

REQUEST FOR PROPOSAL (RFP) 20211686

NEXT GENERATION MOBILE TICKETING APPLICATION

Release Date: May 26, 2021

Response Due Date: June 23, 2021

FACILITATOR:

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#WeMoveTheCity

NOTICE TO PROPOSERS	2
PROCURING AGENCY AND PROCUREMENT & CONTRACTING OFFICER	2
1 INTRODUCTION	2
2 INSTRUCTIONS TO PROFESSIONAL FIRM(S)	5
3 SCOPE OF WORK & SERVICES	9
4 FTA MODEL CLAUSES AND FORMS	12
5 CONTRACT TERMS AND CONDITIONS (PROPOSED)	28

1 INTRODUCTION

1.1 About Transit Authority of River City

The Transit Authority of River City (hereafter referred to as “TARC”) is critical to the daily function of Greater Louisville, connecting real people to real opportunities, and removing transportation barriers to equity and inclusion.

TARC’s mission is to explore and implement transportation opportunities that enhance the social, economic, and environmental well-being of its service area. This includes connecting our residents and visitors to the entire region with 102 paratransit vehicles and 227 buses.

TARC is dedicated to moving the workforce of today and tomorrow. With 63% of trips taken for work & another 20% for school, TARC is crucial in the region for delivering a qualified workforce to employers and getting students to class. We Move the City Forward.

1.2 Summary of Opportunity

TARC is requesting proposals from qualified firms to provide a Next Generation Mobile Ticketing Application, as set out in Section III, Scope of Work. TARC invites sealed proposals in accordance with the provisions, specifications, and instructions set forth in this RFP. Proposals will be received until the date and time specified in Section 1.3 below. Late proposals will not be considered. All Proposers are cautioned to read the entire RFP, noting insurance and submittal requirements, and to complete all required forms. Failure to provide all requested information may cause the proposal to be deemed non-responsive.

TARC seeks and intends to award a Firm Fixed-Price contract for a term of 3 Years with an option to exercise an annual one (1) year term for a total of 2 Years to the highly qualified professional firm(s) and best value proposal.

1.3 Solicitation Schedule

The following estimated schedule should be used as a working guide for planning purposes. TARC reserves the right to adjust this schedule as required during the course of the solicitation process. TARC will make good faith efforts to notify potential professional firm(s) of adjustments to the schedule; however, ultimate responsibility for obtaining notice of changes lies with the professional firm(s). Any changes to the proposed schedule will be posted as addenda on Bonfire.

SOLICITATION SCHEDULE		
EVENT TYPE	DUE DATE	TIME (EST)
Solicitation Notice Release	May 26, 2021	8:00 AM
Non-Mandatory Pre-Proposal Meeting (If Needed, and Site Walk-Thru)	June 7, 2021	2:30 PM
Question For Clarification	June 17, 2021	6:00 PM
Proposal Submission	June 23, 2021	6:00 PM
Professional Interview/Presentation via Zoom (if Needed)	TBD	TBD
Notice To Proceed	TBD	TBD

Any and all changes or adjustments to the schedule will be published and posted via addenda at <https://tarc.bonfirehub.com/portal/?tab=openOpportunities>

1.4 Cost Incurred By a Professional Firm(s)

Professional firms submitting proposals do so entirely at their expense. There is no express or implied obligation by TARC to reimburse a professional firm(s) for any costs incurred in preparing or submitting proposals, providing additional information when requested by TARC, participating in any selection interviews or product demonstrations, or participating in this procurement.

1.5 Proposal Accepted

Each professional firm(s) submits their proposals with the understanding that the acceptance in writing by TARC of the offer to furnish the services requested shall constitute a contract between the professional firm(s) and TARC, which shall bind the professional firm(s) to furnish the services in accordance with conditions and requirements of TARC. A formal contract will be signed between TARC and the successful professional firm(s).

1.6 Unacceptable Proposals

TARC will not accept proposals or award any contract to any person, firm or corporation that is in arrears or is in default to TARC upon any debt or contract, has defaulted on surety or other obligation or has failed to perform faithfully any previous contract for TARC.

1.7 Rejection or Acceptance of Proposals

The Executive Director and the Board of Directors reserve the right to accept or reject any or all or any part of any Proposals. Any proposals which is incomplete, conditional, obscure, or which contains additions not called for, or irregularities of any kind, may be cause for rejection of the Proposals.

1.8 Cancellation, Postponement and Extensions

TARC reserves the right to cancel, postpone, or extend the date and time for submitting proposals at any time. Such occurrences will be posted in writing on TARC Bonfire Portal. TARC reserves the right to reject any or all Proposals, to waive any or all informalities or irregularities in the proposals received, to investigate the qualifications and experience of any professional firm(s), to reject any provisions in any Proposals, to modify solicitation contents, to obtain new Proposals, and to negotiate the requested services and contract terms with any professional firm(s).

1.9 Pre-Proposal Meeting -Non-Mandatory

TARC Purchasing Department will host a Pre- Proposal meeting as indicated on Section 1.3 Solicitation Schedule. Meeting location is via Zoom. While attendance is not mandatory, all professional firms are encouraged to attend and participate. The purpose of the Pre- Proposal meeting is to address the solicitation requirements and the procurement process, especially those of the supplier community. Assistance for disabled, blind or hearing-impaired persons who wish to attend is available with prior arrangement by contacting TARC Facilitator identified on the cover page.

If interpretations, specifications, or other change to the solicitation is required as a result of the meeting, TARC will post the addenda to TARC Bonfire Portal at <https://tarc.bonfirehub.com/portal/?tab=openOpportunities>

1.10 Determination of Responsiveness and Responsibility

The proposals will be reviewed initially by TARC Purchasing Department to determine compliance

with legal and administrative requirements such as specified within this solicitation. The Purchasing Department will only continue to evaluate proposals meeting these requirements. In the event that no proposals pass the Initial Examination of Responsiveness, the Purchasing Department may cancel the solicitation and reject all Proposals. A professional firm(s) is to respond to all questions and or requirements contained in this solicitation. Failure to comply with any applicable item may result in a proposal being deemed nonresponsive and disqualified.

1.11 Evaluation Process

The Facilitator has the overall responsibility for all matters involving the procurement solicitation process up to contract award. In collaboration with internal stakeholders, the Facilitator determines the number and makeup of the Evaluation Committee (EC). The Facilitator will function as the facilitator of the committee and will guide the members through their duties. The Facilitator is bound to follow the procedures laid out in the solicitation and is limited to the evaluation topics and considerations that were published in the solicitation. Neither the Facilitator nor the EC members are allowed to deviate from the procedures and evaluation requirements of the solicitation. The Facilitator will not evaluate and score any proposals rather will enforce the procurement policies and procedures and the steward of the evaluation process. However, in addition to presiding over the evaluation committee, the Facilitator may review the Proposals, assemble evaluation aids, tabulation of overall scores, or perform other functions helpful to the evaluation committee.

The Facilitator will administer and coordinate the need for additional information, request an interview, request a presentation, request revised or best and final offers from one or more of the professional firm(s) if the need determines by the EC. The Facilitator will contact the short-list professional firm(s) from the first evaluation and schedule or request information to meet the requirements of the EC. After the EC is satisfied with the additional requested information, they will conduct the second and final evaluation and scoring of the Proposals.

1.12 Evaluation Methodology

The Purchasing Department will conduct an initial review and examination of the submitted proposals a pass or fail score will be given in accordance with the procurement policies and procedures to determine compliance with legal and administrative requirements as specified Section 1.10. After the initial review and examination, the Purchasing Department may make the recommendation of the short-listed proposals to the Evaluation Committee or may reject proposals deemed as non-responsive as specified herein.

The proposals will be evaluated and scored through a one and/or two-step process. The same evaluation criteria will be used to complete the evaluation for both the one and/or two-step process. The evaluation committee will be reviewing, evaluating and scoring pass/fail proposals to determine responsive and responsibility of the proposals. If deemed necessary by the Facilitator, committee members may be substituted and/or the evaluation committee may be disbanded.

TARC reserves the right to enter into negotiations with the short-listed professional firm(s) without requesting interviews to reach final agreement on specific terms of the Contract. Proposals should be submitted initially on the most qualified and responsible Proposals, as a BAFO may or may not be requested. Once the Evaluation Committee has finished ranking proposals and upon Board approval, TARC will then enter into negotiations with the top-ranked professional.

1.13 Evaluation Criteria and Weight Values

Proposals will be evaluated using the following criteria and factors. These criteria correspond with Section 2.5 Response Format Requirements and Outline.

CRITERIA	CRITERIA FACTORS	POINT VALUE
QUALIFICATION, EXPERIENCE, COMMITMENT AND FINANCIAL HEALTH (PART 1)	A. Qualification and experience of the professional firm(s) in providing high quality services of similar type or work in this solicitation B. Commitment of high-quality contractor personnel with the required skills and experience for the specific approach proposed C. References of similar scope and size	25
PROJECT APPROACH: TECHNICAL, QUALITY AND SYSTEM SOLUTION (PART 2)	D. Quality of Methodology E. Technical Approach <i>(Does the methodology depict a logical approach to fulfilling the requirements of the solicitation)</i> F. Provide a demonstrative and descriptive system solution	35
UNDERSTANDING OF THE PROJECT REQUIREMENTS (PART 3)	G. Provide a summary of your understanding of the Scope of Work and Services identified in Section 3. Discuss each section of the deliverables mentioned, as well as the capacity of your firm’s ability to meet the deliverables. Include Product and Services types, Performance and Reliability, Safety and Quality, Innovation and Technology Features. H. Provide five (5) successful transit related project examples or other governmental agency related projects from inception to completion. Include a summary of the project scope, project schedule and budget. Discuss briefly how your firm (or subcontractor) executed and performed each of the categories in Section 2.5, Part 3 for additional details.	25
COSTS (Part 4)	I. Proposed Cost	15
TOTAL POINTS		100

Please keep in mind that the nature of this solicitation may require experience and expertise in areas not identified in this section. The qualifications listed here should be considered the minimum training and experience needed.

2 INSTRUCTIONS TO PROFESSIONAL FIRM(S)

2.1. General

Proposal Responses from professional firm(s) shall include all of the items listed below in the order shown. Each Part and subpart should be clearly labeled, with pages numbered and separated by tabs. This format is necessary for evaluation purposes.

Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of this solicitation. Emphasis should be on completeness and clarity of content with sufficient detail to allow for accurate evaluation and comparative analysis. Please be advised that the Parts and Subparts referenced below are the minimum requirements requested by TARC.

2.2. Requests For Clarification

If any professional submitting Proposal is in doubt as to the true meaning of any part of the Scope of Work and Services or other solicitation documents, or finds discrepancies or omissions in the solicitation, professional s may submit a written request for an interpretation or correction to the Purchasing Department by the date specified in Section 1.3 of Solicitation Schedule. Only written requests will be accepted. E-mailed questions to the Purchasing Department are acceptable. Faxed questions are not recommended because TARC cannot guarantee receipt or response to these requests. The person submitting the request will be responsible for its prompt delivery and verification of delivery.

The request must be fully supported with detailed information and reference to a section of the solicitation or Addenda, to assist TARC in determining whether the request is valid or not. Any corrections or changes to this solicitation will be distributed to recipients who submitted the “Addenda Request Form” at the address provided and posted on TARC Procurement website. Verbal questions will not be answered, thus preventing an unfair advantage to any professional firm(s).

2.3. Request for Approved Equals

This solicitation calls for proposals which are responsive to the specifications as prescribed in Section 3 Scope of Work and Services. Conditional proposals, or those, which take exception, alternate, option, and or substitution (“Deviation”) to the specifications, will be considered non-responsive and will be rejected unless specific approval from TARC is requested in writing by the deadline as indicated in section 1.3 of the Solicitation Schedule.

If the professional firm(s) proposes to submit a proposal containing “approved equals” or “deviations” from the specific requirements of these specifications, the professional firm(s) must obtain such approval, confirmed in writing, prior to the proposal submission date. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be deemed non-responsive and cause for its rejection.

TARC Purchasing Department reserves the right to extend the proposal submission deadline or receipt of proposals for its own convenience. All requests for approved equals or clarification of specifications should be sent to the Facilitator. Changes to the specifications will be made by addendum only and issued by the Facilitator within five (5) days following the due date.

2.4. Delivery Of Proposals

The professional firm(s) must submit a complete response using TARC Bonfire Portal at <https://tarc.bonfirehub.com/portal/?tab=openOpportunities> including, but not limited to all required

forms by the date specified in Section 1.3 of the Solicitation Schedule.

ONLY In the event the Portal is out of service or any power outage or technical difficulties, responses should be sent in USB thumb drive or CD-ROM in a sealed envelope and appropriate package must be clearly marked with **“RFP 20211686 - NEXT GENERATION MOBILE TICKETING APPLICATION”** and **“DO NOT OPEN WITH REGULAR MAIL”** on the lower left side. TARC will not consider proposals received after the time and date specified in Section 1.3 of the Solicitation Schedule. All proposals will be logged upon receipt indicating the date and time by a Purchasing staff member.

Professional firm(s) are solely responsible for delivery of their proposals on time. Professional firm(s) who rely on overnight delivery services, local couriers, or other delivery services remain solely responsible for timely delivery of the proposals and assume all risk of late delivery or no delivery.

Note: Proposals will not be opened publicly.

2.5. Proposal Response Format Requirements and Outline

Proposals shall include four (4) tabbed sections, Part 1, Part 2, Part 3, and Part 4 shall be indexed in the order outlined below. Each Subpart (A – J) should be titled using the letters shown and should include your responses and/or any attachments requested within each section. The outline below shall be followed as instructed because it directly correlates to the Criteria Factors in Section 1.13. Proposals shall be page numbered and shall not exceed thirty (30) pages.

PART 1. QUALIFICATION, EXPERIENCE, COMMITMENT AND REFERENCES (A-C)

Include a Cover Letter of Introduction and an Executive Summary of Proposals. In this section, it should clearly state the solicitation contact person, title, and complete contact information including physical address.

Describe your firm's experience in developing effective and successful mobile transit ticketing apps. Proposers should provide the names and titles of key contacts who will be working with TARC on this project with a short description of their relevant experience. Provide examples of similar partnerships and if possible, detail how the client succeeded in reaching their goals.

Briefly introduce your company, providing a summary of administration, leadership of the organization and staffing of your firm, including multiple offices, if applicable.

- A. Include key staff qualifications, experience, expertise, and capability to perform deliverables.
- B. Include the availability commitment of key staff to the project. (High quality staff with the required skills and experience for the specific approach proposed)
- C. Provide names and contact information for five references who can speak to your firm's work specifically related to developing mobile transit ticketing application.

PART 2. TECHNICAL & QUALITY (D-E)

- D. Include a brief statement of your firm's quality improvement methodology and provide examples of key performance indicators including dashboards from agencies of similar size.

E. User ratings and reviews in the App Store and Google Play Store. Number of ratings, average rating, most recent release ratings, and developer responses will all be considered.

F. Describe your technical and logical approach to fulfilling the requirements of the solicitation; provide examples of similar projects.

G. Provide a demonstrative and descriptive system solution being proposed

PART 3. UNDERSTANDING THE SCOPE OF WORK AND SERVICES (F-G)

H. Provide a summary of your understanding of the Scope of Work and Services identified in Section 3. Discuss each section of the deliverables mentioned, as well as the capacity of your firm's ability to meet the deliverables. Include Product and Services types, Performance and Reliability, Security, Safety and Quality, Innovation and Technology Features.

I. Describe your firm's basic approach to partnerships with transit agencies. Describe your standard project plan once a partnership has been established, including but not limited to the order of tasks or steps toward completion, points of contact within your firm, methods of communication, data delivery methods and research and development and deployment of new features etc.

J. As a prime contractor, provide five (5) examples of successful transit related projects or other governmental agency related projects from inception to completion. Include a summary of the project scope, project schedule and budget. Discuss briefly how your firm (or subcontractors) executed and performed each of the categories, a statement of your key successes, major constraints, issues or concerns and how you resolved those conflicts and what was the outcome. Include a statement how your firm will plan and execute TARC's projects that may prevent and or minimize potential challenges. Describe what measure your firm will take to ensure that the probability of project delay, additional cost or even abandonment is low to none:

- Project management planning
- Cost management
- Time management
- Quality management
- Contract administration
- Safety management
- Resource management (managing the project team, defining roles and responsibilities, etc).

PART 4. COSTS

K. Provide an estimate of total anticipated costs, including hours and materials and any other direct costs or fees needed to provide the services and features as outlined in the Project Description above. Please submit pricing good for up to 180 days.

- Rate and Hours
- Proposed Schedule
- Equipment and Materials

- Annual Licensing Fees
- Support and Maintenance
- Warranty
- Other Associated Costs

2.6. Acceptance of Proposed Contract Terms and Conditions

Indicate any exceptions to the Scope of Work and Services, general terms and conditions, Federal clauses, and or other requirements listed in the Proposed Contract. Signature is not required on the Proposed Contract included in the solicitation; however, any exceptions or proposed changes to the terms and conditions must be proposed on a separate attachment. TARC reserves the right to make changes to the Proposed Contract.

The professional firm(s) or an authorized representative of the firm must sign the Proposals. Any erasures, corrections or other changes to provided forms must be initialed and dated by the person signing the Proposals.

Proposals must include all Required Forms provided in this solicitation. Please review, sign, and include all forms in Section 5.7. If a form is not applicable to your organization please indicate not applicable, sign and submit.

All forms must be submitted whether or not they apply

Please keep in mind that the nature of this solicitation may require experience and expertise in areas not identified in this section. The qualifications listed here should be considered the minimum training and experience needed.

2.7. Public Records / Confidentiality

All proposals received become the exclusive property of TARC. When a contract award is approved by the TARC Purchasing Department, all proposals submitted in response to this SOLICITATION shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each Proposal that are marked as "TRADE SECRET," "CONFIDENTIAL" or "PROPRIETARY." If required by law or by an order of a court, TARC may be required to disclose such records or portions thereof, including without limitation those so marked. Proposals that indiscriminately identify all or most of the Proposal as exempt from disclosure without justification may be found to be technically unacceptable.

3 SCOPE OF WORK & SERVICES

3.1. Background and History

Transit Authority of River City (TARC) is seeking a mobile ticketing app for its transit services. **The app should augment the use of MyTARC Card - TARC's fare card.** The proposed solution shall provide TARC's passengers with reliable, secure, intuitive interfaces for acquiring and using TARC fare. TARC currently offers various fare types with its MyTARC card, including: Single Ride, 24 hours, 7-Day and 30-Day passes for local service, as well as supporting discounts for Youth and Senior/Disabled customers. However, as noted below, **TARC is very interested in fare capping.** The ability to provide for fairest fare, or a fare cap based on usage, is important. **It is equally important that fare validation is accomplished electronically,** either through the use of the bar code scanner

integrated into TARC's fare boxes supplied by Genfare, or through some short distance wireless (RF) communication. The application shall provide ease of use functionality in fare enforcement.

The Proposer will be responsible for providing, hosting, operating and maintaining the mobile ticketing app. TARC requires a turnkey solution that shall include design, internal and commuter testing, delivery, site preparation, installation, and assistance with associated hardware if necessary, software, communications, all system interfaces, all other system components, operations, maintenance, licenses, support and training. **The look and feel of the application shall be branded by TARC and available for download on the iOS and Android app stores.**

The Solution must integrate the ELERTS See Say SDK for iOS and Android, to allow app users to report Quality of Life (safety & customer experience) issues to TARC. The See Say SDK enables 2-way real-time communication between app user and TARC dispatcher.

In addition, TARC desires a mobile ticketing solution with the capacity to implement a fare accumulator, a feature currently not available through MyTARC card. Customers using the mobile app would pay for single rides until they cap out at TARC's day and weekly pass rates. This can provide an additional opportunity for riders to benefit from the discounts afforded to pass buyers without having to pay for a pass upfront.

3.2. Mobile Ticketing Application Scope

The Scope of Work describes TARC's minimal functional requirements for a mobile ticketing app. It is intended to be used as a general guide and is not a complete list nor description of all work necessary. Proposers responding to this RFP are expected to be familiar with all aspects of project management. Additional requirements pertaining to this Work are stipulated in the Sample Contract included as an attachment to the RFP. Proposers are strongly encouraged to specifically review requirements relating to ownership of work, data privacy, and data security included. Proposer to provide user ratings and reviews in the App Store and Google Play Store of their proposed solutions. The Number of ratings, average rating, most recent release ratings, and developer responses will all be considered.

3.2.1. Fare System Goals and Objectives

TARC hopes to achieve the following goals with the implementation of an app-based fare payment system:

- ✓ Stimulate growth in ridership
- ✓ Ease and simplicity of use
- ✓ Fare capping
- ✓ Decrease dwell time
- ✓ Increase ease of use for customers and improve rider experience
- ✓ Reduce cash and lower cash handling costs
- ✓ Increase access to fare products, especially for customers lacking convenient access to TARC retail locations
- ✓ Provide employers and other organizations ability to distribute transit passes to their employees electronically
- ✓ Increase access to pass products through fare accumulator, providing customers with opportunity to benefit from the discounts afforded to 30 day pass buyers without having to pay for a 30 day pass upfront
- ✓ **TARC branded**

3.2.2. General Mobile Ticketing Requirements

The Selected Contractor shall provide, host, operate and maintain a Mobile Ticketing App based on the following criteria:

A. Rider Application

1. A native application that runs on iOS and Android which is available in the iOS App Store and Google Play store as a free download.
2. Doesn't require a user account or sign-in to purchase tickets, but will be optional.
3. Doesn't require users to store a payment method, but will be optional.
4. Supports purchasing and validating multiple tickets at the same time on a single device.
5. Provides a simple and intuitive ticket selection interface for first time and infrequent users.
6. Validates fare electronically, with ability to validate visually.
7. Tickets expire in an appropriate time after they are validated.
8. Contains security features to prevent electronic scanning and screen shots of expired or fraudulent mobile tickets.
9. Accepts mobile wallet payment options such as, but not limited to, Apple Pay, Google Wallet, Android Pay, MasterPass, Paypal, Softcard, etc.
10. Available for customer specific business ruling
11. Customization and personalization
12. PCI compliance
13. Handling of payment processing and management of clearinghouse

3.2.3. Fare Products and fare capping

Application shall support TARC's base fare for all types of service. Currently, the fixed route local cash fare is \$1.75 (1.50 with a MyTARC card). Payment of fare provides a two-hour free transfer. The fare for seniors, people with disabilities and students is \$0.80.

Application shall support TARC's desire to implement fare capping, whereby riders can pay for single trips that are then capped at the 24 hour, 7 day, or 30 day pass level.

The application shall be able to incorporate fare changes and new fare products as they become available.

3.2.4. Agency Analytics Platform

1. Provides a back-end dashboard with access to data on usage, ridership, sales and revenue
2. TARC prefers browser based client software
3. License-free software and all future software updates shall be provided at no extra cost
4. The software shall provide various levels of user access rights that allow and restrict access to various functions

5. The software shall provide access to an unlimited number of users and feature multiple user access-levels with password protection to ensure system settings are secure
6. Ridership statistics including stop location, bus route/block/run, date, time and GPS coordinates of boardings
7. Ability to manage fare structure requirements
8. Ability to provide refunds to riders
9. Ability to see sales and transaction data in real time
10. Ability to easily export all data for integration with other software systems and tools
11. Application Programming Interface (API) for extracting usage data that is free for TARC to access, use, and share
12. Ability to run sales, usage summary, user statistics, fare transaction statistics, and revenue summary reports
13. Ability for third party applications such as Google Maps, Apple Maps, Transit App, Citymapper, TNCs to offer TARC mobile tickets in their app via an API or SDK.

3.2.5. Other requirements

1. Current fare structure and policies impacts transit equity in Louisville
2. Mobile ticketing app must be deployed and in use at an existing transit agency or organization.
3. Hosting and maintenance of the mobile ticketing app must be the responsibility of the Contractor.
4. The Proposer shall be responsible for providing the Software Development Kit.
5. The Proposer shall furnish a mechanism for Source Code escrow.
6. Upon receipt of a notice to proceed, the App shall be fully designed, developed, tested, and revenue ready within two months.

3.2.6. Security

Data security for the mobile ticketing app applications, system and interfaces shall employ the most current industry and U.S. government techniques to ensure that all data is safeguarded from unauthorized access or use and programs are protected from any known cyber-attack or computer virus. The entire mobile ticketing platform system, all system applications that process payments, and all communications and computer systems comprising the entire mobile ticketing app shall be in full compliance with the Payment Card Industry (PCI) standards. Additionally, the Platform application shall contain a variety of security features to allow for applicable TARC personnel to easily visually identify invalid, expired or fraudulent mobile tickets.

3.2.7. Schedule

Interested firms shall provide a proposed project schedule.

4 FTA MODEL CLAUSES AND FORMS

The professional firm(s) must accept and comply with the below requirements as specified in this solicitation. Under the Authority of Federal, State and local policies, regulations and standards of the 49 CFR, Circular 4220.1F, and contract agreement for mobile ticketing application funded in part of or in whole with grant funds provided by the Federal, State and local governments.

4.1 Federally Required Transit Administration Contract Clauses

Contract Documents

Federal requirements may apply to this procurement and any future contract. If those requirements change then the most recent requirements shall apply. The Federal Government requires that activities financed in part, with Federal funds, and performed by a third party contractor and/or its subcontractor's on behalf of TARC must be in accordance with Federal requirements.

All subcontracts and subcontractors employed because of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The prime contractor shall ensure that its subcontractor's at all tiers are aware of and comply with these Federal regulations. The prime contractor is liable for subcontractor's compliance failures. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

4.2 No Obligation By The Federal Government

TARC and professional firm(s) acknowledge and agree that notwithstanding any concurrence by the Federal Government in or approval of the Proposal 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 TARC, professional firm(s), or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The professional firm(s) 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 sub-contractor who will be subject to its provisions.

4.3 Program Fraud and False or Fraudulent Statements And Related Acts

The professional firm(s) acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the professional firm(s) certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the professional firm(s) 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 professional firm(s) to the extent the Federal Government deems appropriate.

The professional firm(s) also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the professional firm(s), to the extent the Federal Government deems appropriate.

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

4.4 Access To Records And Reports/Record Retention

The professional firm(s) agrees to provide TARC, 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 professional firm(s) which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. professional firm(s) also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO professional firm(s) access to professional firm(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 professional firm(s) agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The professional firm(s) 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 professional firm(s) agrees to maintain same until TARC, 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(i) (11).

Reports or information requested from the professional firm(s) will be prepared using electronic or information technology capable of assuring that, when provided to FTA, the reports or information will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C., 794d, and U.S.ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

4.5 Federal Changes

The professional firm(s) 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 TARC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Professional firm(s)' failure to so comply shall constitute a material breach of this contract.

4.6 Civil Rights Requirements

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, the professional firm(s) 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 professional firm(s) agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- c) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing 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 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall 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, contractor shall comply with any implementing requirements FTA may issue.
- d) 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 professional firm(s) agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the professional firm(s) agrees to comply with any implementing requirements FTA may issue.
- e) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the professional firm(s) agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the professional firm(s) agrees to comply with any implementing requirements FTA may issue.
- f) Veterans Preference - As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Agency and its contractor agrees and assures that each of its subcontractors: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

The professional firm(s) agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. and 49 USC Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. App. Section 1612; and implementing regulations, as may be amended.

The professional firm(s) 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.

4.7 Termination Provisions

a) Termination for Convenience – TARC may terminate this contract, in whole or in part, at any time with thirty (30) days written notice to the professional firm(s). Upon receipt of such notice, the professional firm(s) shall perform no further services under the contract. Settlement payment will be based on successful delivery or service prior to termination. TARC shall pay the aggregate price of delivered service computed in accordance with the prices specified in the contract. If the professional firm(s) has any property in its possession belonging to TARC, the professional firm(s) will account for the same, and dispose of it in the manner TARC directs.

b) Termination for Default Breach or Cause – If the professional firm(s) does not perform in accordance with the contract delivery or project schedule, or, if the professional firm(s) fails to perform in the manner called for in the contract, or if the professional firm(s) fails to comply with any other provisions of the contract, TARC may terminate this contract for default. Termination shall be effected by serving a thirty (30) day written notice of termination on the professional firm(s) setting forth the manner in which the professional firm(s) is in default. The professional firm(s) shall promptly submit its termination claim to TARC for payment. The professional firm(s) 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 TARC that the professional firm(s) had an excusable reason for not performing, such as a man-made disaster, fire, or flood, which are not the fault of or are beyond the control of the professional firm(s), TARC, may set up a new delivery or performance schedule, and may allow the professional firm(s) to continue work, or treat the termination as a termination for convenience.

In the event of breach or default by the professional firm(s), TARC shall be entitled to all of its damages and reasonable expenses, and its cost to include, but not limited to its reasonable attorneys' fees incurred because of such default.

c) Opportunity to Cure – TARC in its sole discretion may, in the case of a termination for breach or default, allow the professional firm(s) ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If professional firm(s) fails to remedy to TARC satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by professional firm(s) of written notice from TARC setting forth the nature of said breach or default, TARC shall have the right to terminate the Contract without any further obligation to professional firm(s). Any such termination for default shall not in any way operate to preclude TARC from also pursuing all available remedies against professional firm(s) and its sureties for said breach or default.

d) Waiver of Remedies for any Breach -In the event that TARC elects to waive remedies for any breach by professional firm(s) of any covenant, term or condition of this Contract, such waiver by TARC shall not limit TARC remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e) Termination Funding – Should funding for this contract be discontinued, reduced, or delayed, in whole or in part, TARC shall have the right to terminate the contract immediately upon written notice to professional firm(s).

TARC by written notice may terminate this contract, in whole or in part, when it is in the Governments interest. If TARC terminated the contract, TARC shall be liable only for payment under the payment provision of this contract for services rendered before the effective date of termination.

4.8 Disadvantaged Business Enterprise (DBE)

In connection with this project, TARC has established a specific goal of TBD% for Disadvantaged Business Enterprise (DBE) participation. DBE participation is encouraged either in the capacity of the prime contractor or subcontractor. The professional firm(s) are required to document their activities in the Proposal and selection of any subcontractor(s) to ensure the process is nondiscriminatory. To be considered a certified DBE the organization must be registered through the Commonwealth of Kentucky Department of Transportation Uniform Certification Program (KYC UCP) member agencies or through an out-of-state Uniform Certification Program. It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under the Agreement. Accordingly, the DBE requirements of 49 C.F.R. Part 26 applies to this Contract. In connection with the performance of this Contract, the professional firm(s) will cooperate with TARC in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprise and will use its best effort to insure that disadvantaged businesses will be utilized when possible by steps in accordance with DOT regulations 49 C.F.R. Part 26.

4.9 Disadvantaged Business Enterprise Participation

- 1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is **10%**.
 - (a) Disadvantaged Business Enterprise Participation:
 1. TARC's overall goal for DBE participation is **11.0%** for fiscal years 2021-2023.
- 2) The contractor shall not discriminate on the basis of race, religion, color, national origin, disabilities, creed, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as TARC deems appropriate. Each contract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 3) Professional firm(s) are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal prior to award:
 - a) The names and addresses of DBE firms that will participate in this contract;
 - b) A description of the work each DBE will perform;
 - c) The dollar amount of the participation of each DBE firm participating;

- 4) Written documentation of the professional firm(s) commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- 5) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- 6) If the contract goal is not met, evidence of good faith efforts is required for every reporting period.
- 7) The professional firm(s) or professional firm(s) must present the information required above as a matter of responsiveness with initial proposals prior to contract award (see 49 CFR 26.53(3)).
- 8) The successful professional firm(s) will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
 - d) Prompt Payment - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from TARC. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of TARC. This clause applies to both DBE and non-DBE subcontracts.
 - e) The contractor must promptly notify TARC whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of TARC.
- 9) Small Business Participation - TARC has established a race-neutral Small Business element provided through 49 CFR 26.39 of the DBE program to structure contracting requirements to facilitate competition by small business concerns. Under the current Policy, a Small Business is a business which meets the US Government Small Business Administration (SBA) size standard. Contractors doing business with TARC are encouraged to utilize small businesses in their subcontracts. Contractors shall complete and submit the required forms which indicate whether they intend to use small businesses in the contract to be awarded, and, if so, the percentages of contract work to be allocated to small businesses.

A form certificate is attached and must be completed, signed, and submitted with the Proposal.

4.10 Debarment and Suspension Government-Wide

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the professional firm(s) is required to verify that none of the professional firm(s), its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The professional firm(s) is required to comply with 49 CFR 29, Subpart C, and must include the

requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the professional firm(s) certifies as follows:

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

A form certificate is attached and must be completed, signed, and submitted with the Proposal.

4.11 Provisions For Resolution of Disputes, Breaches, or Other Litigation

Disputes- Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of TARC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the professional firm(s) mails or otherwise furnishes a written appeal to TARC. In connection with any such appeal, the professional firm(s) shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of TARC shall be binding upon the professional firm(s) and the professional firm(s) shall Proposal by the decision.

Performance during Dispute- Unless otherwise directed by TARC, professional firm(s) shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages- Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing within fifteen (15) days after the first observance of such injury of damage.

Remedies- Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between TARC and the professional firm(s) arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Jefferson County within the Commonwealth of Kentucky.

Rights and Remedies- The duties and obligations imposed by the Contract Documents and the rights and remedies available shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by TARC, shall constitute a waiver of any right or duty afforded TARC under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing or in a court of competent jurisdiction in Jefferson County, Commonwealth of Kentucky.

4.12 Protest

A. Definitions for Purposes of the Section

The term "days" refers to working days of TARC.

Any protest regarding the requirements and responsiveness of proposal by TARC must be filed with Authority no later than five (5) business days after receipt of letter of notification of non-responsiveness. Any protest filed after such date regarding the requirements and responsiveness will not be considered by TARC.

This type of protest would include any challenge to determinations by TARC of the responsiveness of or the responsibility of a professional firm(s), or any claim that the requirements and responsiveness of proposal violated Federal or State law or TARC's Procurement Process.

3. Protest Regarding Receipt of Non-Award Notification

Any protest regarding the award of the contract must be filed no later than five (5) business days after receipt of Non- Award Notification. Any protest regarding the award of the contract filed after that date will not be considered by TARC.

This type of protest will only be entertained by TARC if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible professional firm(s) or that TARC violated Federal or State regulations or its Procurement Process in the award of the contract.

E. Authority Response

TARC will notify the protestor upon timely receipt of a protest and may, where appropriate, request additional information from the protestor. TARC may, at its discretion, meet with protestor to review the matters raised by the protest. TARC's consideration of the particular types of protests will, except as otherwise stated in Subsection 2. "Decisions by Authority" of this Section E. "Authority Response" in accordance with the following provisions:

1. Types of Protests

a) Protest regarding proposal

Upon receipt of a timely filed protest regarding the proposal, TARC will postpone the opening until resolution of the protest. No additional proposals will be accepted during the period of postponement.

If the protest regarding the proposal involves a claim of unduly restrictive or exclusionary specifications, TARC will, in evaluation of the protest, consider both the specific need of TARC for the feature or item challenged and any effects on competition of including the specifications regarding that feature or item. If TARC determines that such feature or item was included in the specification in order to meet justified and valid transit needs of TARC, and was not unduly restrictive of competition or designed to exclude a particular competitor, then TARC will have grounds to deny the protest.

b) Protest regarding requirement and responsiveness

Upon receipt of a timely filed protest regarding the requirements responsiveness, TARC will suspend its evaluation of all proposals submitted until resolution of the protest, if TARC determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a proposal or the responsibility of a professional firm(s) or regarding TARC's compliance with Federal or State Regulations or its Procurement Process.

c) Protests after non-award notification

Upon receipt of a timely filed protest regarding the non-award notification TARC will not proceed with contract, if necessary, until the resolution of the protest if TARC determines that the protestor has

established a prima facie case that the contract was awarded fraudulently or in violation of that Federal or State Regulations or TARC's Procurement Process.

2. Decisions by Authority

As indicated above, in most instances TARC will suspend the procurement process upon receipt of a bona fide protest. However, TARC reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- a) where the item to be procured is urgently required;
- b) where TARC determines that the protest was vexatious or frivolous; and
- c) where delivery or performance will be unduly delayed or other undue harm will occur, by failure to make the award promptly

After reviewing the protest submitted under this section, TARC will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with protestor, and TARC's own investigation. If the protest is upheld, TARC will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-proposal, revised evaluation of proposal or Authority determinations, or termination of the contract. If the protest is denied, TARC will lift any suspension imposed and proceed with the procurement process.

F. FTA Protest Procedure

Reviews of protests by FTA will be limited to claims that TARC failed to have or follow protest procedures, or claims TARC failed to review a complaint or protest. A protestor must exhaust all administrative remedies with TARC before pursuing a protest with FTA. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

Under certain circumstances, protest may be made to the FTA in accordance with FTA circular 4220.1F.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

4.13 Lobbying Requirements

The professional firm(s) must comply with the following lobbying requirements, "New Restrictions on Lobbying," at 49 CFR Part 20.

The professional firm(s) shall file the certification required by 49 CFR part 20, as amended. "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20.

The professional firm(s) shall certify that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The professional firm(s) shall also disclose the name of any

registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to TARC.

A certificate is attached and must be completed, signed, and submitted with the Proposal.

4.14 Clean Water And Air Requirements

The professional firm(s) agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., and the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The professional firm(s) agrees to report each violation to TARC and understands and agrees that TARC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The professional firm(s) also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

4.15 Fly America

The professional firm(s) agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10. This provides that recipients and sub-recipients of Federal funds and their professional firm(s)' 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. If a foreign air carrier is used, the professional firm(s) shall submit an appropriate certification of compliance, 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. The professional firm(s) shall include the requirements of this section in all subcontracts that may involve international air transportation.

4.16 Privacy Act

The following requirements apply to the professional firm(s) and its employees that administer any system of records on behalf of the Federal Government under any contract:

The professional firm(s) agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974 5 U.S.C § 552a. Among other things, the professional firm(s) agrees to obtain the express consent of the Federal Government before the professional firm(s) or its employees operate a system of records on behalf of the Federal Government. The professional firm(s) 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.

The professional firm(s) 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.

4.17 Energy Conservation Requirements

The professional firm(s) shall 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.

4.18 ADA Access Requirements

The professional firm(s) agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. §§ 12101 et seq; section 504 of the Rehabilitation Act of 1973 as amended 29 U.S.C. § 794, section 16 of the Federal Transit Act, as amended, 49 U.S.C. §§ 1612.

4.19 Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The professional firm(s) shall not perform any act, fail to perform any act, or refuse to comply with any TARC requests which would cause TARC to be in violation of the FTA terms and conditions.

4.20 Notification of Federal Participation For States

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

4.21 Copyright, Trademark, Service Mark, or Patent Infringement.

- 1) Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against TARC to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. The Contractor shall have sole discretion in selecting counsel. Contractor shall further indemnify and hold harmless TARC against any award of damages and costs made against TARC by a final judgment of a court of last resort in any such suit. TARC shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. TARC reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon TARC unless approved by TARC Board.
- 2) If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- a) Procure for TARC the right to continue using the products or services.
 - b) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to TARC, so that they become non-infringing.
 - c) Remove the products or discontinue the services and cancel any future charges pertaining thereto.
 - d) Provided, however, that Contractor will not exercise option 2c. until Contractor and TARC have determined that options 2a. and 2c. are impractical.
- 3) Contractor shall have no liability to TARC, however, if any such infringement or claim thereof is based upon or arises out of:
- a) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.
 - b) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
 - c) The claimed infringement in which TARC has any direct or indirect interest by license or otherwise, separate from that granted herein.

4.22 Conformance With ITS National Architecture

National Intelligent Transportation Systems Architecture and Standards:

To the extent applicable, Contractor agrees to conform, and to assure its subcontractors' conformity, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

4.23 Other Clauses

4.24 Assignability And Purchasers

The awarded professional firm(s) is prohibited to accept and fulfill any order under this contract agreement from other agencies. No agencies are permitted to use this contract unless written authorization is acquired from TARC, Purchasing Department. TARC Purchasing Department Purchasing Agents are the primary stakeholders of this contract as being the primary purchasers. This contract will be available for use by TARC and its authorized representatives. Purchase orders, payments, business transaction exchanges directly to the awarded professional firm(s) are subject to the same contract terms, conditions and pricing as TARC.

While use of the contract during the contract term, TARC Purchasing Department accepts no responsibility for orders or payments due and or made by its authorized representatives and agents to the awarded professional firm(s). The Purchaser in the purchase order agreement is the sole responsibility of, and will be made by, the purchaser.

4.25 Independent Cost Estimate & Price Analysis

TARC will conduct an independent cost estimate (ICE) to ensure that TARC is receiving reasonable pricing in addition to good value. Should TARC believe the proposed pricing is higher than reasonable; TARC will meet with the responsive professional firm(s) and give the professional firm(s) an opportunity to explain to TARC satisfaction and/or lower their proposed pricing or be rejected and be eliminated from possible award.

As discussed in Section 1 above and as described in FTA Circular 4220.1F, Qualifications will be evaluated to determine contract award. Price is excluded as an evaluation factor. Negotiations will be first conducted with only the most qualified professional firm. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified professional firm. Then, if necessary, negotiations with successive professionals in descending order may be conducted until contract award can be made to the professionals whose price the recipient believes is fair and reasonable.

Once negotiations with the most qualified professional firm have begun, TARC reserves the right to conduct a cost or price analysis for any purchase or service in order to determine if the most qualified professional firm's price is fair and reasonable. A cost/price analysis may include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on Qualifications prices. TARC may require a pre-award audit, and potential professional shall be prepared to submit data relevant to the proposed work which will allow TARC to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. TARC reserves the right to negotiate with the most qualified professional firm to achieve a fair and reasonable price.

All contract change orders or modifications will be subject to an internal cost/price analysis.

4.26 Pricing

This solicitation will be evaluated based on best value offering to TARC.

4.27 Prompt Payment

The Professional agrees to pay each subcontractor for satisfactory performance of its contract no later than 30 days from receipt of each payment the Professional receives from TARC. The Professional agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor work is satisfactorily completed. Any delay or postponement of payment from the above reference may occur only for good cause following written approval of TARC. This clause applies to both DBE and non DBE subcontractors. If the Professional determines the work to be unsatisfactory, it must notify TARC immediately, in writing, and state the reasons. Failure to comply with this requirement would be construed to be a breach of contract and subject to contract termination.

4.28 Gratuities And Kickbacks

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program

requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under TARC contracts.

4.29 Interest of Members of TARC

No member of the governing body of TARC, other officer, employee or agent of TARC who exercises any functions or responsibilities in connection with the carrying out of the activities, to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract.

4.30 Interest of Other Local Public Officials And State Officials

No member of the governing body of Metro, and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of activities to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No part of the proceeds shall be paid directly or indirectly to any officer or employee of the Commonwealth of Kentucky as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor, or professional firm(s) to TARC in connection with any work contemplated or performed relative to this Contract.

4.31 Interest of Members, Or Delegates to Congress

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising there from.

4.32 Interest of The Professional Firm(s)

The professional firm(s) covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The professional firm(s) further covenants that no person having such interest shall be employed in the performance of this Contract.

4.33 Workers Compensation ACT

The professional firm(s) shall comply with the State Law known as the Workers' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act to cover all employees furnishing said services to TARC, and under the control of the professional firm(s), and shall relieve TARC from any costs due to accidents and other liabilities mentioned in said Act.

4.34 Social Securities ACT

The professional firm(s) shall be and remain an independent professional firm(s) with respect to all services performed and agrees to and does accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, and retirement benefits or annuities imposed under any State and Federal law which are measured by the wages, salaries, or other remunerations paid to persons by the professional firm(s) for work performed under the terms of this contract. The professional firm(s) agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under laws authorized by State or Federal officials; and professional firm(s) also agrees to indemnify and save harmless TARC from any contributions or liability therefore.

4.35 Equal Employment Opportunity

In implementing the Project/Contract, the professional firm(s) may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The professional firm(s) 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, sex, disability, age or national origin. 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. The professional firm(s) shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

5 CONTRACT TERMS AND CONDITIONS (PROPOSED)

5.1. Contract Documents

Any contract resulting from this solicitation shall include the following;

Request for Proposal No 20211686 and all addenda Professional Offer and Guarantee Award/Contract. The Contractor and appropriate parties of TARC will sign to execute contract.

Federal requirements may apply to this procurement and any future contract. If those requirements change then the most recent requirements shall apply. The Federal Government requires that activities financed in part, with Federal funds, and performed by a third party contractor and/or its subcontractor's on behalf of TARC must be in accordance with Federal requirements.

All subcontracts and subcontractors employed because of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The prime contractor shall ensure that its subcontractor's at all tiers are aware of and comply with these Federal regulations. The prime contractor is liable for subcontractor's compliance failures. Failure to comply will render the prime contractor responsible for damages and/or contract termination.

5.2. Acceptance of Proposed Contract Terms and Conditions

Indicate any exceptions to the scope of services, general terms and conditions, federal clauses, or other requirements listed in the Proposed Contract (Attachment B). Signature is not required on the

Proposed Contract included in the RFP; however, any exceptions or proposed changes to the terms and conditions must be proposed on a separate attachment.

TARC reserves the right to make changes to the Proposed Contract without prior written notice.

5.3. Travel Approval and Reimbursement

Travel requirement must be formally requested in writing by the Professional and a written authorization and approval by TARC Project Manager is acquired prior to scheduling. The Professional will be reimbursed only for travel costs incurred that are directly related to this project and are allowable subject to the limitations prescribed in the resulting contract.

5.4. Insurance Requirements

5.4.1. During the term of this Contract, Contractor shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract and any extension here of the types and amounts of insurance identified below by a check mark.

- a) General Liability Insurance in the amount of not less than one million dollars (\$1,000,000) combined single limit each occurrence for bodily injury and property damage.
- b) Automobile Liability Insurance in the amount of not less than a combined single limit of one million dollars (\$1,000,000) covering Contractor's owned, non-owned, leased or rented vehicles.
- c) Worker's Compensation Insurance with statutory limits required by the Commonwealth of Kentucky or other applicable laws and employer's liability insurance with limits of no less than one hundred thousand (\$100,000) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees).
- d) Professional liability insurance, errors & omissions insurance, or malpractice insurance, whichever may be customary in the professional field, in the minimum amount of one million dollars (\$1,000,000.00) per claim/annual aggregate. Such coverage must be maintained for a period of three years following termination of this Contract or final acceptance by TARC of the Services, whichever is later. This provision shall expressly survive the termination of the Services or the Contract.

5.5. General Terms and Conditions

General Terms and Conditions with forms requiring signature must be completed and submitted with Statement of Qualifications to be considered for award. All Required Forms may be found in section 5.7 of this RFP. If a form is not applicable, Professionals should submit and write "Not Applicable". A discussion of each applicable term and/or condition follows:

5.6. Proposed Contract Alterations

No alterations or variables in the terms of the solicitation and /or of the Proposed Contract shall be valid or binding unless authorized in writing by TARC and published as an addendum.

5.7. REQUIRED FORMS

See following pages for all required forms.

FORM 1 EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project/Contract, the professional firm(s) may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The professional firm(s) 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, sex, disability, age or national origin. 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. The professional firm(s) shall insert the foregoing provisions (modified only to show the particular contractual relationship) in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

FORM 2 ACKNOWLEDGEMENT OF ADDENDA

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

If no addenda were received, please write "none received"

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

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Name of Bidder

Street Address

City State Zip

Signature of Authorized Official

_____/_____/_____
Date

**FORM 3
NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

STATE OF _____

COUNTY OF _____

Printed name of authorized party
being first duly sworn, deposes and says that:

(1) They are the _____
Official Title
of _____
Company name

(2) They are fully informed regarding the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection with the contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm, or person to fix any overhead, profit, or cost element of the bid price or the bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement and advantage against TARC or any person interested in the proposed contract; and

(5) The price or prices quoted in the attached bid are fair and proper and are not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

**FORM 4
PROPOSER'S CERTIFICATION OF ELIGIBILITY**

The _____ (Name of Contractor) hereby certifies that (Check appropriate box) is not included on the United States Comptroller General's "Consolidated List of Persons or Firms Currently Debarred for Violation of Various Public Contracts Incorporation Labor Standards Provision"

SAM CAGE NO.

DUNS NO.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

**FORM 5
COMPLIANCE WITH SPECIFICATIONS OR
STATEMENT OF WORK**

In submitting a Proposal the professional firm(s) is sufficiently informed in all matters affecting the solicitation, and that the professional firm(s) has checked the Proposal for errors and omissions and hereby states that they will comply with the specifications in all areas including approved equals and addenda that were granted by TARC.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

FORM 6 DISADVANTAGED BUSINESS ENTERPRISE COMPLIANCE STATEMENT

THIS PAGE MUST BE COMPLETED BY PRIME PROPOSER TO INDICATE THE AMOUNT (PERCENTAGE) OF DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.

The undersigned, as a representative of the entity, _____, submitting a Proposal/Proposal for the _____ project, hereby acknowledges that the DBE goal established for this project is _____%.

1. Is your organization a qualified Disadvantaged Business Enterprise and/or is your subcontractors a qualified DBE? _____

If yes,

The professional firm(s) will submit DBE Certificate.

The professional firm(s) is further represents that the proposed level of DBE participation is _____%. However, this level of DBE participation is less than the goal established for this project.

2. If your organization is not a qualified Disadvantaged Business Enterprise, submit documentation of the Proposer's good faith efforts to achieve the goal established for this project.

Company

Authorized Signature /Date

Name Printed

Title

FORM 7 AFFIDAVIT OF COMPLIANCE

TO BE COMPLETED BY DISADVANTAGED BUSINESS ENTERPRISE/WB DISADVANTAGED BUSINESS

State of _____

County of _____

I hereby certify that I am the _____ (title)
and; duly authorized representative of _____ (name of
firm) Whose address is _____.

I do hereby declare and affirm that I am a Disadvantaged Business Enterprise (DBE) as defined by the SOLICITATION and I will provide information requested by TARC to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and the above firm has authorized me to execute this affidavit.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

FORM 8 CERTIFICATE OF AUTHORITY

I hereby declare and affirm that I am:

- PROPOSER IS A CORPORATION
- PROPOSER IS A PARTNERSHIP
- PROPOSER IS AN INDIVIDUAL

I, the undersigned, as certified authority of the organization submitting the foregoing Proposal, hereby certify that under and pursuant to the By-Laws and Resolutions of said organization, each officers who has signed proposals on behalf of the corporation, including the foregoing assurance of irrevocability, is fully and completely authorized so to do.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

FORM 9 CERTIFICATION OF RESTRICTIONS ON LOBBYING

APPLICABLE TO CONTRACTS \$100,000.00 OR GREATER

THE UNDERSIGNED HEREBY CERTIFIES ON BEHALF OF _____

_____ that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2021

Name of Proposer: _____

Address, City, State, Zip: _____

Signature of Authorized Official: _____

Title of Official: _____

Telephone _____ Date _____

FORM 10 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION PRIMARY PARTICIPANT

The prospective contractor certifies, by submission of this Proposal, that neither itself nor its “principals” as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency as defined at 49 CFR 29.940 and 29.945.

The contractor must comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal or Proposal, the professional firm(s) or professional firm(s) certifies as follows:

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

Company

Authorized Signature /Date

Name Printed

Title

**FORM 11
CERTIFICATION OF LOWER-TIER PARTICIPANTS
CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

The prospective lower tier participant contractor certifies, by submission of this Proposal or Proposal, that neither it nor its “principals” as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency as defined at 49 CFR 29.940 and 29.945.

By signing and submitting its Proposal, the professional firm certifies as follows:

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

Company

Authorized Signature /Date

Name Printed

Title

**FORM 12
CONTACT INFORMATION OF SIMILAR CONTRACTS
AND REFERENCES**

1. _____

2. _____

3. _____

4. _____

Company

Authorized Signature /Date

Name Printed

Title

FORM 13 AFFIDAVITS

State of _____ County of _____

As used herein, "Proposer" will include Proposers and.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Title) of _____ (Proposer), and that professional firm(s) is presently in compliance with, and will continue to maintain compliance with, all applicable laws. Thus, Affiant states that professional firm(s) has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that professional firm(s) is current on its payment of all applicable gross receipt taxes and personal property taxes.

Contingent Fees: In accordance with TARC Procurement Policy and FTA rules it is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a TARC contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the professional firm(s) has not retained anyone in violation of the foregoing.

Non-Discrimination: After first being duly sworn according to law, the undersigned (Affiant) states that by its employment policy, standards, and practices the professional firm(s) does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal, or laying off of any individual due to his/her race, creed, color, national origin, age, or sex, and that the professional firm(s) is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

It is the policy of TARC and FTA not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of its contract with TARC, professional firm(s) certifies and warrants it will comply with this policy.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

FORM 14
NOTICE TO PROPOSER

The professional firm(s) hereby agrees that the Executive Director and or the Board of Directors have the right to reject any or all proposals and to waive informality in any Proposal and the professional firm(s) shall not dispute the correctness of the quantities used in computing the best, responsive Proposal.

Company

Authorized Signature

Name Printed

Title

Date

FORM 15 BUY AMERICA CERTIFICATE

(For Procurement of Buses, Other Rolling Stock [Including Train Control, Communications, and Traction Power] and Associated Equipment)

FOR COMPLIANCE WITH TITLE 49 U.S.C. § 5323(j)(2)(C)

The Professional hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j)(2)(C) and the applicable regulations at 49 CFR. Part 661.

Company

Authorized Signature /Date

Name Printed

Title

FOR NON-COMPLIANCE WITH TITLE 49 USC § 5323(j)(2)(C)

The Professional hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(2)(C), but may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR Part 661.7.

Company

Authorized Signature /Date

Name Printed

Title

FORM 16 DBE AND ALL SUBCONTRACTOR INFORMATION

Please provide the following information pertaining to your subcontractors: **Firm Name, Description of Work, Contractor License Number with Date Information, SAM & DUNS Numbers, Anticipated Subcontract or Supply amount, and Anticipated DBE%**

COMPANY NAME	DESCRIPTION OF WORK	SAM (CAGE#)	DUNS#	ANTICIPATED SPEND AMOUNT	DBE GOAL %	LICENSE #

Please copy this form if you have more than four (6) sub-contractors.

FORM 17 CONTRACTOR CONFIDENTIALITY AND INTEGRITY STATEMENT

Transit Authority of River City's Information Technology Department is responsible for safeguarding the integrity and confidentiality of data in TARC computer files regardless of the source of the data or medium on which they are stored. All data generated from the original source data shall remain property of TARC (e.g. reports, metrics and benchmarks.) The control of the disclosure of data shall be retained by TARC.

I/we, as a representative of _____, understand that I/we act as an extension of TARC's Information Technology Department and therefore I/we are responsible for safeguarding District data included within the scope of services of contract _____.

I/we will not use, disclose or modify TARC data without the written authorization of TARC. I/we agree to take all necessary precautions to prevent unauthorized use, disclosure or modification of District data.

I/we will alert TARC immediately of any situation in which any data under my/our responsibility has or may have been accessed, disclosed or modified without authorization.

Penalty for unauthorized use, disclosure or modification may result in TARC finding my company in violation of the contract and may mean prosecution under applicable State or Federal law.

COMPANY NAME

PRINT NAME

DATE

AUTHORIZED SIGNATURE & TITLE

SUBSCRIBED AND SWORN TO BEFORE ME THE _____ DAY OF _____, 2021

MY COMMISSION EXPIRES _____

NOTARY PUBLIC NAME PRINTED

NOTARY PUBLIC SIGNATURE

ATTACHMENT A COST PROPOSAL FORM

Please refrain from editing all fee types except for edits/additions/deletions of cells clearly identified for Optional Features.

<u>Fee Type</u>	<u>Occurrence</u> <i>(One-time or Recurring)</i>	<u>Fixed Fee/Rate</u>	
		<u>%</u>	<u>\$\$\$</u>
Application/Software Development			
Vendor Processing Fees			
Third Party Processing Fees			
Annual Licensing and Support			
Warranty			
Hardware, If Any			
Optional Features			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<i>[Fill in Optional Features here]</i>			
<u>Proposed Totals</u>			

ATTACHMENT B - PROPOSED DRAFT CONTRACT

CONTRACT NO [REDACTED]

BETWEEN

TRANSIT AUTHORITY OF RIVER CITY

AND [CONTRACTOR]

FOR [REDACTED] GOODS AND SERVICES]

This Contract No. [REDACTED] (hereinafter referred to as “Contract”) is entered into as of the [REDACTED] day of [REDACTED] 2021, by and between TRANSIT AUTHORITY OF RIVER CITY (hereinafter referred to as “TARC”), having its principal office located at 1000 West Broadway, Louisville, KY 40203, and [REDACTED] (hereinafter referred to as “Contractor”), having its principal office located at [REDACTED].

CONTRACT

The following documents constitute this Contract, and the order of precedence in resolving any dispute that may arise or conflicting provisions:

1. Any properly executed amendment to this Contract (most recent with first priority),
2. Contract No. [REDACTED]
3. Response to Bid for [REDACTED]
4. Request for Bid No. [REDACTED] (the “Solicitation”)
5. Contractor’s Proposal dated [REDACTED] (collectively, the “Contract”)

DRAFT

1. Duties and Responsibilities of Contractor

1.1. Contractor shall provide [REDACTED] Goods and Services as detailed in the solicitation and this Contract (the “Goods and Services”) at TARC’s Operations and Maintenance and fueling facilities located at 1000 West Broadway; 925 West Broadway; And 2905 west Broadway, Louisville, KY 40203 and/or at its Union Station transit hub (collectively “Facilities”). The Goods and Services shall be provided as set forth in this Contract, and to the extent not inconsistent with the terms herein, according to the methods set forth in the solicitation. Contractor’s duties and responsibilities are more specifically set forth in Section III of the solicitation.

1.2. Contractor guarantees that in the event of a declared emergency or natural disaster, Contractor shall give supply and delivery priority to TARC.

1.3. TARC may purchase additional [REDACTED] Goods and Services offered by Contractor under this Contract (“Additional Goods and Services”). The Additional Goods and Services shall be agreed upon in writing with a properly executed amendment between the parties. Additional Goods

and Services shall be invoiced at the rates as stated in the written amendment as agreed to by both parties. The rights and obligations of the parties in this Contract shall pertain and apply to “Additional Goods and Services”, unless stated otherwise in writing.

2. Term

2.1. This Contract shall commence on the ____ day of _____, 20___. The initial term of this Contract shall continue for a three (3) year period, unless otherwise terminated as provided herein (the “**Term**”). This Contract may be extended by a properly executed amendment for two (2) additional one (1) year terms as may be offered by TARC, in TARC’s sole discretion.

2.2. This Contract may be extended by all the required parties with a properly executed amendment to this Contract.

3. Compensation/Invoices

3.1 For its Goods and Services, Contractor is entitled to receive a not to exceed amount \$_____ [refer to cost form, responses, and Contractor’s proposal).

3.2. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

3.3. There shall be no other charges or fees for the performance of this Contract unless otherwise agreed to by both parties in writing. TARC shall make reasonable efforts to make payments within thirty (30) days of receipt of approved invoice.

3.4. Contractor shall submit electronic mail invoices to:

ACCOUNTSPAYABLE@RIDETARC.ORG
AND PROCUREMENT@RIDETARC.ORG

4. Acceptance

4.1. If the Goods and Services are not acceptable to TARC according to the Contract, then TARC shall submit a letter of non-acceptance to Contractor detailing the deficiencies within sixty (60) days of delivery to TARC of the deficient Goods and Services. Acceptance of delivery of the Goods and Services shall not release Contractor from liability for Contractor’s other obligations and duties as provided herein.

4.2. Approval or acceptance by TARC of any of Contractor’s Goods and Services under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor, its employees, associates, agents or subcontractors for the exercise of skill and diligence necessary to fulfill Contractor’s responsibilities under this Contract. Nor shall TARC’s approval or acceptance be deemed to be the assumption of responsibility by TARC for any defect or error in the Goods and Services of Contractor, its employees, associates, agents, or subcontractors.

5. Taxes and Freight

5.1. TARC shall not be responsible for any taxes that are imposed on Contractor. Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to TARC.

5.2 Freight Handling and Shipping Transportation

5.2.1 All Goods must be shipped F.O.B. Destination, Freight Prepaid by Contractor, and Inside Delivery.

5.2.2 The Contractor or supplier assumes all risks and responsibility for freight charges, bears the freight expense, owns the Goods in transit, and files transportation claims if warranted.

6. Warranty and Warranty Period

6.1. Contractor warrants that the Goods and Services provided by Contractor reflect high professional and industry standards, procedures and performances. Contractor warrants the preparation of materials, the selection of personnel, the fitness and operation of its recommendations, and the performance of the Goods and Services shall conform to a high standard of performance in the profession. Contractor warrants that it will exercise diligence and due care and perform in a good and workmanlike manner all of the Goods and Services pursuant to this Contract.

6.2. Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable Goods and Services. Contractor shall, at no cost to TARC remedy any errors, deficiencies or any service, work or other work products found unacceptable, in TARC's sole discretion, as soon as possible, but in all cases within fifteen (15) days of Contractor's receipt of written notice of said errors, deficiencies or unacceptable Goods and Services. For the Warranty Period, as defined below, Contractor's obligation shall be to replace, resolve or correct, at Contractor's own expense, any defects in the Goods and Services.

6.3. Warranty Period is defined as a period of _____ [year(s)] beginning on the date TARC accepts the Goods and Services, until Contractor has remedied all problems of which Contractor was notified prior to expiration of the warranty period (“**Warranty Period**”).

6.4. In the event that during the Term and applicable Warranty Period any Goods and Services do not operate in all material respects as specified in the Contract, TARC shall be entitled to terminate this Contract for Default in accordance with the terms and conditions of this Contract and shall be entitled to a full refund for any such defective Goods and Services.

7. Title Warranty

7.1. Contractor warrants that it has good title to and/or the right to sell the Goods and Services, and represents that the Goods and Services delivered to TARC are free and clear of all liens, Claims or encumbrances of any kind.

7.2. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Covered Entities, as defined in Section 14, below, to the extent that it is based on a Claim that the Goods and Services or other work products furnished contain liens, Claims, or encumbrances of any kind. The Contractor shall further indemnify and hold harmless, to the fullest extent permitted by law, and as set forth in Section 14, the Covered Entities against any award of damages and costs made against the Covered Entities or in any settlement agreement of a Claim authorized in writing by TARC.

7.3. In the event use of the Goods and Services are restricted or interfered with as a result of any such encumbrance, Contractor shall, at its cost, procure non-encumbered Goods and Services for TARC which are equal substitutes, in TARC's discretion, for the Services in all material respects, or obtain for TARC the right to use the Goods and Services without encumbrances, or refund to TARC all monies paid by TARC for such Goods and Services. Nothing in this Section 7 shall preclude TARC from exercising any rights or remedies as provided elsewhere in this Contract.

8. Copyright, Trademark, Service Mark, or Patent Infringement

8.1. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against the Covered Entities to the extent that it is based on a Claim that the Goods and Services or other work products furnished infringe a copyright, trademark, service mark, or patent. The Contractor shall further indemnify and hold harmless to the fullest extent permitted by law, and as set forth in Section 14, the Covered Entities against any award of damages and costs made against the Covered Entities or in any settlement agreement of a Claim authorized in writing by TARC.

8.2. If the Goods and Services or other work products furnished under this Contract are likely to, or do become, the subject of such a Claim of infringement, then without diminishing Contractor's obligation to satisfy the award, Contractor may at its option and expense:

8.2.1. Procure for TARC the right to continue using the products or services.

8.2.2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to TARC, so that they become non-infringing.

8.2.3. Remove the products or discontinue the services and cancel any future charges pertaining thereto.

8.2.4. Provided, however, that Contractor will not exercise option 8.2.3 until Contractor and TARC have agreed and determined that options 8.2.1 and 8.2.2 are impractical.

8.3. Contractor shall have no liability to TARC, however, if any such infringement or Claim thereof is based upon or arises out of:

8.3.1. The use of the Goods and Services or other work products in combination with apparatus or devices not supplied or else approved by Contractor.

8.3.2. The use of the Goods and Services or other work products in a manner for which the Goods and Services or other work products were neither designated nor contemplated.

8.3.3. The claimed infringement in which TARC has any direct or indirect interest by license or otherwise, is separate from that granted herein.

Nothing in this Section 8 shall preclude TARC from exercising any rights or remedies as provided elsewhere in this Contract.

9. Works for Hire and Software License

9.1. Contractor acknowledges that all Goods and Services under this Contract are “work(s) for hire” within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to TARC all rights and interests Contractor may have in the Goods and Services it prepares under this Contract, including any right to derivative use of the Goods and Services.

9.2. The term “**Software**” as used herein shall be the set of copyrighted, object code computer programs and databases licensed under this Contract and provided by Contractor at any time, and from time to time under this Contract. Further, the term Software shall include any upgrades, updates, patches, hotfixes, modules, routines, feature enhancements and supplemental or replacement Software and their associated media, printed materials, online or electronic documentation, or other features or components, distributed by or on behalf of the Contractor.

9.3. The term “**Documentation**” as used herein shall mean all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, or technical or other components, features or requirements, of the Software. Contractor shall provide TARC with complete and accurate Documentation for all Software prior to or concurrently with its delivery, and as necessary from time to time.

9.4. Contractor warrants that the Software and Documentation, and TARC’s use thereof, are and will remain free and clear of all encumbrances, liens and security interests of any kind.

9.5. All Software and related materials developed by Contractor in performance of this Contract for TARC shall be the sole property of TARC. Further, TARC shall own all any and all rights to any information TARC generates, inputs, prints, copies, or downloads from the Software. Notwithstanding the foregoing, TARC agrees not to reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part, except as and only to the extent: (i) this restriction is prohibited by applicable law; (ii) such action is taken for purposes of ensuring or assessing interoperability or otherwise qualifies as a “fair use” under US Copyright Act or other applicable law or; or (iii) these acts are permitted under the applicable Software license.

9.6. TARC agrees that the Software will be displayed or read into or used or distributed on computers required to render services under this Contract. TARC agrees to make no more than two (2) copies of the Software for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of TARC.

9.7. Contractor hereby grants to TARC a nonexclusive, perpetual, irrevocable license to the Software for the purposes set out in this Contract.

9.8. Contractor, if requested by TARC, shall execute all necessary documents to enable TARC to protect TARC’s rights under this Section 9.

10. Termination

10.1. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract (“**Default**”), TARC shall have the right to terminate this Contract provided Contractor fails to cure such Default within thirty (30) days of

TARC's written notice of Default to Contractor. Such termination shall not relieve Contractor of any liability for damages sustained by virtue of any Default by Contractor.

10.2. Should funding for this Contract be discontinued, TARC shall have the right to terminate this Contract effective immediately, without penalty, upon written notice to Contractor.

10.3. TARC may terminate this Contract at any time, without penalty, for its convenience or its best interest upon fifteen (15) days' written notice to Contractor.

10.4. In the event of a termination under Section 10.2. or 10.3., Contractor will be compensated in accordance with the Goods and Services that have been "accepted" in accordance with this Contract.

11. Maintenance of Records and TARC Property

11.1. Contractor shall maintain documentation for all charges against TARC. The books, records, and documents of Contractor, insofar as they relate to the Goods and Services performed or money received under the Contract, shall be maintained for a minimum period of five (5) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by TARC or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

11.2. Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by TARC or their duly appointed representatives.

11.3. Any TARC property, including but not limited to books, records and equipment that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to TARC by Contractor upon termination of the Contract. All goods, documents, records, work and other work product and property produced by Contractor during the performance of this Contract are deemed to be TARC property. Upon completion or termination of this Contract, Contractor shall promptly deliver to TARC all records, notes, data, memorandum, models, and any other material of any nature that are within Contractor's possession or control and that are TARC property or relate to TARC or its business.

11.4. TARC shall retain existing ownership and all proprietary rights to its information and data. Confidential information and data may need to be disclosed to Contractor for purposes necessary to Contractor providing the Goods and Services. Contractor shall treat any such data and information as strictly confidential.

12. Independent Contractor/Subcontractors

12.1. Contractor is an independent contractor. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. It is expressly agreed and understood between the parties that Contractor and any of its subcontractors and suppliers are independent contractors to TARC and as such shall be viewed in law and equity. No vicarious liability shall be imposed upon the Covered Entities by any action of Contractor, subcontractor or supplier in the performance of this Contract. Neither TARC nor Contractor shall hold itself out in a manner contrary to the terms of this Section 12 nor shall TARC or Contractor become liable for any representation, act, or omission of the other party contrary to the terms of this Section 12.

12.2. Neither Contractor nor Contractor’s employees, subcontractors or agents are TARC employees. Contractor shall bear sole responsibility for payment of compensation to its employees and subcontractors. Contractor shall procure and maintain Worker’s Compensation Insurance as stated in Section 16.

12.3 In addition to the other requirements of Contractor set forth herein regarding subcontractors, Contractor shall not subcontract any of its rights or responsibilities in this Contract without the prior written approval of the TARC. Contractor shall remain fully responsible for the Goods and Services of the subcontractor and for supervising the performance of the Goods and Services by the subcontractor. TARC is not subject to any liability of any kind with respect to any subcontractor nor do subcontractors obtain any rights against TARC under this Contract.

12.4 Contractor and its subcontractors shall be appropriately licensed in the Commonwealth of Kentucky to conduct the Goods and Services required by this Contract. Contractor and subcontractors must maintain current Data Universal Numbering Systems (“**DUNS**”) number, System for Award Management (“**SAM**”), or registration in other substantially similar registration databases. Contractor must submit to TARC all Kentucky Commonwealth Department of Transportation letters or certification of any Disadvantage Business Enterprises (“**DBEs**”) participating in the Project. Contractor shall hire reliable and dependable subcontractors. Contractor and its subcontractors found guilty of unethical, irresponsible business practices according to governmental authority will be suspended and debarred from conducting future business with TARC.

12.5 Subcontractors, if approved in writing, shall be made and are subject to the applicable terms of this Contract in their contractual agreements with the Contractor. Contractor shall include in its subcontracts a similar indemnification provision as set forth in Section 14 running from each subcontractor directly to the Covered Entities.

13. Waiver

13.1. No failure to exercise, and no delay in exercising, on the part of either party, any privilege, any power or any right hereunder will operate as a waiver thereof, nor will any single or partial exercise of any privilege, right or power hereunder preclude further exercise of any other privilege, right or power hereunder.

14. Indemnity and Contractor Responsibility.

14.1. Contractor shall indemnify, defend and hold harmless, to the fullest extent permitted by law, TARC, the Louisville/Jefferson County Metro Government, and their officers, agents, employees and volunteers (“**Covered Entities**”) from:

14.1.1. Any claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and reasonable attorneys’ fees, including, but not limited to third party claims for injury to or death of any person or damage to property (“**Claims**”), arising from the Goods and Services under this Contract, and/or from the alleged negligent or intentional acts or omissions of Contractor, its officers, employees and/or agents, including its sub or independent contractors (including third parties), in connection with the performance of this Contract, and,

14.1.2. Any Claims arising from any alleged failure of Contractor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

14.2. The indemnity and release in this Section 14 applies regardless of whether said Claims are covered, in whole or in part, by insurance and regardless of the negligence, if any, of the Covered Entities.

14.3. Contractor assumes full responsibility for the Goods and Services to be performed hereunder and hereby releases, relinquishes, and discharges the Covered Entities from all Claims of every kind and character, including the cost of defense thereof, for any alleged injury to or death of any person (including third parties) and damage to property that are caused by or alleged to be caused by, arising out of, or in connection with Contractor's Goods and Services, Additional Goods and Services and work to be performed hereunder. This release shall apply regardless of whether said Claims are covered, in whole or in part, by insurance and regardless of the negligence, if any, of the Covered Entities.

14.4. In the event of any Claim against the Covered Entities, the Covered Entities may choose counsel, in the Covered Entities' sole and absolute discretion, to represent the Covered Entities, and Contractor shall promptly reimburse the Covered Entities for all costs actually incurred, including, but not limited to, all expenses of litigation, court costs, and reasonable attorneys' fees. The Covered Entities shall be consulted prior to any settlement and approve such settlement in writing.

14.5. The Covered Entities shall not, under any circumstances, indemnify, defend, or hold harmless Contractor from any Claim.

15. TARC Owned Data

15.1. TARC will own and retain rights to all of its data. Some data will need to be disclosed to Contractor for purposes necessary for design and implementation. Contractor will treat TARC information as strictly confidential.

16. Insurance

16.1. During the term of this Contract, Contractor shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract and any extension hereof the types and amounts of insurance identified below by a **check mark**.

a) Products Liability Insurance in the amount of one million (\$1,000,000) dollars (If the Contractor will be shipping to a receiving department at TARC)

b) General Liability Insurance in the amount not less than one million dollars (\$1,000,000) combined single limit each occurrence for bodily injury and property damage.

c) Professional liability insurance, errors & omissions insurance, or malpractice insurance, whichever may be customary in the professional field, in the minimum amount of one million dollars (\$1,000,000.00) per claim/annual aggregate. Such coverage must be maintained for a period of three (3) years following termination of this Contract or final acceptance by TARC of the Goods and Services, whichever is later. This provision shall expressly survive the termination of the Goods and Services or the Contract.

d) Automobile Liability Insurance in the amount not less than a combined single limit of one million dollars (\$1,000,000) covering Contractor's owned, non-owned, leased or rented vehicles.

e) Worker's Compensation Insurance with statutory limits required by the Commonwealth of Kentucky or other applicable laws and employer's liability insurance with limits of no less than one hundred thousand (\$100,000) dollars, as required by the laws of Commonwealth of Kentucky. (Not

required for companies with fewer than five (5) employees).

f) Other insurance

g) Such insurance shall:

1. Contain or be endorsed to contain a provision that includes Covered Entities as additional insureds and loss payees with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the Covered Entities.

2. For any Claims related to this Contract, Contractor's insurance coverage shall be primary insurance as respect to the Covered Entities. Any insurance or self-insurance programs covering the Covered Entities shall be excess of Contractor's insurance and shall not contribute with it.

3. Regarding Automotive Liability Insurance including vehicles owned, hired, and non-owned, said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the Covered Entities as additional insureds with respect to Claims and liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

4. Contractor shall maintain workers' compensation insurance, if applicable, with statutory limits as required by the Commonwealth of Kentucky or other applicable laws and liability insurance. Contractor shall require each of its subcontractors to provide workers' compensation insurance for all of the latter's employees to be engaged in such work unless employees are covered by Contractor's workers' compensation insurance coverage.

5. Other Insurance Requirements. Contractor shall:

a) Prior to commencement of the Goods and Services, furnish TARC with original certificates and amendatory endorsements effecting coverage required by this Section 16 and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to TARC.

b) Provide certified copies of endorsements and policies if requested by TARC in lieu of or in addition to certificates of insurance.

c) Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

d) Maintain such insurance from the time the Goods and Services commence until completed. Failure to maintain, renew coverage or provide evidence of renewal as required by TARC may be treated by TARC as a material breach and Default under this Contract.

e) Place such insurance with insurer licensed to do business in the Commonwealth of Kentucky and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon written appeal to the TARC Director of Purchasing.

f) Require all subcontractors to maintain during the Term of this Contract Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/Employers Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall file subcontractor's certificates of insurance as required by TARC.

g) Disclose any deductibles and/or self-insured retentions greater than ten thousand dollars (\$10,000) and obtain TARC's written approval of such deductibles and/or self-insured retentions prior to the commencement of the Goods and Services.

h) Not have, if Contractor has or obtains primary and excess policies, any gap between the limits of the primary policy and the deductible features of the excess policies.

17. Employment and Nondiscrimination

17.1. Contractor shall not discriminate on the basis of age, race, sex, color, national origin, disability or any other classification protected by Federal, Commonwealth of Kentucky, or Louisville/Jefferson County Metro Government law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

17.2. Contractor shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

17.3. Violation of these Contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of TARC.

18. Ethical Standards

18.1. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand accept or agree to accept from any other person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract, subcontract, solicitation or proposal therefore.

18.2. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order.

18.3. Breach of the provisions of this Section 18 is, in addition to a Default of this Contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under TARC contracts.

19. Assignment-Consent Required

19.1. The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the compensation due to Contractor under this Contract, neither this Contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of TARC. Any such assignment of transfer shall not release Contractor from its obligations hereunder.

19.2. Any public agency (i.e., city, district, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in this Contract at the same prices, terms and conditions. TARC reserves the right to assign any or all portions of the Goods and Services awarded under this Contract. This assignment, should it occur, shall be set forth in writing by TARC and Contractor. Once assigned, each agency will enter into its own agreement and be solely responsible to Contractor for obligations for the Goods and Services assigned. TARC's right of assignment will remain in force over the Term. TARC shall incur no financial responsibility in connection with agreements issued by another public agency. The public agency shall accept sole responsibility for placing service and payments to the Contractor.

20. Remedies

20.1. In no event shall TARC be liable for special, incidental, indirect, or consequential damages, including, but not limited to, lost profits arising from the performance of this Contract, whether such damages are based in contract, tort, or any other legal theory.

20.2. In the event of breach or Default of the Contract by Contractor, in addition to any other remedies set forth herein, Contractor shall be liable to TARC for damages for the breach or Default thereof, including the costs and reasonable attorneys' fees for the enforcement thereof. The remedies set forth in this Contract shall be cumulative, and no one remedy shall be deemed to be exclusive of any other or of any other remedy in law or equity, and the failure or delay of TARC to exercise a remedy at any time shall not operate as a waiver of the right to exercise a remedy for the same or subsequent breach or Default at any time thereafter.

21. Governing Law and Venue

21.1. The validity, construction and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the Commonwealth of Kentucky. Commonwealth of Kentucky law shall govern regardless of any language in any attachment or other document that Contractor may provide.

21.2. The parties consent that any action between the parties arising from this Contract shall be maintained in the state trial courts of Jefferson County in the Commonwealth of Kentucky.

22. Entire Agreement

22.1. This Contract states the entire contract between the parties. No alteration, modification, release, or waiver of this Contract or any of the provisions hereof shall be effective unless in writing, executed by the parties hereto.

22.2. Notwithstanding the foregoing, Contractor agrees that this Contract is subject to

modification by TARC to the extent necessary to comply with federal, state or local regulations, which may govern this Contract. TARC shall provide written notice to Contractor of any such modification.

23. Compliance with Federal Regulations

23.1. All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F and the FTA contract clauses in the solicitation are incorporated by reference. Unless otherwise modified in this Contract, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TARC request that would cause the parties to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between TARC and FTA, as may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a Default of this Contract.

24. Export

24.1. Contractor represents and warrants that the Goods and Services and documentation related thereto shall not be disclosed to any foreign national, firm, or country, nor shall be exported from the United States without first complying with all the requirements of the International Traffic in Arms Regulations and the Export Administration Act, including the requirement for obtaining an export license, if applicable. Contractor shall fully indemnify TARC for any breach of this representation.

25. Force Majeure

25.1. No party shall have any liability to the other hereunder by reason of any delay of failure to perform any obligation of this Contract if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

26. Severability

26.1. If any provision of this Contract is held invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted and the remainder of this Contract shall remain in full force and effect.

27. Notices

27.1. Any notice or other communication to be made pursuant to this Contract shall be made in writing by United States certified or registered mail, by messenger service or by a nationally recognized overnight courier, and shall be effective (i) upon receipt, if delivered in person, (ii) five (5) business days after deposit into the United States mail, if sent by certified or registered mail, and (iii) at 1:00pm on the following business day, if sent by overnight courier. Notice hereunder shall likewise be effective when actually received by either party. In each case, such notice or other communication shall be made to the address shown below. Either party shall have the right, by written notice to the other party, to change its address for such notice.

TARC: Transit Authority of River City
1000 Broadway, Louisville, KY 40203
Attn: Procurement Department

Contractor: [Contractor’s Company]
[Contractor’s address here]
Attn: _____

28. Counterparts

28.0. This Contract may be executed in one or more identical counterparts, each of which shall be deemed to be an original for all purposes, and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, TRANSIT AUTHORITY OF RIVER CITY AND CONTRACTOR HAVE EXECUTED THIS CONTRACT AS OF THE DATE FIRST ABOVE WRITTEN.

Transit Authority of River City (TARC)

[Contractor]

Carrie Butler, Executive Director

Authorized Signatory

Date: _____

Title: _____

TARC’s Legal Approval

Pat Mulvihill, Counsel

Date: _____