMTA may pursue such remedies as are provided in the Contract, or as are available to it at law or in equity, including (but not limited to) the right of setoff, collection of damages (including, without limitation, direct, consequential, incidental, and/or liquidated damages) and/or injunctive relief. Such remedies shall be cumulative and not exclusive, and the exercise of one remedy shall not be deemed to be a waiver of any other remedy. The failure to exercise a given remedy shall not be deemed to be a waiver of such remedy. In the event that EMTA does elect to waive a particular breach by the Contractor of any covenant, term or condition of the Contract, such waiver by EMTA shall not be deemed a waiver for any succeeding breach of that or of any other term, covenant, or condition of the Contract.

4.2.2.2 Construction Contracts. If a Contract for construction, alteration or repair is terminated by EMTA due to the Contractor's default, EMTA may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to EMTA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by EMTA in completing the work. The rights and remedies of EMTA in this Section 4.2.2.2 are in addition to any other rights and remedies provided in Section 4.2.2.1, above, or at law, in equity, or under the Contract.

4.2.3 Wrongful Termination for Default. In the event the Contract is wrongfully terminated by EMTA for default, the termination will be treated as one for the convenience of EMTA, and the rights and obligations of the Parties shall be as set forth in Section 4.1, above. The Contractor shall have no remedies other than those specified in Section 4.1, above, which remedies shall be the sole and exclusive remedies available to the Contractor.

V. CONTRACT ADMINISTRATION AND CONSTRUCTION

5. Contract Administration and Construction.

5.1 Statutory and Regulatory References. The contents of Section 5614 of the State Act (as it presently exists and as it may be amended from time to time) are hereby fully incorporated into the Contract. Additionally, any statutory or regulatory authority cited herein is hereby incorporated by reference in the Contract, including any amendments thereto which may hereafter be adopted.

5.2 Number and Gender. In this Contract, any words or terms used in the singular shall

be read as if written in the plural, or *vice versa*, when appropriate. Words of masculine, feminine or neuter import shall be read as if written in the neuter, masculine or feminine, when appropriate.

5.3 Governing Law. This Contract shall be governed by the laws of the Commonwealth of Pennsylvania, without reference to any principles of conflicts of law which would direct the application of the laws of any other jurisdiction.

5.4 Successors in Interest. The obligations of the Contractor under a Contract with EMTA shall be binding upon the Contractor's assigns, heirs, and successors in interest. However, no Contractor may assign any right or delegate any duty under an EMTA Contract without the express prior written consent of EMTA. Any attempted assignment or delegation in violation of this Section 5 .4 shall be null and void, and shall not be binding upon EMTA unless EMTA subsequently elects, in writing, to treat such assignment or delegation as binding upon the assignee and/or donee. An assignment or delegation shall not relieve the Contractor of its obligation under the Contract, and the Contractor shall remain jointly and severally liable with the assignee and/or donee for the performance of the Contract.

5 .5 *Captions.* Captions used in this Part IV of the EMTA Procurement Handbook are for convenience only and shall not be construed as expanding, contracting or otherwise modifying the text of a Section. References to Section numbers shall be construed as including references to all subsidiary Sections, *i.e.*, for example, a reference to Section 2.4 would be deemed to include Sections 2.4.1, 2.4.2, 2.4.2.1, 2.4.2.2, and 2.4.3.

5.6 Entire Contract. Unless otherwise specifically provided therein, any Contract entered into by EMTA pursuant to a Competitive Bid Procurement or a Competitive Proposal Procurement shall consist of: (1) the contract acknowledgment or written document executed by the Contractor and EMTA and describing the written obligation(s) entered into by the Contractor and EMTA as a result of a particular Competitive Procurement Proceeding,(2) EMTA's Competitive Bid Invitation or Request for Proposals; (3) EMTA's Instructions to Bidders or Offerors (if applicable); (4) Specifications; (5) EMTA Standard Contract Terms;(6) the Contractor's Bid Form or Proposal submission, including any documents submitted in conjunction therewith; (7) the Contractor's DBE Assurance Form; (8) the Contractor's Non- Collusion Affidavit; (9) EMTA's Notice of Award; (10) all certifications submitted by the Contractor; and (11) such other documents as are incorporated within the above by reference. The foregoing documents shall constitute the entire Contract between EMTA and the Contractor, and shall supersede any and all prior agreements, understandings, oral negotiations and/or discussions between the parties.

5.7 Contract Modifications or Amendments. No Contract with EMTA may be modified or amended except by a writing signed by an EMTA official authorized by the Board of Directors of EMTA to execute such modification or amendment. With respect to Contracts requiring the Contractor to maintain performance and/or payment bonds, in the event a modification or amendment causes an increase in the Contract price, the Contractor shall promptly provide additional security equal to one hundred percent (100%) of the increase in the Contract price, either by increasing the penal amount of its existing bonds, or by securing additional bonds.

5.8 Claims by Contractor.

5.8.1 Definition. A "Claim" is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor.

5.8.2 Time Limits on Claims; Notice; Waiver. All Claims must be initiated by means of written notice to EMTA within twenty-one (21) days after occurrence of the event giving rise to such Claim, or within twenty-one (21) days after the Contractor first recognizes, or should have recognized, the condition giving rise to the Claim, whichever is later. The Contractor agrees that failure to provide written notice within the time period set forth above constitutes a waiver of the Claim.

5.8.3 Continued Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract, and EMTA shall continue to make payments in accordance with the Contract Documents.

5.8.4 Resolution of Claims.

5.8.4.1 Review of Claims. EMTA will review all timely submitted Claims and take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) reject the Claim in whole or in part; (3) approve the Claim in whole or in part; (4) suggest a compromise; or (5) advise that EMTA is unable to resolve the Claim. EMTA will not decide disputes between the Contractor and persons or entities other than EMTA. In the event a Claim is not resolved within 90 days following submission of the Claim to EMTA, the Contractor may then pursue such remedies as are available to the Contractor at law or in equity.

5.8.4.2 Condition Precedent; Waiver. As set forth in Section 5.8.2, above, the Contractor shall provide EMTA with prompt notice of all Claims. The Contractor expressly agrees that: (1) compliance with the provisions of this Section 5.8 is a condition precedent to the litigation of any Claim arising out of or relating to the Contract; and (2) failure to provide EMTA with timely notice of a Claim constitutes a waiver of such Claim.

5.9 Consent as to Jurisdiction and Venue. By entering into the Contract, the Contractor submits to the jurisdiction of the state and Federal courts located in Erie, Pennsylvania, waives any objections to venue in Erie, Pennsylvania, and agrees that all litigation arising out of or relating to the Contract shall be commenced solely in the state and Federal courts located in Erie, Pennsylvania.

5.10 Damages Recoverable by EMTA upon Default by Contractor; Other Remedies.

5.10.1 Generally. Regardless of whether EMTA exercises its right to terminate the Contract for default as provided in Section 4.2, above, upon default by the Contractor under the Contract, EMTA may pursue such remedies as provided in the Contract, or as are available to EMTA at law or in equity, including (but not limited to) the right of setoff, collection of damages (including, without limitation, direct consequential, incidental and/or liquidated damages) and/or injunctive relief.

5.10.2 Liquidated Damages. EMTA may use liquidated damages if EMTA reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards of liquidated damages must be calculated to reasonably reflect EMTA's costs should the standards not be met, and must be specified in the contract. The calculation should ordinarily be established at a specific rate per day for each business day beyond the contract's delivery date or performance period. A measurement other than a business day or other period to time may be established, however, if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Daily damages accrue for business days only and may not accrue for Saturdays or Sundays. Damages may not be open ended and the contractor's maximum risk must be clearly expressed in the contract. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. The procurement file should include a record of the calculation and rational for the amount of liquidated damages established. The Liquidated Damages Check-Sheet attached hereto and incorporated herein as Appendix C shall be completed and included in the contract file.

5.10.3 Damages to Include Enforcement and/or Defense Costs. In the event of a default by the Contractor, EMTA shall be entitled to collect as part of its actual damages the costs incurred by EMTA in enforcing or defending its rights under the Contract. Such costs include, but are not limited to, attorneys' fees, witness fees, accounting fees, and so forth.

5.10.4 Right of Setoff. EMTA, without waiver or limitation of any of its rights or remedies at law or in equity, shall be entitled from time to time to deduct from any amounts due or owing by EMTA to the Contractor in connection with this Contract (or any other contract with EMTA), any and all amounts owed by the Contractor to EMTA in connection with this Contract or any other contract with EMTA.

5.11 Limitation of Liability of EMTA.

5.11.1 Exclusion of Certain Damages. In no event shall EMTA or EMTA's employees, officers, directors, representatives, affiliates and/or agents be liable for consequential, incidental or punitive damages incurred by Contractor or any third party in connection with any matter arising out of or relating to the Contract, or a breach thereof, regardless of whether such damages are characterized as arising out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity or otherwise. Such limitations shall apply regardless of whether Contractor has been advised or otherwise made aware of the possibility of such damages arising. For purposes of this Section 5.11.1, consequential damages include, but are not limited to: (1) Contractor's lost production, sales and/or profits; or (2) Contractor's cost of capital.

5.11.2 Limitation on Amount. Notwithstanding any other provision of the Contract, the total liability, in the aggregate, of EMTA and EMTA's employees, officers, directors, representatives, affiliates and agents to Contractor or any third party claiming through or under the Contract for any claims, losses, damages, or costs arising out of or relating to the Contract, or the breach thereof, shall not exceed the Contract price. This Section 5.11.2 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability,

statutory liability, indemnity or otherwise.

(Originally adopted 2125102;
revised and restated 3116110);
revised and restated 8/12/13).

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APPENDIX A
**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER --
 MATRICES**

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE , (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§2.f
False or Fraudulent Statements or Claims -Civil and Criminal Fraud		§3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§2.c(l)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220. IF.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding \$100,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17)10-1-2010)
Transport of Property or Persons		
Cargo Preference	II :- property suitable for by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections -DavisBacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections -Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections - Sec. 1 Copeland Anti-Kickback Act -Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	50% bid guarantee bond. 100% performance bond. Payment bond equal to: -50% for contracts <\$1M. -40% for contracts >\$1M-<\$5M. -\$2.5M for contracts > \$5M.	§ 15.o(l)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection -Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Charter Bus Operations		§ 24.d
School Bus Operations		§ 28
Drug Use and Testing	Safety sensitive functions.	§ 29
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(I7)10-12010)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-
MATRICES**

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS
(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A:&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of PTA Terms	All	All	All	All	All
Debannent and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/. . . Rolling Stock Management	Purchase	.Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(1) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable.	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)

APPENDIX B

DAVIS-BACON ACT REQUIREMENTS

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

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

(ii) [This section was intentionally deleted pursuant to 58 FR 58954.]

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

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, that the Secretary of Labor has found, upon the written request of the Contractor,

that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

(2) **Withholding** - EMTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract, or from any other Federal contract with the same Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements,

which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, EMTA may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to EMTA for transmission to the Federal Transit Administration if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to EMTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to EMTA if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to EMTA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor or owner).

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

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 and that such information is correct and complete;

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

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

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

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

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, take such action as may be necessary to

cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every

trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

(5) Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

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

(7) Contract termination: debarment - A breach of the Contract provisions contained herein may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

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

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and EMTA, the U.S. Department of Labor, or the employees or their representatives.

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

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

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

APPENDIX C
Liquidated Damages Checklist

EMTA PROJECT NO.	CONTRACT TITLE: _____		
ESTIMATED CONTRACT VALUE:	General _____ Mechanical _____ Electrical _____ Other _____		
Item	Project Manager's Determination	If Applicable, Dollar Amount	
	Applicable	Non- Applicable	
1. Costs reflecting the relative importance of completion of this contract to the completion of other directly associated activities, e.g., if a \$10 million dollar substation is being procured and requires construction of a building, the cost to EMTA of delays upon the completion of the building on the substation procurement should be considered.			
2. Rental costs for each day of facilities and equipment necessitated by the delays in contract completion.			
3. Cost(s) for additional maintenance required on equipment or structures being replaced for each day of delay in completion of the project.			
4. Additional operating costs to EMTA for each day of delay in completion, including but not limited to cashier, operator and supervisory costs resulting from contract completion delays. Costs of route detours or substitution of one transit mode for another shall be considered			
5. Loss of revenue to EMTA's operations for each day due to delay in contract completion			
6. Any other damages for each day of delay in completion which EMTA may anticipate, e.g. is there a high potential for delay of one prime contract with resulting costs to EMTA for other prime contracts.			
7. Estimated costs of inspection			
8. Actual damages (Project Manager to indicate whether actual types of damages should be excluded from the calculations)			

Signed _____
 Project Manager

**ERIE METROPOLITAN TRANSIT AUTHORITY PROCUREMENT
HANDBOOK
PARTY PROTEST PROCEDURES**

February 25, 2013

TABLE OF CONTENTS

	Page
I. <u>General Provisions</u>	2
I.I <u>Applicability</u>	2
I.2 <u>Definitions</u>	2
2. <u>Filing of Protest</u>	3
2.1 <u>Who May File a Protest</u>	3
2.2 <u>Protest Requirements</u>	3
2.2.1 <u>Written Protest</u>	3
2.2.2 <u>Content of Protest</u>	3
2.3 <u>Amendment of Protest</u>	3
2.3.1 <u>Time for Amendment</u>	3
2.3.2 <u>Limitation on Amendments</u>	3
2.3.3 <u>Written Amendments</u>	3
2.4 <u>Time for Filing of Protest</u>	4
2.4.1 <u>Matters Disclosed in Initial Bid or Proposal Package</u>	4
2.4.2 <u>Matters Disclosed Subsequent to the Issuance of the Initial Bid or Proposal Package but Prior to Bid or Proposal Opening</u>	4
2.4.3 <u>Matters Disclosed After Opening of Bids or Proposals</u>	4
2.5 <u>Waiver of Requirements</u>	4
3. Consideration of Protests: Anneal	5
3.I <u>Initial Consideration</u>	5
3.1.1 <u>Review by Executive Director</u>	5
3.1.2 <u>Decision of Executive Director</u>	5
3.1.3 <u>Notice of Decision</u>	5
3.2 Appeal of Decision of Executive Director	5
3.2.1 <u>Right of Appeal</u>	5
3.2.2 <u>Written Appeal</u>	5
3.2.3 <u>Content of Appeal</u>	5
3.2.4 <u>Time for Anneal</u>	6
3.2.5 <u>Waiver of Requirements</u>	6
3.3 <u>Annealate Consideration</u>	6
3.3.1 <u>Review by Appeal Officer</u>	6
3.3.2 <u>Decision of Anneal Officer</u>	6
3.3.3 <u>Notice of Decision</u>	6
4. General Provisions	7
4.1 <u>Filing</u>	7
4.2 <u>Hearings</u>	7
4.3 <u>Intervention by Third Parties</u>	7
4.4 <u>Limitations on Relief Available</u>	7
4.5 <u>Limitations on Scope of Review</u>	7
4.6 <u>Conformity With FTA Circular 4220.1D</u>	7
4.7 <u>Administrative Remedy</u>	8

EMTA PROTEST PROCEDURES

I. General Provisions

I.I Applicability. The EMTA Protest Procedures set forth the procedures which must be followed by an Interested Party who wishes to protest any aspect of an EMTA Competitive Procurement Proceeding. Failure to comply with the requirements of these Protest Procedures may result in the disallowance of a Protest. EMTA reserves the right to modify these Protest Procedures with respect to a particular Competitive Procurement Proceeding, in which case such modification shall be set forth in EMTA's Invitation for Bids, Instructions to Bidders, Request for Proposals, or other appropriate document.

1.2 Definitions. Unless the context clearly otherwise requires, terms used herein shall have the same meanings assigned to those terms in the EMTA Procurement Procedures. In addition to such terms, unless the context clearly otherwise requires, the following terms shall have the meanings set forth below:

- (a) "Appeal" means a written request for relief from a decision issued by the Executive Director pursuant to these Protest Procedures.
- (b) "Appeal Officer" means the Chairman of the Board of Directors of EMTA or such other person as may be designated by the Chairman to act as Appeal Officer with respect to a particular Competitive Procurement Proceeding.
- (c) "Chairman" means the Chairman of the Board of Directors of EMTA, or such other person who is duly authorized to act in the capacity of Chairman.
- (d) "Competitive Procurement Proceeding" means a Competitive Bid Procurement and/or a Competitive Proposal Procurement, as applicable.
- (e) "Executive Director" means the Executive Director of EMTA, or such other person who is duly authorized to act in the capacity of Executive Director.
- (f) "Initial Bid or Proposal Package" means the Bid or Proposal Package originally issued by EMTA in conjunction with a particular Competitive Procurement Proceeding.
- (g) "Interested Party" means an actual or prospective Bidder or Offeror whose direct economic interest would be affected by the Award of the Contract or by failure to Award the Contract.

- (h) "Protest" means a written request for relief from any aspect of a particular EMTA Competitive Procurement Proceeding.
- (i) "Protester" means an Interested Party who has filed a Protest in accordance with the terms of these Protest Procedures.

2. Filing of Protest

2.1 Who May File a Protest. Any Interested Party may file a Protest with respect to an EMTA Competitive Procurement Proceeding. Protests from persons who are not Interested Parties will not be accepted or considered by EMTA.

2.2 Protest Requirements.

2.2.1 Written Protest. All Protests must be submitted in writing. Verbal Protests will not be accepted or considered by EMTA.

2.2.2 Content of Protest. The Protest must be clearly labeled or otherwise identified as a Protest which is being submitted under the terms of the EMTA Protest Procedures. The Protest must contain, at a minimum, the following information: (1) the name and address of the Protester; (2) the identity of the Competitive Procurement Proceeding which is the subject of the Protest; (3) a complete statement of each and every basis upon which the Protester is relying in protesting the Competitive Procurement Proceeding, including supporting documentation; and (4) a clear statement of the relief sought by the Protester. The failure to label or identify the Protest clearly, or the failure to include the minimum required information, may result in the rejection or disallowance of the Protest.

2.3 Amendment of Protest.

2.3.1 Time for Amendment. A Protester may amend or supplement its Protest at any time prior to the issuance of the written decision of the Executive Director of EMTA with respect to the Protest. A Protester shall not be permitted to amend or supplement a Protest after the issuance of the written decision of the Executive Director of EMTA.

2.3.2 Limitation on Amendments. Any amendment or supplement to a Protest must relate directly to matters originally raised in the Protester's initial Protest. Amendments or supplements proffered by a Protester which raise matters not directly related to matters originally set forth in the Protester's initial Protest shall be considered a new Protest for purposes of consideration under these Protest Procedures.

2.3.3 Written Amendments. All amendments or supplements to a Protest must be in writing. Verbal amendments or supplements will not be accepted or considered by EMTA.

2.4 Time for Filing of Protest.

2.4.1 Matters Disclosed in Initial Bid or Proposal Package. Protests based upon matters which are disclosed in the Initial Bid or Proposal Package must be filed no later than twenty-one (21) calendar days prior to the date on which the Bids or Proposals are actually opened or seven (7) calendar days after the issuance of the Initial Bid or Proposal Package, whichever is later. For purposes of this Section 2.4.1, a matter is considered to have been disclosed if any of the following apply: (!) the matter is explicitly stated in the Bid or Proposal Package; (2) the matter could reasonably be inferred by a prudent person from the Bid or Proposal Package taken as a whole, and in light of the circumstances surrounding the Competitive Procurement Proceeding in question; or (3) the Bid or Proposal Package contains or omits information which, taken as a whole and in light of the circumstances surrounding the Competitive Procurement Proceeding, would put a prudent person on notice of the matter, or which would cause a prudent person to make inquiry concerning the matter.

2.4.2 Matters Disclosed Subsequent to the Issuance of the Initial Bid or Proposal Package but Prior to Bid or Proposal Opening. Protests based upon matters which were not disclosed in the Initial Bid or Proposal Package must be filed no later than twenty-one (21) calendar days prior to the actual opening of Bids or Proposals or within seven (7) calendar days after the matter upon which the Protest is based has been disclosed, whichever is later.

2.4.3 Matters Disclosed After Opening of Bids or Proposals. Protests based upon matters which are disclosed at or after the opening of Bids or Proposals, including the Award of a Contract by EMTA, must be filed no later than seven (7) calendar days after the matter upon which the Protest is based is disclosed or has taken place.

2.5 Waiver of Requirements. Failure to comply with the requirements set forth in Sections 2.1-2.4, above, may result in the rejection of a Protest for filing or the disallowance of the Protest on the merits. Notwithstanding the foregoing, EMTA reserves the right, in its discretion, to waive any of the foregoing requirements in the following circumstances:

- (!) EMTA determines that the Protester has substantially complied with the requirements of the EMTA Protest Procedures and the waiver will not unduly impair EMTA's Competitive Procurement Proceedings; or
- (2) EMTA determines that the Protester's failure to comply with the requirements of the EMTA Protest Procedures is for good cause based on a compelling reason or circumstance beyond the Protester's control and the waiver will not unduly impair EMTA's Competitive Procurement Proceedings; or
- (3) EMTA determines that a waiver is appropriate and necessary for reasons of public policy, or to avoid manifest inequity.

EMTA may impose such conditions on any waiver as EMTA determines are necessary and appropriate under the circumstances. Such conditions may include, but are not limited to, a requirement that the Protester cure any defects in the form or content of its Protest.

3. Consideration of Protests: Appeal

3.I Initial Consideration.

3.1.1 Review by Executive Director. All properly filed Protests shall be reviewed by the Executive Director of EMTA and/or such other EMTA officials as may be designated from time to time by the Executive Director and/or the Board of Directors of EMTA.

3.1.2 Decision of Executive Director. The Executive Director (or such other authorized officer of EMTA acting in place of the Executive Director) shall issue a written decision denying, upholding, or partially denying and partially upholding the Protest within ten (10) calendar days after the filing of the Protest, or the timely filing of any amendment thereto. The decision of the Executive Director shall be final, shall address each substantive issue raised in the Protest, and shall clearly set forth what relief, if any, is being granted to the Protester. The decision shall also advise the Protester of its right to appeal the decision of the Executive Director under the EMTA Protest Procedures.

3.1.3 Notice of Decision. The Protester shall be notified by telephone, facsimile transmission or e-mail of the substance of the decision issued by EMTA. A copy of the decision shall be mailed to the Protester by certified or registered mail.

3.2 Appeal of Decision of Executive Director.

3.2.1 Right of Appeal. A Protester whose Protest has been denied or who is dissatisfied with the relief granted (if any) in the decision issued by the Executive Director, may file an Appeal of that decision with EMTA. The Appeal shall be considered by the EMTA Appeal Officer.

3.2.2 Written Appeal. An Appeal must be submitted to EMTA in writing. Verbal Appeals will not be accepted or considered by EMTA.

3.2.3 Content of Appeal. The Appeal must be clearly labeled or otherwise identified as an Appeal which is being submitted under the terms of the EMTA Protest Procedures. The Appeal must contain a copy of the Protester's original Protest (as amended, if appropriate) and a clear, concise statement of: (1) those items in the decision issued by the Executive Director with which the Protester is dissatisfied; and (2) the relief sought by the Protester in the appeal proceeding. An Appeal shall be limited to those matters raised or argued in the Protest (including timely amendments thereto). Matters not raised or argued before the Executive Director in the Protest shall not be considered upon appeal.

3.2.4 Time for Appeal. An Appeal must be filed with EMTA no later than seven (7) calendar days after the date of the decision issued by the Executive Director with respect to the Protest in question.

3.2.5 Waiver of Requirements. Failure to comply with the requirements set forth in Sections 3.2.1-3.2.4, above, may result in the rejection of an Appeal for filing or the disallowance of the Appeal on the merits. Notwithstanding the foregoing, EMTA reserves the right, in its discretion, to waive any of the foregoing requirements in the following circumstances:

- (!) EMTA determines that the Protester has substantially complied with the requirements of the EMTA Protest Procedures and the waiver will not unduly impair EMTA's Competitive Procurement Proceedings; or
- (2) EMTA determines that the Protester's failure to comply with the requirements of the EMTA Protest Procedures is for good cause based on a compelling reason or circumstance beyond the Protester's control and the waiver will not unduly impair EMTA's Competitive Procurement Proceedings; or
- (3) EMTA determines that a waiver is appropriate and necessary for reasons of public policy, or to avoid manifest inequity.

EMTA may impose such conditions on any waiver as EMTA determines are necessary and appropriate under the circumstances. Such conditions may include, but are not limited to, a requirement that the Protester cure any defects in the form or content of its Appeal.

3.3 Appellate Consideration.

3.3.1 Review by Appeal Officer. All properly filed Appeals shall be reviewed by the EMTA Appeal Officer.

3.3.2 Decision of Appeal Officer. The Appeal Officer shall issue a written decision denying or upholding the Appeal within ten (10) calendar days after the filing of the Appeal. The decision shall clearly set forth what relief, if any, is being granted to the Protester. The decision shall also advise the Protester of its right to appeal the decision of the Appeal Officer under the FTA Protest Procedures.

3.3.3 Notice of Decision. The Protester shall be notified by telephone, facsimile transmission or e-mail of the substance of the decision issued by the EMTA Appeal Officer. A copy of the decision shall be mailed to the Protester by certified or registered mail.

4. General Provisions

4.1 Filing. All Protests and Appeals must be filed by actual delivery of the Protest or Appeal to the office of the Executive Director of EMTA. Protests and Appeals which are mailed to EMTA shall not be considered to have been filed until actual receipt of the Protest or Appeal by EMTA. Failure to timely file a Protest or Appeal due to delay in delivery by the U.S. Postal Service or private delivery services shall not normally be considered good cause for such failure so as to warrant a waiver of the timely filing requirement. Protests and Appeals may not be filed by facsimile transmission or by e-mail.

4.2 Hearings. As a general rule, Protests and Appeals shall be considered solely on the basis of the written materials submitted by the Protester in conjunction with the Protest or the Appeal. At the written request of the Protester, and at the sole discretion of the Executive Director and/or Appeal Officer, a Protester may be permitted to make a verbal presentation to the Executive Director and/or Appeal Officer, subject to such restrictions as the Executive Director and/or Appeal Officer may deem appropriate.

4.3 Intervention by Third Parties. Intervention by third parties in a Protest or Appeal shall not be permitted: *Provided, however,* that nothing herein shall be construed as limiting or otherwise restricting the authority of EMTA, the Executive Director, and/or the Appeal Officer from soliciting, receiving, and/or considering information from third parties regarding a particular Competitive Procurement Proceeding or any matters affected thereby.

4.4 Limitations on Relief Available. The Executive Director and the Appeal Officer shall have the authority to grant such relief, or to direct that such actions be taken, as are necessary and appropriate to remedy any defect, substantive or procedural, which may have occurred in a particular Competitive Procurement Proceeding. Notwithstanding the foregoing, the Executive Director and the Appeal Officer shall not have the power or authority to make an Award of an EMTA Contract. In the event that the Executive Director or Appeal Officer concludes that the Award of a Contract was improper, the Executive Director or Appeal Officer shall so state in his or her decision and the matter shall be remanded to the Board of Directors or the EMTA officer that awarded the Contract, for action not inconsistent with the findings of the Executive Director or the Appeal Officer.

4.5 Limitations on Scope of Review. The scope of review exercised by the Executive Director and the Appeal Officer shall be limited to determining whether a particular EMTA Competitive Procurement Proceeding complied with applicable Federal and state law, and the requirements of the EMTA Procurement Procedures. The scope of review shall not extend to the advisability of a particular procurement decision, nor shall it extend to those matters which are committed by law to the discretion and judgment of the EMTA Board of Directors.

4.6 Conformity With FTA Circular 4220.I F. The EMTA Protest Procedures are issued in conformity with the provisions of FTA Circular 4220.I F § 7(1), as amended, and are intended to be applied in a manner consistent therewith.

4.7 Administrative Remedy. The EMTA Protest Procedures are intended to provide an

administrative remedy to Interested Parties who may wish to protest any aspect of an EMTA Competitive Procurement Proceeding. The EMTA Protest Procedures do not limit or otherwise restrict any other remedies that an Interested Party may have at law or in equity, except to the extent that the failure of an Interested Party to avail itself of the remedies provided by the EMTA Protest Procedures may be considered to constitute a failure to exhaust administrative remedies. EMTA specifically reserves the right to assert in any proceeding that the failure of an Interested Party to avail itself of the remedies provided by the EMTA Protest Procedures constitutes a failure to exhaust administrative remedies and that the Interested Party's claims are therefore barred and/or unenforceable.

(Originally Adopted 10_24_ 88; revised and restated 7_22_91 ; revised and restated 4-24-95; revised and restated 2-25-02; revised and restated 2-25-13).

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