



**MACATAWA AREA EXPRESS
TRANSPORTATION AUTHORITY**

Padnos Transportation Center
171 Lincoln Ave. Ste 20
Holland MI 49423

**REQUEST FOR PROPOSALS (RFP)
BUS DRIVER UNIFORMS**

RFP ISSUE DATE: Wednesday, April 28, 2010

BID DUE/OPENING DATE: Friday, May 14, 2010 @ 3:00 p.m. Local Time (DST)

MAILING ADDRESS :

MAX Transportation Authority
Attn: RFP -Uniforms
Padnos Transportation Center
171 Lincoln Ave., Ste 20
Holland, MI 49423

EMAIL QUESTIONS SHOULD BE DIRECTED TO:

Sherri Betz – RFP Project Manager
Marketing & Customer Service Manager
s.betz@catchamax.org

Submissions must be clearly marked on the outside “RFP-UNIFORMS” and be SEALED. Unmarked and/or unsealed submissions and proposals received after the exact deadline time and date will remain unopened and will be rejected. Faxed proposals will not be accepted.

You are invited to submit a proposal for this project. Specifications, terms, conditions and instructions for submitting bids are contained herein. This Request for Proposal (RFP) with all pages, documents and attachments contained herein, or subsequently added to and made a part hereof, submitted as a fully and properly executed bid shall constitute the contract between the MAX Transportation Authority and the successful bidder when approved and accepted on behalf of the Authority by an authorized official or agent of the Authority. Please review the RFP as soon as possible and note the **DEADLINE FOR QUESTIONS** in the Instructions to Bidders.

Bidders shall complete and return the Bid and Award page(s) and submit all information requested herein in order for a bid to be responsive. The bid document shall be returned in its entirety, in a properly identified and sealed envelope to the MAX Transportation Authority at the above address. The Authority reserves the right to postpone the bid opening for its own convenience.

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STATEMENT OF NO PROPOSAL

NOTE: If you DO NOT intend to bid on this commodity or service, please complete and return this form immediately. Your response will assist us in evaluating all responses for this important project and to improve our bid solicitation process.

The MAX Transportation Authority wishes to keep its bidders list file up-to-date. If for any reason you cannot supply the commodity/service noted in this bid solicitation, this form must be completed and returned to remain on our bid list for future projects of this type.

If you do not respond to this inquiry within the time set for the bid opening date and time noted, we will assume that you can no longer supply this commodity/service, and your name will be removed from this bid list.

_____ Specifications are too stringent, due to brand, style, colors, etc. (explain below).

_____ Specifications are unclear (explain below).

_____ Unable to meet specifications.

_____ insufficient time to respond to the Request for Proposal.

_____ Our schedule would not permit us to perform.

_____ We are unable to meet bond requirements.

_____ We are unable to meet insurance requirements.

_____ We do not offer this product or service.

_____ Remove us from your bidders list for this commodity or service.

_____ Other (specify below).

REMARKS: _____

SIGNED: _____ NAME: _____
(Type or Print)

TITLE: _____ DATE: _____

FIRM NAME: _____
(if any)

ADDRESS: _____
(Street address) (MAX Authority) (State) (Zip)

PHONE: _____ FAX: _____

EMAIL: _____

SECTION I INSTRUCTIONS TO BIDDERS

1. **EXAMINATION OF BID DOCUMENT** Before submitting a bid, bidders shall carefully examine the specifications and shall fully inform themselves as to all existing conditions and limitations. The bidder shall indicate in the bid the sum to cover the cost of all items included on the bid form.
2. **INTENT TO SUBMIT AND PREPARATION OF PROPOSAL** Firms that intend to submit a Proposal must email the MAX Project manager for this RFP with their preferred email address for receiving amendments or addenda to the RFP. The Proposal shall be legibly prepared in ink or typed. If a unit price or extension already entered by the bidder on the Proposal and Award form is to be altered, it shall be crossed out and the new unit price or extension entered above or below and initialed by the bidder with ink. The bid shall be legally signed and the complete address and contact information of the bidder given thereon.

All bids shall be tightly sealed in an envelope plainly marked SEALED BID and identified by “RFP-UNIFORMS” along with the bid opening date and time. Unmarked or late bids will be unopened and rejected. The MAX Transportation Authority will maintain and guarantee confidentiality of the contents until the specified opening date and time. Proposals will NOT be accepted by fax.

3. **EXPLANATION TO BIDDERS** Any binding explanation desired by a bidder regarding the meaning or interpretation of the Request for Proposal (RFP) and attachments must be requested via email at the email address provided above **within 5 days of the RFP release date** so that MAX’s response(s) via email may reach all prospective bidders prior to the submission of proposals. Any information given to a prospective bidder concerning the RFP will be issued as an amendment or addendum and will be furnished to prospective bidders **who provide MAX with a valid email address**, if such information would be prejudicial to uninformed bidders. Receipt of amendments or addenda by a bidder must be acknowledged in the bid by attachment, or by letter or fax received before the time set for opening of bids. Verbal explanation or instructions given prior to the opening will not be binding.
4. **CASH DISCOUNTS** Discount offered for payment of less than thirty (30) days will not be considered in evaluating bids for award. Offered discounts of less than thirty (30) days will be taken if payment is made within the discount period, even though not considered in evaluation of the bid.
5. **WITHDRAWAL OF PROPOSALS** Proposals may be withdrawn in person by a bidder or authorized representative, provided their identity is made known and a receipt is signed for the bid, but only if the withdrawal is made prior to the deadline for receipt of Proposals. No bid may be withdrawn for at least ninety (90) days after the opening of Proposals.
6. **ALTERNATE PROPOSALS** Bidders are cautioned that any alternate bid, unless specifically requested or any changes, insertions or omissions to the terms and conditions, specifications or any other requirement of this RFP may be considered non-responsive, and at the option of the Authority, result in rejection of the alternate bid.
7. **LATE PROPOSALS** Any Proposal received by the Authority designated herein after the exact date and time specified for receipt will not be opened or considered.
8. **UNIT PRICES** If there is a discrepancy between unit prices and their extension, unit prices shall prevail.

9. **SCHEDULE** The following is the schedule for the RFP process for this project:

EVENT	DATE
RFP Issued	4/28/2010
Questions/Clarifications by Email	5/05/2010 12 Noon DST
Response to Questions/Clarifications by Email	5/10/2010
Deadline for Submission of Proposals	5/14/2010 12 Noon DST
Opening of Proposals	5/14/2010
Review of Proposals	5/17/2010
Recommendation to Board & Action	5/24/2010
Contract Approved and takes effect	5/28/2010

SECTION 2
PROPOSAL AND AWARD

The undersigned having become thoroughly familiar with and understanding all of the bid/contract documents incorporated herein and the uniform specifications included, agrees to provide all of the items listed below, delivered to the employee in quantities requested as specified herein for the following unit prices.

Item/Description	Make (Brand)	Number (Style)	Available Sizes	Unit Price
1. Men's Navy Flat Front Cargo Pants or equal	Edwards	2568		\$
			3X	\$
			4X	\$
			5X	\$
2. Women's Navy Flat Front Cargo Pants or equal	Edwards	8568		\$
			3X	\$
			4X	\$
			5X	\$
3. Men's Navy Flat Front Cargo Shorts (or equal	Edwards	2468		\$
			3X	\$
			4X	\$
			5X	\$
4. Women's Navy Flat Front Cargo Shorts or equal	Edwards	8468		\$
			3X	\$
			4X	\$
			5X	\$
5. Navy Mini-plaid work shirt (short sleeve) or equal	Redkap	SP84GB		\$
			3X	\$
			4X	\$
			5X	\$

Item/Description	Make (Brand)	Number (Style)	Available Sizes	Unit Price
6. Navy Mini-plaid work shirt (long sleeve) or equal	Redkap	SP74GB		\$
			3X	\$
			4X	\$
			5X	\$
7. Navy Ribbed wool/poly V-neck sweater with shoulder epaulets or equal	Edwards	397		\$
			3X	\$
			4X	\$
			5X	\$
8. Navy Mock turtleneck sweater	Tri-Mountain	620		\$
			3X	\$
			4X	\$
			5X	\$
9. Navy reversible Terra-Tek Vest	Port Authority	J749		\$
			3X	\$
			4X	\$
			5X	\$
10. Navy Zip up Courier Jacket w/ reflective striping	Tri-Mountain	8930		\$
			3X	\$
			4X	\$
			5X	\$
11. Black leather 1 1/2 "security belt with silver tone buckle	Edwards	BC00		\$
			3X	\$
			4X	\$
			5X	\$

The following items are for SUPERVISORS:

Item/Description	Make (Brand)	Number (Style)	Available Sizes	Unit Price
12. Men's Long Sleeve white poly/cotton Flyer shirt or equal	Edwards	1260		\$
			3X	\$
			4X	\$
			5X	\$
13. Women's Long Sleeve white poly/cotton Flyer shirt or equal	Edwards	5260		\$
			3X	\$
			4X	\$
			5X	\$
14. Men's Short Sleeve white poly/cotton Flyer shirt or equal	Edwards	1210		\$
			3X	\$
			4X	\$
			5X	\$
15. Women's Short Sleeve white poly/cotton Flyer shirt or approved equal	Edwards	5210		\$
			3X	\$
			4X	\$
			5X	\$
16. Women's Contour short sleeve 60/40 cotton poly golf/polo shirt Slate blue or approved equal	Tri-Mountain	102		\$
			3X	\$
			4X	\$
			5X	\$
17. Men's Profile short sleeve 60/40 cotton poly golf/polo shirt Slate blue or approved equal	Tri-Mountain	105		\$
			3X	\$
			4X	\$
			5X	\$

Item/Description	Make (Brand)	Number (Style)	Available Sizes	Unit Price
18. Women's Long Sleeve 60/40 cotton poly golf/polo shirt slate blue or approved equal	Tri-Mountain	602		
			3X	\$
			4X	\$
			5X	\$
19. Men's Short Sleeve 60/40 cotton poly golf/polo shirt slate blue or approved equal	Tri-Mountain	608		
			3X	\$
			4X	\$
			5X	\$

OPTIONS:

1. Price to add reflector strip on vest: \$ _____ per unit

Funding for this project is provided in part with state and federal transportation funding. As such, federal requirements, as attached hereto, are applicable to the contract.

All prospective bidders may submit a sample of items proposed with their bid. Each sample shall be identified with the "item number", bidder's name, manufacturer's name and product number.

Guaranteed delivery shall be _____ calendar days after receipt of voucher and additional replacement and/or new hire orders.

Bidder shall provide all of the information as requested herein with their bid. **Failure to do so and/or failure to provide post-bid requested information may be cause for rejecting the bid as non-responsive.**

Contact person for order information shall be:

NAME: _____

PHONE: _____

All bids shall include a detailed description of the manufacturer's product by means of specifications literature.

Bidders **NOT** having local distributors/outlets may subcontract with **ANY** local firm to provide **LOCAL** service as specified herein.

The undersigned bidder agrees that the following is a complete and accurate list of all subcontractors to be utilized if awarded this contract and any change from this list shall be permitted only with the consent of the MAX Authority.

LIST NAME OF EACH SUBCONTRACTOR AND BRIEF DESCRIPTION OF WORK TO BE DONE.

Bidder/Contractor has examined and carefully studied the bidding documents and attachments, and acknowledges receipt of the following addenda:

Addendum No: _____

Dated: _____

Bidder shall provide all of the information as requested herein with their bid. **Failure to do so and/or failure to provide post-bid requested information may be cause for rejecting the bid as non-responsive.**

By my signature below, I certify that the firm bidding on this contract, when making hiring decisions, does not use a past criminal conviction as a bar to or preclude a person with a criminal conviction from being considered for employment with the bidding firm unless otherwise precluded by federal or state law. I further certify that I have read and agree to be bound by the provisions of the MAX Authority's Non-Discrimination Clause found in Appendix A.

Signed: _____ Name: _____

Title: _____

BUY AMERICA CERTIFICATE (A)

Certification requirement for procurement of steel, iron, or manufactured projects:

Certificate of Compliance with 49 CFR U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company _____

Title _____

BIDDERS' QUESTIONNAIRE

Firm Name: _____

Address: _____

Person Completing this Form:

1. Contractor's Method of Operation:

Do you have a local (storefront) facility? Yes: _____ No: _____

Days and Hours of Operation: _____

If no, indicate proposed method of meeting with employees and measuring, ordering and delivering employee orders. (Include hours available to schedule and meet, locations of meetings, etc.)

Do you presently inventory clothing for purchase? Yes: _____ No: _____

Will you be inventorying these items for our employees? Yes: _____ No: _____

Describe how your facility takes employee measurements? (Include number of people available to take measurements, whether sample garments are available in several sizes to try on and limitations as to accuracy of sizes.)

2. Delivery Schedule:

A. Employee measurements within _____ days after Notice by Employee.

B. Initial delivery within _____ days after fittings (Must be within 14 calendar days).

3. Sizes Available:

List the sizes on the Bid and Award pages for each item requested.

4. Would you be able to accommodate our Employee Allowance system?

Yes: _____ No: _____ Explain:

BIDDERS' QUESTIONNAIRE (cont)

5. Can you accommodate our delivery time of 2 weeks (14 calendar days) after fittings?

Yes: _____ No: _____ Explain:

6. Have you provided a sample garment for each item that has been bid as an approved equal?

Yes: _____ No: _____ If no, explain:

7. The MAX Authority may want to add safety reflector strips to the vests. Please describe if this option is feasible and appropriate on the vests bid. Provide a cost on the Bid and Award page.

I hereby state that all of the information I have provided is true, accurate and complete. I hereby state that I have the authority to submit this bid which will become a binding contract if accepted by the MAX Authority. I hereby state that I have not communicated with nor otherwise colluded with any other bidder, nor have I made any agreement with nor offered/accepted anything of value to/from an official or employee of the MAX Authority that would tend to destroy or hinder free competition.

The firm's identification information provided will be used by the MAX Authority for purchase orders, payment and other contractual purposes. If the contractual relationship is with or the payment is made to another firm, please provide a complete explanation on your letterhead and attach to your bid. Please provide for accounts payable purposes:

Tax Identification Number (Federal ID): _____

Remittance Address: _____

I hereby state that I have read, understand and agree to be bound by all terms and conditions of this bid document.

SIGNED: _____ NAME: _____
(Type or Print)

TITLE: _____ DATE: _____

FIRM NAME: _____
(if any)

ADDRESS: _____
(Street address) (City) (State) (Zip)

PHONE: _____ FAX: _____

EMAIL ADDRESS: _____

FOR MAX AUTHORITY USE ONLY - DO NOT WRITE BELOW

SECTION 3 SPECIFICATIONS AND REQUIREMENTS

1. SCOPE AND INTENT

The MAX Authority intends to enter into a three (3) year contract with a contractor to provide operational staff (bus drivers and road supervisors) with new and replacement uniforms on an as-needed basis. It is the intent of these specifications to secure uniform items approved by the MAX Authority Board as part of the supplied uniform or for individual purchase by the employee. All items must meet or exceed the minimum specifications and requirements for daily wear and maintenance. It is not the intent of these specifications to preclude reputable bidders from bidding, nor to inhibit free and open competition. Manufacturers and distributors/suppliers are welcome to submit bids, but must be able to provide local service and those described in this RFP.

2. UNIFORM CLOTHING AVAILABILITY

Contractor shall maintain an inventory of uniform items to accommodate employee fittings and a reasonable delivery schedule (within 14 calendar days).

3. CUSTOMIZED APPLICATION

3.1 **Jacket, Reversible Vest, Sweater, and Shirts:** These items require an embroidered MAX logo on the left side in white thread. If possible, the Vest should have an embroidered logo on each side of the reversible vest. Baseball caps and fleece hats shall have logo embroidered on them in the center in white thread.

1.2 The supervisor's jacket and vest also shall also have "Supervisor" embroidered on the right side.

4. SIZES

Uniforms shall be available to accommodate all employees, from the smallest to the largest. Clothing shall be sized to fit neatly, and alterations to be made shall be determined by fitting the largest part of the body, and reducing the size of the garment, as necessary, for proper fit. Gussets shall not be used, without expressed approval, and only in extreme cases.

Bidders shall state size charts (i.e., Women's S-M-L-XL; 4-20, 22-28 and Men's 15-17½) for all items bid, as well as brand names. Costs associated with large sizes shall be included on the Bid and Award page, as well as any other "add on" costs for variations.

5. **CLOTHING ITEMS**

- 5.1 **Men's Pants:** Edwards #2568 Navy poly/cotton blend flat front cargo pants or approved equal.
- 5.2 **Women's Pants:** Edwards 8568 Navy poly/cotton blend flat front cargo pants or approved equal. NAVY BLUE.
- 5.3 **Men's Shorts:** Edwards #2468 Navy poly/cotton blend flat front 10" inseam cargo shorts or approved equal. NAVY BLUE.
- 5.4 **Women's Shorts:** Edwards #8468 Navy poly/cotton blend flat front 8" inseam cargo shorts or approved equal. NAVY GRAY.
- 5.6 **Short Sleeve Shirt:** Redkap #SP84GB Navy/Gray mini-plaid poly/cotton blend poplin work shirt or approved equal. NAVY GRAY
- 5.7 **Long Sleeve Shirt:** Redkap #SP74GB Navy/Gray mini-plaid poly/cotton blend poplin work shirt or approved equal. NAVY/GRAY.
- 5.8 **Pullover Sweater:** Edwards #397 Commando ribbed wool/poly blend V-neck pullover sweater with shoulder epaulets or approved equal. NAVY.
- 5.10 **Turtleneck Sweater:** Tri-Mountain #620 Graduate mock turtleneck sweater or approved equal. NAVY.
- 5.15 **Outer Vest:** Port Authority #J749 Reversible Terra-Tek Vest with nylon waterproof shell and fleece or approved equal. (Note: Two embroidered logos on both reversible sides of vest) NAVY BLUE.
- 5.16 **Winter Jacket:** Tri-Mountain #8930 Zip up Winter Courier Jacket with silver reflective striping or approved equal. Windproof/waterproof heavyweight 100% nylon shell with polyfill quilted lining. Utility pocket on sleeve and side zippers for belt access. Two front double-entry pockets, chest pocket with inner cell phone pocket with Velcro closure, open button and Velcro cuff closure. NAVY BLUE.
- 5.17 **Supervisor Long Sleeve Shirts:** Edward's Women's #5260 and Men's #1260 long sleeve Flyer shirt made of 65/35 poly cotton poplin with point collar, 2 front flap pockets, front epaulets, straight back yoke, stain/wrinkle resistant or approved equal. WHITE.
- 5.18 **Supervisor Short Sleeve Shirts:** Edward's Women's #5210 and Men's #1210 short sleeve Flyer shirt made of 65/35 poly cotton poplin with point collar, 2 front flap pockets, front epaulets, straight back yoke, stain/wrinkle resistant or approved equal. WHITE.
- 5.19 **Short Sleeve Women's Polo Shirts:** Tri-Mountain Women's #102 Contour short sleeve polo shirts with 60% cotton/40% poly pique knit or approved equal. Three horn buttons set in reverse placket. Square hemmed bottom. SLATE BLUE with MAX logo embroidered with white thread on left chest.
- 5.20 **Short Sleeve Men's Polo Shirts:** Tri-Mountain Men's #105 Profile short sleeve polo shirts with 60% cotton/40% poly pique knit or approved equal. Three horn buttons set in reverse placket. Square hemmed bottom. SLATE BLUE with MAX logo embroidered with white thread on left chest.

Clothing Items (cont'd)

- 5.21 **Long Sleeve Women's Polo Shirts:** Tri-Mountain Women's #602 Victory long sleeve golf/polo shirts with 60% cotton/40% poly pique knit or approved equal. Three horn buttons set in reverse placket. Square hemmed bottom. Double stitched seams for durability. SLATE BLUE with MAX logo embroidered with white thread on left chest.

- 5.22 **Long Sleeve Men's Polo Shirts:** Tri-Mountain Men's #608 Champion long sleeve golf/polo shirts with 60% cotton/40% poly pique knit or approved equal. Three horn buttons set in reverse placket. Square hemmed bottom. Double stitched seams for durability. SLATE BLUE with MAX logo embroidered with white thread on left chest.

- 5.23 **Leather Belt:** Edward's Garrison 1.75" black leather security unisex belt with removable silver tone buckle or approved equal.

6. APPROVED EQUALS

Requests for approved equals shall only be approved if the specifications provided herein for each item have been met. Bidders are cautioned that products bid for which prior approved equal status has not been requested may be deemed non-responsive. Bidders must provide samples for their proposed "approved equals." Samples provided to the MAX Authority may be picked up or arranged for outbound shipping any time after the substituted equals are reviewed and approved by MAX. Union uniform manufacturer/brands will be acceptable.

7. MONTHLY INVOICES, PACKING SLIPS AND PAYMENTS

Contractor shall submit, not more frequently than once per month, two (2) copies of a duly authorized invoice for goods of approved uniform items ordered, delivered and accepted by the MAX Authority. Contractor also must submit a monthly report detailing Project Manager or his/her designee, and countersigned by the employee, shall be submitted with the invoice. Payment will not be made on goods for which an original voucher is not presented. All delivered items must include a packing list displaying the employee name, items shipped, item number(s), quantity, size, and cost.

8. ANNUAL EMPLOYEE UNIFORM ALLOWANCE PROGRAM

The MAX Authority will allot each uniformed employee who has successfully completed their 6-month introductory period an annual uniform allowance to order new and replacement items. The Authority also will order and purchase temporary uniform items for introductory employees to wear during their first six months.

The Annual Employee Uniform Allowance will become available at the beginning of each new fiscal year on July 1. The Contractor will be required to establish a system for managing uniform allowance use and balances for each Authority employee and their Internet orders.

The Contractor shall provide the Authority with a Monthly Order Summary, which will contain all orders sorted by employee. The Monthly Order Summary shall include the item(s) ordered, quantity, cost per piece, subtotal, total of order, total allowance used year-to-date, and balance remaining. The Contractor's Internet ordering system must prohibit placement of orders that exceed employees' Annual Uniform Allowance.

MAX employees will be required to sign the packing slip enclosed with delivered items, which will be retained on file by the Authority as proof of the order and receipt of items to verify the Contractor's monthly reports of order. Uniform items shall NOT be delivered to employee's homes or alternative addresses. MAX shall retain a copy of the employee-signed packing receipts as proof of delivery and acceptance to verify monthly reports.

Employees shall be allowed to purchase at their own expense uniform items directly from the Contractor at the current contract pricing. Employee's personal business transactions are, however, subject to any appropriate sales tax. All items ordered by employees must be delivered to the MAX Authority regardless of whether the items are paid for by the Authority with their Uniform Allowance or by the employee.

9. INTERNET ORDERING CAPABILITIES

Contractor shall develop and maintain a secure website for the ordering of approved uniform items by Authority employees. The website shall provide photos, descriptions, available sizes, quantities and costs of approved uniform items. Authority employees will be able to access the website, login with a secure user name and password, and place orders as needed, which will be “charged” against their Annual Uniform Allowance. The Contractor will be responsible for establishing an accounting system that accurately tracks all online orders placed by employees and produce a Monthly Order Summary for the MAX Authority.

10. METHODS OF CONTRACTOR'S OPERATION

Bidders shall provide details regarding the procedure which will be established for drivers and dispatchers to be fitted, order and receive garments ordered under the contract. At a minimum, the Contractor shall be available to fit employees during the hours of 8am and 5pm, Monday through Friday. If the Contractor requires appointments be made; employees shall be able to contact the Contractor during normal business hours and appointments shall be scheduled within three (3) business days thereafter. If the Contractor's phone number is not local, he/she shall provide a toll-free number for employees to call.

In lieu of a Contractor's local (storefront) facility, the Contractor may elect to meet employees at a mutually acceptable place and time. If bidders propose use of the MAX Authority premises, coordination for this meeting must be scheduled with the Operations Manager or Transit Director.

10. ESTIMATED ANNUAL PURCHASES

The MAX Authority's uniformed workforce totals approximately 46 with 34 full time and 12 part time employees. Approximately 44 of these employees are drivers, and 2 are full time road supervisors.

The MAX Authority has estimated the initial total investment to provide a **Standard Issue** for each uniformed employee (both full and part time) to be \$15,000. This estimate, however, is not intended as a guarantee of a minimum or maximum amount under this contract. Actual amount may be more or less than indicated. Subsequent new hires will be issued temporary uniform items to wear during their introductory period. Following successful completion of their introductory period, new hires will be required to order the Standard Issue of uniform items.

11. DELIVERY

The Contractor shall be responsible for delivery of garments to the MAX Authority. At no times shall goods be delivered to employees or to any other address than the MAX Authority. Deliveries shall be pre-arranged and scheduled with the Operations Manager or her designee. Under no circumstances will the MAX Authority accept drop shipped items direct from the manufacturer. The MAX Authority reserves the right to impose sanctions for unsubstantiated delays in delivery. Delivery is expected not more than 14 calendar days after the ordering date.

12. INITIAL ISSUE UNDER THIS CONTRACT

12.1 Uniform Issue

All initial new hires and/or rehires scheduled to report to the MAX Authority for work on July 1, 2010 will receive the following Standard Issue:

- 5 long **OR** short sleeve shirts (any combination totaling 5)
- 5 pants **OR** shorts (any combination totaling 5)
- 1 sweater **OR** 1 vest (of their choice)
- 1 winter jacket

Subsequent new hires who have never worked for the MAX Authority or its immediate previous contractor (MV Transportation) will receive a temporary uniform issue to wear during their six-month introductory period. The temporary Uniform Issue includes the following items:

- 4 long **OR** short sleeve slate blue polo shirts (any combination totaling 4)
- 1 Navy outer vest **OR** v-neck Commando sweater (optional, but may choose one)

12.2 Measurements

The selected Contractor will be required to properly fit all operators as orders are placed. An inventory of uniform items in a variety of sizes will be made available for employees to try on.

13. CONTRACT PERIOD

The contract period shall be in effect for a basic three (3) year period, beginning on the date of award and continuing thereafter. Pricing shall be firm for the life of the contract. The contract can be renewed for one (1) additional two-year period, upon the execution of an extension agreement setting forth Intent of Renewal and signed by both parties to this agreement.

14. PRICING

All quoted prices shall be firm for the duration of the contract and during any negotiated renewal thereof, and shall include: initial uniform cost, initial measuring and fittings, required embroidered logos on select items, all packing, handling and shipping charges, required reports, and any and all support services such as Internet ordering and setup of accounts. The price included in the Contractor's proposal shall constitute the only charge and obligation to the MAX Authority. Any cost incurred from the return and replacement, for correction of improper fit or faulty garments, will be at the expense of the Contractor.

15. CONTRACT SUPERVISION

The MAX Operations Manager shall designate an individual who shall have general supervision over the service provided. That employee shall have authority to make adjustments to uniforms to reflect changes in personnel, and to reject any repairs or garments that do not conform to the contract requirements and the general quality of service expected with a contract of this nature.

16. CONTRACT AWARD CRITERIA

Bids will be evaluated on initial cost, responsiveness to the specifications, delivery time, availability of inventory for proper fittings, and the ability to offer Internet ordering and generate the required accounting reports.

SECTION 4 TERMS AND CONDITIONS

1. AWARD OF CONTRACT

- A. This contract will be awarded to that responsible bidder whose bid, conforming to this solicitation, will be most advantageous to the MAX Authority, price and other factors considered. The MAX Authority reserves the right to accept or reject any or all bids, waive informalities and minor irregularities in bids received, or to enter into negotiations with the preferred bidder.

Notification of award will be in writing by the MAX Project Manager for this RFP. Upon notification, the Contractor shall submit to the RFP Project Manager all required insurance certificates (if required) and such other documentation as may be requested or required hereunder. Upon their receipt and subsequent approval by the MAX Authority, the RFP Project Manager will forward to the Contractor a written **NOTICE TO PROCEED**. Work shall **NOT** be started until such **NOTICE TO PROCEED** is received by the Contractor.

- B. Unilateral changes in bid prices by the bidder shall not be allowed. However, the MAX Authority, at its sole option, reserves the right to negotiate with bidders in the event of, but not limited to:

- 1) No bids received;
- 2) A single bid being received; or
- 3) Prices quoted are over budget and/or unreasonable.

2. COMPLETE CONTRACT

This bid document together with its addenda, amendments, attachments and modifications, when executed, becomes the complete contract between the parties hereto, and no verbal or oral promises or representations made in conjunction with the negotiation of this contract shall be binding on either party.

3. SUBCONTRACTORS - NON ASSIGNMENT

Bidders shall state in writing any and all sub-contractors to be associated with this bid, including the type of work to be performed. The Contractor shall cooperate with the MAX Authority in meeting its commitments and goals with regard to maximum utilization of minority and women-owned business enterprises. The Contractor hereby agrees and understands that the contract resulting from this solicitation shall not be transferred, assigned or sublet without prior written consent of the MAX Authority.

4. TAXES

The MAX Authority is exempt from all federal excise tax and state sales and use taxes. However, depending upon the situation, the vendor or contractor may not be exempt from said taxes and the MAX Authority is making no representation as to any such exemption.

5. PAYMENTS

Unless otherwise specified by the MAX Authority in this contract, the Contractor will be paid in not more than thirty (30) days after receipt of a properly executed invoice, the sum stipulated herein for supplies delivered and accepted, or service rendered and accepted. Payments are processed by the MAX Authority after receipt of an original invoice from the Contractor and approval by the Operations Manager.

6. CHANGES AND/OR CONTRACT MODIFICATIONS

The MAX Authority reserves the right to increase or decrease quantities, add/delete or substitute uniform items, add or change services or requirements, or make any changes necessary at any time during the term of this contract, or any negotiated extension thereof. Price adjustments due to any of the foregoing changes shall be negotiated and mutually agreed upon by the Contractor and the MAX Authority.

Changes of any nature after contract award which reflect an increase or decrease in requirements or costs shall not be permitted without prior approval by Transit Director. MAX Authority Board approval may also be required. **SUCH CHANGES, IF PERFORMED IN ADVANCE OF TRANSIT DIRECTOR APPROVAL, MAY BE SUBJECT TO DENIAL AND NON-PAYMENT.**

7. LAWS, ORDINANCES AND REGULATIONS

The Contractor shall keep himself/herself fully informed of all local, state and federal laws, ordinances and regulations in any manner affecting those engaged or employed in the work and the equipment used. Contractor and/or employees shall, at all times, serve and comply with such laws, ordinances and regulations.

Any permits, licenses, certificates or fees required for the performance of the work shall be obtained and paid for by the Contractor. This contract shall be governed by the laws of the State of Michigan.

8. RIGHT TO AUDIT

The MAX Authority or its designee shall be entitled to audit all of the Contractor's records, and shall be allowed to interview any of the Contractor's employees, throughout the term of this contract and for a period of three years after final payment or longer if required by law to the extent necessary to adequately permit evaluation and verification of:

- A. Contractor compliance with contract requirements,
- B. Compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of his payees.

9. HOLD HARMLESS

If the acts or omissions of the Contractor/Vendor or its employees, agents or officers, cause injury to person or property, the Contractor/Vendor shall defend, indemnify and save harmless the MAX Authority, its agents, officials, and employees against all claims, judgments, losses, damages, demands, and payments of any kind to persons or property to the extent occasioned from any claim or demand arising therefrom.

10. **DEFAULT**

The MAX Authority may at any time, by written notice to the Contractor, terminate this contract and the Contractor's right to proceed with the work, for just cause, which shall include, but is not limited to the following:

- A. Failure to provide insurance and bonds (when called for), in the exact amounts and within the time specified or any extension thereof.
- B. Failure to make delivery of the supplies, or to perform the services within the time specified herein, or any extension thereof.
- C. The unauthorized substitution of articles for those bid and specified.
- D. Failure to make progress if such failure endangers performance of the contract in accordance with its terms.
- E. Failure to perform in compliance with any provision of the contract.
- F. **Standard of Performance** - Contractor guarantees the performance of the commodities, goods or services rendered herein in accordance with the accepted standards of the industry or industries concerned herein, except that if this specification calls for higher standards, then such higher standards shall be provided.

Upon notice by the MAX Authority of Contractor's failure to comply with such standards or to otherwise be in default of this contract in any manner following the Notice to Proceed, Contractor shall immediately remedy said defective performance in a manner acceptable to the MAX Authority. Should Contractor fail to immediately correct said defective performance, said failure shall be considered a breach of this contract and grounds for termination of the same by the MAX Authority.

In the event of any breach of this contract by Contractor, Contractor shall pay any cost to the MAX Authority caused by said breach including but not limited to the replacement cost of such goods or services with another Contractor.

The MAX Authority reserves the right to withhold any or all payments until any defects in performance have been satisfactorily corrected.

In the event the Contractor is in breach of this contract in any manner, and such breach has not been satisfactorily corrected, the MAX Authority may bar the Contractor from being awarded any future MAX Authority contracts.

- G. All remedies available to the MAX Authority herein are cumulative and the election of one remedy by the MAX Authority shall not be a waiver of any other remedy available to the MAX Authority either listed in this contract or available by operation of law.

11. CONTRACT PERIOD, EXTENSIONS, CANCELLATION

- A. The contract shall be in effect for the term stated in the specifications.
- B. The MAX Authority may opt to extend this contract upon mutual agreement of both parties. The number of extensions shall be limited to that stated in the specifications.
- C. The MAX Authority may, from time to time, find it necessary to continue this contract on a month-to-month basis only, not to exceed a six (6) month period. Such month-to-month extended periods shall be by mutual agreement of both parties, with all provisions of the original contract or any extension thereof remaining in full force and effect.
- D. All contracts, extensions and cost increases are subject to availability of funds and the approval of the MAX Authority Board (if required).
- E. The MAX Authority reserves the right to cancel the contract due to non-appropriation of funds by the MAX Authority Board with thirty (30) days written notice.
- F. Either party may terminate the contract (or any extension thereof) without cause at the end of any twelve (12) month term by giving written notice of such intent at least 60 days prior to the end of said twelve (12) month term.
- G. All notices are in effect commencing with the date of mailing. Written notices may be delivered in person or sent by First Class mail; faxed or emailed to the last known address.
- H. If cancellation is for default of contract due to non-performance, the contract may be canceled at any time (see Item 10, DEFAULT).

APPENDIX A
NON-DISCRIMINATION CLAUSE FOR ALL MAX AUTHORITY CONTRACTS

The Contractor agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans With Disabilities Act of 1990 as amended; the Elliott-Larson Civil Rights Act, Act. No. 453, Public Act of 1976 as amended; the Michigan Handicappers Civil Rights Act, Act No. 220, Public Act of 1976 as amended and all other applicable Federal and State laws. The Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex, height, weight, marital status, or a disability that is unrelated to the individual's ability to perform the duties of the particular job or position. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, sex, height, weight, marital status, or a disability that is unrelated to the individuals ability to perform the duties of the particular job or position.
3. If requested by the MAX Authority, the Contractor shall furnish information regarding practices, policies and programs and employment statistics for the Contractor and subcontractors. The Contractor and subcontractors shall permit access to all books, records and accounts regarding employment practices by agents and representatives of the MAX Authority duly charged with investigative duties to assure compliance with this clause.
4. Breach of the covenants herein may be regarded as a material breach of the contract or purchasing agreement as provided in the Elliott-Larsen Civil Rights Act.
5. The Contractor will include or incorporate by reference the provisions of the foregoing paragraphs 1 through 4 in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission* and will provide in every subcontract or purchase order that said provision will be binding upon each subcontractor or seller.

The Elliott-Larson Civil Rights Act, Sec. 202 of Act. No. 453 of 1976 reads in part as follows:

Sec. 202. (1) An employer shall not:

- (a) Fail or refuse to hire, or recruit, or discharge or otherwise discriminate against an individual with respect to employment, compensation, or a term condition or privilege of employment because of religion, race, color, national origin, age, sex, height, weight or marital status.
- (b) Limit, segregate or classify an employee or applicant for employment in a way which deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, height, weight or marital status.
- (c) Segregate, classify or otherwise discriminate against a person on the basis of sex with respect to a term, condition or privilege of employment, including a benefit plan or system.

* Except for contracts entered into with parties employing less than three employees.

**APPENDIX A-1
NONDISCRIMINATION**

During the performance of this contract, the contractor agrees as follows:

- (1) Nondiscrimination – in accordance with Title VI of the Civil Rights Act, as amended, 42 USC subsection 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC subsection 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC subsection 12132, and Federal transit law at 49 USC subsection 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
 - a. Race, Color, Creed, National Origin, Sec - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC subsection 2000e and Federal transit laws at 49 USC subsection 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the Department of Labor (USDOL) regulations. “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” 41 CFR 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 USC subsection 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are tested 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 of training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC subsections 623 and Federal transit law at 49 USC subsection 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC subsection 12112, the Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**APPENDIX B-1
APPLICATION OF FEDERAL TRANSIT ADMINISTRATION
REGULATIONS AND REQUIREMENTS**

To achieve compliance with changing Federal requirements, the MAX Authority hereby includes notice that Federal requirements may change and the changed requirements will apply to this contract, as applicable, unless the Federal government determines otherwise.

The contractor also recognizes that the United States Environmental Protection Agency, Federal Highway Administration, and other agencies in the Federal Government have issued and are expected to issue regulations, guidelines, orders, or other requirements that may affect this contract. The Contractor acknowledges that other obligations relative to this contract involving Federal law may exist.

The MAX Authority has agreed to include provision adequate to ensure compliance of participation entities with Federal requirements. The contractor agrees to include in its subcontracts for service under this contract provisions adequate to impose Federal requirements including those below:

For all Contracts:

NOTICE OF FEDERAL REQUIREMENTS: The contractor shall comply with the rules of 49 CFR Part 18, relative to third party contracts with the MAX Authority, Uniform Administrative Requirements for Grants and Cooperative Agreements.

INTEREST OF MEMBERS OR DELEGATES TO CONGRESS: No member or delegate to the Congress of the United States shall be admitted to any share or part of this project or any benefit therefrom.

ENERGY CONSERVATION REQUIREMENTS: The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ACCESS TO RECORDS (sole source or offer): The contractor agrees to provide the MAX Authority system, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three years, after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the MAX Authority System, 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. Reference 49 CFR 18.39(l)(11).

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS (applies to the contractor and its employees that administer any system of records on behalf of the Federal Government under any contract. Specific attention is drawn to contractors administering drug and alcohol enforcement activities for FTA): (1) The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. subsection 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the contractor or its employees operate a system of records on behalf of the Federal Government. The contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

FEDERAL CHANGES: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1999) between the MAX Authority System, and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

RECOVERED MATERIALS: 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 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designed in Subpart B of 40 CFR Part 247.

NO OBLIGATIONS BY THE FEDERAL GOVERNMENT: (1) The MAX Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government or in approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS: These provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any The MAX Authority requests which would cause The MAX Authority to be in violation of the FTA terms and conditions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS: (1) The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. subsection 3801 et seq. And U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assistance project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of

1986 on the Contractor to the extent the Federal Government deems appropriate. (2) 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.

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

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

DISADVANTAGED BUSINESS ENTERPRISE PROVISION: The Federal Fiscal Year goal has been set by the MAX Authority in an attempt to match projected procurements with available qualified disadvantaged businesses. The MAX Authority goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the MAX Authority as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this solicitation.

- (1) Policy. It is the policy of the MAX Authority that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURRA of 1987, apply to this contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts. It is further the policy of the MAX Authority to promote the development and increase the participation of businesses owned and controlled by disadvantaged individuals. DBE involvement in all phases of MAX Authority procurement activities are encouraged.

- (2) DBE obligation. The contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- (3) Where the contractor is found to have failed to exert sufficient reasonable and good faith efforts to involved DBEs in the work provided, the MAX Authority may declare the contractor noncompliant and in breach of contract.

- (4) The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the MAX Authority's DBE program. These records and documents will be made available at reasonable times and placed for inspection by an authorized representative of the MAX Authority and will be submitted to the MAX Authority upon request.
- (5) The MAX Authority will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request: identification of a qualified DBE; available listing of minority assistance agencies; holding bid conferences to emphasize requirements.
- (6) Definitions:

- X **Disadvantaged business:** A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it - OR - Which is at least 51 percent owned by one or more women, or in the case of public owned business, at least 51 percent of the stock of which is owned by one or more women; and, whose management and daily business operations are controlled by one or more women who own it.
- X **Small Business Concern:** A small business, as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
- X **Socially and economically disadvantaged individuals:** Those individuals who are citizens of the United States or lawfully admitted permanent residents and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Black Americans includes persons having origins in any of the Black racial groups of Africa; Hispanic Americans includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; Native Americans includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; Asian-Pacific Americans includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; Asian-Indian Americans includes persons whose origins are from India, Pakistan, and Bangladesh.

TRANSIT EMPLOYEE PROTECTIVE PROVISIONS: (1) The contractor agrees to comply with applicable transit employee protective requirements, as follows: (a) General Transit Employee Protective Requirements. To the extent that FTA determines that transit operations are involved, the contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. subsection 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the US DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that US DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. subsection 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. subsection 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause. (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. subsection 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. subsection 5310(a)(2), and if the US Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. subsection 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. subsection 5333(b), US DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the US DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that US DOL letter. (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. subsection 5311 in Nonurbanized areas. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. subsection 5311, the contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the US Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by US DOL or any revision thereto. (2) The contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES: The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) as amended, 42 USC subsection 12101, et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC, subsection 794, 49 USC subsection 5301(d), the following Federal regulations, and all newly-enacted ADA requirements as they relate to this contract:

- (1) United States Department of Transportation regulations, Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37.
- (2) United States Department of Transportation regulations, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 49 CFR Part 27.
- (3) United States Department of Transportation regulations, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles, 49 CFR Part 38.
- (4) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 CFR Part 35.

- (5) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 CFR Part 36.
- (6) United States General Services Administration regulations Accommodations for the Physically Handicapped, 41 CFR Subparts 101-19.
- (7) United States Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the ADA, 29 CFR Part 1630.
- (8) United States Federal Communications Commission regulations, Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled, 47 CFR Part 64, Subpart F.
- (9) Federal Transit Administration regulations, Transportation for Elderly and Handicapped Persons, 49 CFR Part 609.
- (10) Any implementing requirements FTA may issue.

TERMINATION PROVISIONS – If there is a conflict between the termination provisions of the terms and conditions and these FTA provisions, the FTA provisions prevail.

- a. Termination for Convenience – The MAX Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Authority’s best interest. The Contractor shall be paid its costs, including contract close-outs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the MAX Authority to be paid the Contractor. If the Contractor has any property in its possession belonging to the MAX Authority, the Contractor will account for the same, and dispose of it in the manner the MAX Authority directs.
- b. Termination for Default (Breach or Cause) – If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the MAX Authority may terminate this contract for default. Termination shall be effective by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the MAX Authority that the Contractor had an excusable reason for not performing, such as strike, flood, events which are not the fault of or are beyond the control of the Contractor, the MAX Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.
- c. Opportunity to Cure – The MAX Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the MAX Authority’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the established timeframe, the MAX Authority shall have the right to terminate the Contract without any further obligation to the Contractor. Such termination for default shall not in any way operate to preclude the MAX Authority from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for Any Breach – In the event that the MAX Authority elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of the Contract, such waiver by the MAX Authority shall not limit the MAX Authority’s remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

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

CARGO PREFERENCE REQUIREMENTS - Use of United States Flag Vessels: (applies to anything transported by ocean vessels) The contractor agrees to a) use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b) furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rates, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the MAX Authority System; c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the MAX Authority System may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the MAX Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, persons, lower tier covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may the MAX Authority for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized in writing by the MAX Authority.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause entitled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determined the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the MAX Authority may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Transactions

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its principals [as defined at 49 CFR subsection 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPEALS AND REMEDIES - FTA GRANT REQUIREMENTS**(A) PROTESTS****(1) *Right to Protest***

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may file a written protest with the Purchasing Director. A protest with respect to a Request for Proposal shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and would not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In all cases, the protest shall be submitted within ten (10) calendar days after receiving knowledge of the action about which the protest is being made.

(2) *Stay of Procurement During Protests*

In the event of a timely protest, the RFP Project Manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Transit Director makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the MAX Authority.

(3) *Notification of Granter Agency - Grant Funding*

If a procurement action which spends grant funding is subject to a protest, the grantor agency shall be notified in writing of such protest and any subsequent response made by the MAX Authority or the challenging vendor.

(4) *Decision of Transit Director*

The Transit Director shall issue a decision in writing within fourteen (14) calendar days after receipt of such protest or notice of other controversy. A copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken.

(5) *Appeal*

The decision of the Transit Director shall be final and conclusive unless the aggrieved party files a written appeal with MAX Executive Committee within ten (10) calendar days after receipt of the Transit Director's decision.

(6) *Decision of MAX Executive Committee*

The MAX Executive Manager shall issue a decision, in writing, within fourteen (14) calendar days after receipt of appeal unless the parties agree to a longer period. The decision of the MAX Executive Committee shall be final and conclusive, and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken. In the absence of a decision by the MAX Executive Committee within the time specified, the decision of the Transit Director shall stand.

(B) CONTRACT CLAIMS

(1) *Decision of the Purchasing Director*

All claims by the contract against the MAX Authority relating to a contractor, except bid protests, shall be submitted in writing to the Transit Director for a decision. The contractor may request a conference with the Transit Director on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) *Notice to the Contractor of the Transit Director's Decision*

The decision of the Transit Director shall be issued in writing within fourteen (14) calendar days after receipt of such protest, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

(3) *Finality of Purchasing Director's Decision: Contractor's Right to Appeal*

The Transit Director's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the MAX Executive Committee or commences an action in a court of competent jurisdiction.

(4) *Decision of MAX Executive Committee*

The MAX Executive Committee shall issue a decision, in writing, within fourteen (14) calendar days after receipt of an appeal unless the parties agree to a longer period. The decision of the MAX Executive Committee shall be final and conclusive and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party, and shall state the reasons for the action taken. In the absence of a decision by the MAX Executive Committee within the time specified, the decision of the Transit Director shall stand.