

REQUEST FOR PROPOSALS

Issue Date: January 16, 2012

Title: Consulting Services – Maintenance Review
RFP#12-01

Issuing and Using Agency: Bloomington-Normal Public Transit System
Attn: Isaac Thorne
Procurement Director
351 Wylie Dr.
Normal, IL 61761

Proposals for Furnishing the Services Described Herein Will Be Received Until: 2:00 p.m. local time on February 16, 2012.

All Inquiries for Information Should Be Directed To: ISSUING AGENCY, address listed above at Phone: (309) 829-1130

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO: BNPTS, ISAAC THORNE, PROCUREMENT DIRECTOR, 351 Wylie Dr Normal IL, 61761. The RFP number, date and time of proposal submission deadline, as reflected above, must clearly appear on the face of the returned proposal package.

In Compliance With This Request for Proposals And To All Conditions Imposed Therein and Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services Described Herein In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Name and Address of Firm:

_____ Date: _____

_____ By: _____

(Signature in Ink)

_____ Zip Code: _____ Name: _____
(Please Print)

Telephone: () _____ Title: _____

Fax Number: () _____ FEI/FIN Number: _____

E-Mail Address: _____

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SECTION 1 -INSTRUCTIONS TO PROPOSERS

1-1 Introduction

The Bloomington-Normal Public Transportation System is responsible for the provision of public transit service within Bloomington-Normal, and is funded with federal, state and local monies, as well as operating revenue. The BNPTS was created pursuant to the Illinois Downstate Transportation Act of 1969. BNPTS currently operates eleven (11) bus routes and has approximately forty (40) buses in its fleet.

1-2 Purpose

BNPTS is requesting proposals from firms interested in performing a maintenance review. The successful Proposer will provide an extensive overview as well as detailed review and recommendations for improvements. The details of the maintenance review are described in Section 7.

1-3 Proposal Submission

The proposer must submit one (1) clearly identified proposal and three (3) hard copies of the proposal and all required certificates and affidavits. Each proposal will be bound together with the required RFP Cover Page and Proposer Check List (Attachment A) on top. **None of the cost forms should be bound together** please submit these separately. The package containing the proposal must be clearly marked with the words "Proposal Maintenance Review" and the time and date proposals are due.

1-4 Postponement or Cancellation of Request for Proposals

BNPTS reserves the right to cancel the RFP at any time or change the date and time for submitting proposals by announcing same prior to the date and time established for proposal submittal.

1-5 Proposal Signatures

Each proposal shall include the RFP Cover Page signed by a person authorized to bind the proposing firm to the terms of the Contract. Proposals signed by an agent are to be accompanied by evidence of that person's authority, unless such evidence has been previously furnished to BNPTS.

1-6 Addenda

Receipt and review of Addenda by each proposer must be acknowledged on the Addendum Page (Attachment C). All addenda must be signed and returned with each proposers proposal.

1-7 Inquiries

The proposer is required to show on all correspondence with BNPTS the following: "Maintenance Review". Any communication with BNPTS should be written and directed to: Isaac Thorne, Procurement Director, BNPTS, 351 Wylie Dr., Normal, Illinois 61761.

Written communication may also be forwarded via facsimile to (309) 828-1952 or email to ithorne@bnpts.com. Correspondence will not be accepted by any other party.

1-8 Procurement Schedule

The projected schedule for this procurement is:

Request for Proposals available:	January 13, 2012
Clarifications for Proposals due by:	January 23, 2012
Proposals due by 2:00 p.m.:	February 13, 2012
Evaluation of Proposals:	February 15-20, 2012
Trustees to Award @ Board Meeting	TBD
Contract signing/Notice to Proceed:	TBD
Anticipated start-up date:	TBD

1-9 Interpretation of RFP and Contract Documents

No oral interpretations as to the meaning of the RFP will be made to any proposer. Any explanation desired by a proposer regarding the meaning or interpretation of the RFP, specifications, etc., must be requested in writing and with sufficient time allowed (a minimum of five (5) calendar days before date set to receive proposals) for a reply to reach proposers before the submission of their proposals. Any interpretation or change made will be in the form of an addendum to the RFP, specifications, etc., as appropriate, and will be furnished as promptly as is practicable to all parties to whom the RFP has been issued, but at least three (3) calendar days prior to the proposal due date. All Addenda will become part of the RFP and any subsequently awarded Contract. Oral explanations, statements, or instructions given by BNPTS before the award of the Contract will not be binding upon BNPTS.

1-10 Examination of RFP and Contract Documents

Proposers are expected to examine the scope of services required, specifications, schedules, all instructions, and form agreement. Failure to do so will be at the proposer's risk. It is the intent of these specifications to provide services of first quality, and the workmanship must be the best obtainable in the various trades. The services, which the Proposer proposes to furnish, must be high quality in all respects. No advantage will be taken by Proposer in the omission of any part or detail, which goes to make the services complete. All manner of workmanship and material used in the production of the services and not herein contained or specified shall be of the industry standard and shall conform to the best practices known in the industry.

Proposer will assume responsibility for all equipment used in the proposal item, whether the same is manufactured or purchased ready made from a source outside Proposers Company. It is the sole responsibility of proposer to read the specifications and understand them.

The submission of a proposal shall constitute an acknowledgment upon which BNPTS may rely that the Proposer has thoroughly examined and is familiar with the solicitation and form agreement, including any work site identified in the RFP, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a

Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions shall in no way relieve the Proposer from any obligations with respect to its Proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation will be allowed which is based on lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances, or resolutions.

1-11 Cost of Proposals

BNPTS is not liable for any costs incurred by Proposers in the preparation, presentation, testing, or negotiation of Proposals submitted in response to this solicitation.

1-12 Modification or Withdrawal of Proposals Prior to Submittal Date and Late Proposals

At any time before the time and date set for submittal of proposals, a Proposer may request to withdraw or modify its Proposal. Such a request must be made in writing by a person with authority as identified on the RFP Cover Page, provided their identity is made known and a receipt is signed for the proposal. All proposal modifications shall be made in writing executed and submitted in the same form and manner as the original proposal. Any proposal or modification of proposal received at BNPTS's office designated in the solicitation after the exact time specified for proposal receipt will not be considered.

1-13 Errors and Administrative Corrections

BNPTS will not be responsible for any errors in proposals. Proposers will only be allowed to alter proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by BNPTS. BNPTS reserves the right to request an extension of the proposal period from a Proposer or Proposers.

BNPTS reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or similar administrative errors. Erasures or other changes or entries made by the proposer must be initialed by the person signing the proposal.

1-14 Compliance with RFP Terms and Attachments

BNPTS intends to award a Contract based on the terms, conditions, and attachments contained in this RFP. Proposers are strongly advised to not take any exceptions. Proposers shall submit proposals, which respond to the requirements of the RFP. An exception is not a response to a RFP requirement. If an exception is taken, a "Notice of Exception" must be submitted with the proposal. The "Notice of Exception" must identify the specific point or points of exception and provide an alternative.

Proposers are cautioned that exceptions to the terms, conditions, and attachments may result in rejection of the proposal.

BNPTS may, at its sole discretion, determine that a proposal with a Notice of Exception merits evaluation. A proposal with a Notice of Exception not immediately rejected may be evaluated, but its competitive scoring will be reduced to reflect the importance of the exception. Evaluation and negotiation will only continue with the Proposer if BNPTS

determines that a Contract in the best interest of BNPTS may be achieved. The Notice of Exception will be used as part of BNPTS's evaluation of the proposal, and, therefore, must be made known during the course of the proposing process. Comments and exceptions substantially altering the form agreement will not be considered after conclusion of the proposal process and the award of a contract. Failure to submit a marked-up copy of the form agreement with a proposal will be interpreted by BNPTS as the proposer's acceptance of the form agreement provided herein.

1-15 Proposal Format Requirements

Proposals shall contain the following items and follow the exact sequence outlined below:

A. Cover Letter

This section should contain the name and address of the proposing firm and the names and telephone numbers of the individuals authorized to answer technical, price, and/or contract questions. The cover letter must also be signed by an officer authorized to bind the company.

Describe in a letter, the technical experience level and certifications earned by the staff that will performing the service proposed. Also include information related to the trade name of the proposed software, headquarters location, annual revenue, number of employees, type of ownership, number of years in business, and total number and names of transit agencies currently utilizing the proposed system.

B. RFP Cover Page and Attachments

C. Notice of Exception (if applicable)

D. Qualifications and Capabilities of the Company/Firm(s)

1. Names, title, of key personnel proposed for the duration of the contract. Identify project personnel by name and provide a detailed resume outlining his/her appropriate experience on other similar projects. In the event that oral presentations are conducted, the designated key personnel will be required to attend along with other representatives of the Proposer.
2. Identify any conditions (bankruptcy, pending merger, pending litigation, planned office closures) that may impede the Proposer's ability to complete the project.
3. Identify all qualifications and organizational capabilities that will establish the proposer as a satisfactory Proposer for the maintenance review.

E. Related Experiences and References

1. This section of the Proposal should establish the ability of the Proposer to satisfactorily provide the required product by demonstrating competence in the performance of services to be provided; record of satisfactory performance on similar contracts; and supportive client references. Provide examples of similar contracts that Proposer has undertaken (indicating current status of the

contract) within the last year. For each reference cited as related experience, furnish the name, title, address, and telephone number of the person(s) at the purchaser's organization who is the most knowledgeable about the work performed.

F. **Scope of Work (to include)**

1. A response to each line item in the Scope of Work. The proposer will identify the response to each line item in the order the line item appears in the scope of work. The proposer will identify how the line item requirements will be met. This response will incorporate all addenda to the RFP. Each response should be clearly defined and will include, but not be limited to, a detailed statement of how the Proposer intends to achieve full compliance, or an explanation of why full compliance cannot be attained.
2. Where the Scope of Work permits alternative means, methods, and/or materials to be employed, the proposal shall indicate the choice of the Proposer.
3. To the extent that there are any disclaimers or caveats pertaining to the provision of service and start-up of services as described in BNPTS's specifications, they must be listed. Except as clearly stated in this section, it shall be assumed that BNPTS's technical specifications shall supersede any and all such specifications that may be described and/or included in the proposal.

G. **Cost Proposal (Separate Envelope)**

As part of the cost and price proposal, the Proposer shall submit proposed pricing to provide the services for the required effort described in the Scope of Work. Proposers' pricing shall include all applicable prices and costs. The Proposer shall complete the "Cost Proposal" form included with this RFP, and furnish any narrative required to explain the prices quoted. Any costs excluded from Proposers price proposal to BNPTS shall be the sole responsibility of the Proposer.

H. **Concluding Remarks**

This section shall contain any Proposer elaboration regarding the maintenance review philosophy, advantages, or other items of information that the Proposer feels important to a clear understanding of the proposed product/equipment/system and/or the Proposer's capabilities.

1-16 Collusion

The proposer guarantees that the proposal submitted is not a product of collusion with any other proposer, and no effort has been made to fix the proposal price of any proposer or to fix any overhead, profit, or cost element of any proposal price (Attachment G). Failure to submit the signed affidavit at the time of proposal opening shall be grounds for disqualification of the proposer's offer.

If BNPTS determines that collusion has occurred among Proposers, none of the proposals from the participants in such collusion shall be considered. BNPTS's determination shall be final.

1-17 Pricing, Taxes and Effective Date

The price to be quoted in any proposal will include all items of labor, materials, tools, equipment, and other costs necessary to fully meet the requirements of BNPTS. Any items omitted, which are clearly necessary for the completion of this project, will be considered a portion of such specifications, although not directly specified.

BNPTS is exempt from payment of Federal, Excise and Transportation Tax, and the Illinois Sales, Excise and Use Tax. Proposers will not include these taxes in their price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

In the event of a discrepancy between the unit price and the extended amount for a required item, the unit price will govern.

1-18 Rejection of Proposals

BNPTS reserves the right to reject any or all proposals and waive any minor informalities or irregularities.

1-19 Proposal Alternatives

Proposals shall address all requirements identified in this solicitation. In addition, BNPTS may consider proposal alternatives submitted by Proposers that provide enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in BNPTS's best interests. Proposal alternatives must be clearly identified.

1-20 Disadvantaged Business Enterprise (DBE) Participation

For proposers to receive credit for the use of a DBE, the proposed DBE must be certified by the Illinois Unified Certification Program (IL UCP) prior to submission of the proposal. It is the policy of BNPTS that Disadvantaged Business Enterprises (DBE's) as defined in 49 CFR Part 26 shall have a level playing field to compete fairly for DOT-assisted contracts. Proposer or firm is encouraged to take all necessary and reasonable steps to ensure that DBE's have a level playing field to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the Proposer or firm intends to subcontract a portion of the services on the project, Proposer or firm is encouraged to contact DBE's to solicit their interest, capability and qualifications.

It is the policy of BNPTS to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime Proposer or firms on DOT-assisted contracts to make use of these institutions. Therefore, BNPTS encourages prime Proposer or firms to use DBE financial institutions whenever possible.

49 CFR Part 26 requires BNPTS to collect certain data about firms attempting to participate in FTA contracts. This data must be provided on the enclosed Firm Data Sheet (Attachment J).

A. Certification – To be certified as a DBE, a firm must meet all certification eligibility standards. Firms that qualify as a DBE must: 1) be a small business as defined by the Small Business Administration; 2) be at least 51% owned by minorities, women and/or socially and economically disadvantaged adults, and 3) have its day-to-day operations controlled by women or minorities. The Illinois Unified Certification Program (IL UCP) will make its certification decisions based on the facts as a whole. DBE certification entitles Proposer or firms to participate in BNPTS's DBE program; however this certification does not guarantee that the Proposer or firm will obtain work with BNPTS.

B. Process – A firm must apply for certification through the IL UCP. Certification guidelines and applications are also available online as PDF's at the following links:

www.dot.state.il.us
www.egov.citychicago.org
www.transitchicago.com
www.pace.com
www.Metrarail.com

C. BNPTS's DBE Program – For information about BNPTS's DBE Program, firms may contact:

Angie Lancaster,
Treasurer
(309) 828-9331
351 Wylie Dr.
Normal, Illinois 61761
alancaster@bnpts.com

SECTION 2 – PROPOSAL EVALUATION & CONTRACT AWARD

2-1 General

Any contract resulting from this solicitation will be between BNPTS and the Proposer or firm responsible for providing the goods and/or performing the services described herein. BNPTS is not party to defining the division of work between the Proposer or firm and its Subcontractors, if any, and the Specifications and/or Scope of Services have not been written with this intent.

BNPTS shall employ the qualification-based selection in a negotiated purchase method in making the award for this procurement. Technical information and price information will be evaluated.

Offerors will be required to submit supporting documentation on the technical aspects and cost. The Evaluation Committee may elect to interview proposers In order to clarify their proposals and/or for the Proposers to make oral presentations. If interviews, presentations, or negotiations are held, the evaluation team may reevaluate the proposals of those firms interviewed. BNPTS expects all offerors to fully cooperate with its evaluation process.

2-2 Eligibility for Award

In order to be eligible for award, proposers must be responsive and responsible.

- A. Responsive proposals are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Proposals that do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.
- B. Responsible proposers are those prospective Proposers or firms who, at a minimum, must:
 - 1. have adequate financial resources, as required during performance of the Contract.
 - 2. are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
 - 3. have a satisfactory record of past performance auditing governmental agencies.
 - 4. have necessary technical capability to perform.
 - 5. certify that they are not on the U.S. Comptroller General's list of ineligible Proposers or firms.
 - 6. are otherwise qualified and eligible to receive an award under applicable laws and regulations.

2-3 Evaluation of Proposals

The Evaluation Committee will evaluate the proposals in accordance with the criteria set

forth below. The total evaluation points, as separately determined by each team member, will be added and each proposer will be ranked in numerical sequence, from the highest to the lowest score. BNPTS may then select the proposal that is considered to be the most advantageous to BNPTS and recommend that proposal to the Board of Trustees.

2-4 Scoring and Evaluation Criteria

The specifications, as amended through the request for approval or exception process, and any addenda thereto, set forth the minimum requirements of the components, warranty, service, support, and other deliverables BNPTS requires through this procurement.

The award of this contract shall be made to the offeror whose proposal, in the opinion of BNPTS, best meets the established criteria listed herein. Project approach is part of the evaluation criteria, as well as previous experience, and is listed as follows:

- Scope of Work (35%) Outlined in Section 7
- Cost (30%)
- Experience and References (25%)
- Qualifications of Firm and Staff (15%)

2-5 Single Proposal Response

If only one Proposal is received in response to the RFP, a sample of two (2) Proposals, if available, awarded to the Proposer within the past two (2) years may be requested of the single Proposer. A cost/price analysis and evaluation and/or audit may be performed of the cost Proposal in order to determine if the price is fair and reasonable.

2-6 Competitive Range

The competitive range is determined through a preliminary evaluation of proposals, which applies the evaluation criteria as set forth above. The groups remaining in the competitive range may be invited to participate in additional evaluations, demonstrations, Best and Final Offer, or negotiations.

2-7 Negotiations

BNPTS may undertake concurrent negotiations with proposers determined to be within a competitive range. BNPTS does, however, reserve the right to award a contract based on the original proposal without any negotiations. The decision to award without negotiation may be made by BNPTS if, in the sole opinion of BNPTS, preliminary evaluation of the proposals received indicates that the best achievable and technically acceptable proposal has been received.

Concurrent negotiations with all proposers whose proposals are within the competitive range may be conducted by BNPTS. Negotiations may be entered with one or more Proposers to finalize contract terms and conditions. In the event negotiations are not successful, BNPTS may initiate negotiations with the next ranking proposer or reject proposals.

Negotiation of a Contract will be in conformance with all applicable federal, state, and local laws, regulations, rules, and procedures. The objective of the negotiations will be to reach agreement on all provisions of the proposed Contract. The BNPTS may elect to submit a revised cost as part of the negotiation process based on current market values.

Upon completion of negotiations, the proposal that best meets the requirements of the RFP and ranks the highest evaluation score earned by its proposal based on the evaluation criteria shall be recommended to BNPTS's Board of Directors as the successful proposer for award.

2-8 Contract Award

Contract award, if any, will be made by BNPTS to the responsible Proposer whose proposal meets the requirements of the RFP, and will be the most advantageous to BNPTS with respect to operational plan, quality, and other factors as evaluated by BNPTS. BNPTS shall have no obligations until a Contract is signed between the Proposer and BNPTS.

2-9 Execution of Contract and Notice to Proceed

The Proposer to whom BNPTS intends to award the Contract shall sign the Contract and return it to BNPTS. Upon authorization by BNPTS's Board of Directors, or designee, the Contract will be countersigned. Upon receipt by BNPTS of any required documentation and submittals by the Proposer, a Notice to Proceed may be issued, if appropriate.

2-10 Public Disclosure of Proposals

BNPTS is subject to the Illinois Freedom of Information Act. Therefore, the contents of this RFP and the Proposer or firm's proposal submitted in response to this RFP shall be considered public documents and are subject to the Illinois FOIA statutes. As such, all proposals submitted to BNPTS will be available for inspection and copying by the public after the selection process has been concluded. There are, however, various items that may be exempt under public disclosure laws. If any proprietary, privileged, or confidential information or data is included in the Proposer or firm's proposal, each page that contains this information or data should be marked as such (e.g., "Proprietary," "Confidential," "Business Secret," or "Competition Sensitive") in order to indicate your claims to an exemption provided in the Illinois FOIA. It is BNPTS's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Illinois FOIA statutes.

All data, documentation and innovations developed as a result of these contractual services shall become the property of BNPTS.

2-11 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest – Proposer or firm, by submitting a proposal to BNPTS to perform or provide work, services, or materials, has thereby covenanted that it has

no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Proposer or firm or its agents, employees or representatives hereafter acquires such a conflict of interest, is shall immediately disclose such interest to BNPTS and take action immediately to eliminate the conflict or to withdraw from this Contract, as BNPTS may require.

B. Contingent Fees and Gratuities – Proposer or firm, by submitting a proposal to BNPTS to perform or provide work, services, or materials, has thereby covenanted:

1. No person or selling agency except bona fide employees or designated agents or representatives of Proposer or firm has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Proposer or firm or any of its agents, employees, or representatives, to any official, member or employee of BNPTS or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

SECTION 3 – STANDARD CONTRACTUAL TERMS & CONDITIONS

3-1 Administration

This Contract is between BNPTS and the Proposer who will be responsible for providing the goods and/or performing the services described herein. BNPTS is not party to defining the division of work between the Proposer and its Subcontractor, if any, and the Specifications and/or Scope of Services have not been written with this intent.

Proposer represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Proposer or firm's performance under this Contract may be monitored and reviewed by a Procurement Director appointed by BNPTS. Reports and data required to be provided by Proposer or firm shall be delivered to the Procurement Director. Questions by Proposer or firm regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Procurement Director for response.

3-2 Notification of Delay

Proposer or firm will notify BNPTS's Procurement Director as soon as Proposer or firm has, or should have, knowledge that an event has occurred which will delay delivery or start-up of services. Within five days, Proposer or firm will confirm such notice in writing furnishing as many details as is available.

3-3 Request for Extension

Proposer or firm agrees to supply, as soon as such data are available, any reasonable proofs that are required by BNPTS's Procurement Director to make a decision of any request for extension. BNPTS's Procurement Director will examine the request and any documents supplied by Proposer or firm and will determine if Proposer or firm is entitled to an extension and the duration of such extension. BNPTS's Procurement Director will notify Proposer or firm of the decision in writing. It is expressly understood and agreed that Proposer or firm will not be entitled to damages or compensation, and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

3-4 Contract Changes

Any proposed change in the contract will be submitted to BNPTS for its prior written approval and BNPTS will make the change by a Change Order. BNPTS may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract. No oral order or conduct by BNPTS will constitute a Change Order unless confirmed in writing by BNPTS.

If any such change causes an increase or decrease in the cost or the time required for the performance of any part of the work under this Contract, an equitable adjustment will be made, at the sole discretion of BNPTS, in the Contract price, or delivery schedule, or both, and the Contract will be modified in writing accordingly. Every Change Order may require a cost/price analysis to determine the reasonableness of the proposed change.

Any claim by Proposer or firm for adjustment under this clause must be asserted within fourteen (14) calendar days from the date of receipt by Proposer or firm of the notification of change. The request for equitable adjustment must be in writing and state the general nature and monetary extent of the claim. BNPTS may require additional supporting documents and cost or price analysis to determine the validity of the claim.

No claim by Proposer or firm for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract. No claim will be allowed for any costs incurred more than twenty (20) calendar days before Proposer or firm gives written notice, as required in this section.

3-5 Change Order Procedure

- A. Proposer or Firm Changes: Any proposed change in this Contract shall be submitted to BNPTS's Procurement Director for approval.
- B. Written Change Orders: Oral change orders are not permitted. No change in this Contract shall be made unless BNPTS's GM or Procurement Director gives prior written approval therefore. Proposer or firm shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by BNPTS's GM.
- C. Change Order Procedure: Within 15 days after receipt of the written request to modify the Contract, the Proposer or firm shall submit to BNPTS's Procurement Director a detailed price and schedule Proposal for the work to be performed. This Proposal shall be accepted or modified by negotiations between the Proposer or firm and BNPTS's Procurement Director. At that time, a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with subsection 3-19, Disputes, Claims and Appeals. Regardless of any disputes, the Proposer or firm shall proceed with the work ordered.
- D. Price Adjustment for Regulatory Changes: If price adjustment is indicated, either upward or downward, it shall be negotiated between BNPTS and Proposer or firm for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective between the date of Proposal opening and the date of contract performance. Such price adjustment may be modified where required.

3-6 Instructions by Unauthorized Third Persons

In accordance with subsection 3-4, Contract Changes, of the solicitation, BNPTS's GM or his authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to Proposer or firm by someone other than BNPTS's GM or his authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract change. Any action on the part of Proposer or firm taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

3-7 Cost or Price Analysis

BNPTS reserves the right to conduct a cost or price analysis for any purchase. BNPTS

may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single Proposal being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect on Proposal prices. BNPTS may require a Pre-Award Audit and potential Proposer or firms shall be prepared to submit data relevant to the proposed work which will allow BNPTS to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and BNPTS reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, BNPTS reserves the right to reject the single Proposal. Contract change orders or modifications will be subject to a cost analysis.

3-8 Termination

A. Termination for Convenience

The performance of work under this Contract may be terminated by BNPTS in accordance with this clause in whole, or from time to time in part, whenever BNPTS's GM shall determine that such termination is in its best interest. Any such termination shall be effected by delivery to Proposer or firm of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by BNPTS's GM, Proposer or firm shall:

1. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
2. place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. assign BNPTS, in the manner at the times, and to the extent directed by BNPTS's GM, all of the rights, title, and interest of Proposer or firm under the orders and subcontracts so terminated, in which case BNPTS shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of BNPTS's GM, to the extent he may require which approval or ratification shall be final for all the purposes of this clause;
6. transfer title to BNPTS and deliver in the manner at the times and to the extent if any, directed by BNPTS's GM then, work in process, completed

work, supplies, and other material produced as part of, or acquired in connection with the performance of the work terminated, and the completed or partially completed plans, information and other property which, if the Contract had been completed, would have been required to be furnished to BNPTS;

7. use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by BNPTS's GM, any property of the types referred to above, provided, however, that Proposer or firm shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by BNPTS's GM, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by BNPTS to Proposer or firm under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as BNPTS's GM may direct;
8. complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and take such action as may be necessary, or as BNPTS's GM may direct, for the protection or preservation of the property related to this Contract, which is in the possession of Proposer or firm and in which BNPTS has or may acquire an interest.

Settlement of claims under this Termination for Convenience clause shall be in accordance with paragraphs (c) through (m) of the clause contained in the Federal Acquisition Regulation (FAR) Part 52, subpart 52.249-2, except that wherever the word "Government" or "Contracting Officer" appears it shall be deleted and the words "BNPTS " shall be substituted in lieu thereof.

B. Termination for Breach or Default

BNPTS may, by written notice of default to Proposer or firm, terminate the whole or any part of this Contract if Proposer or firm fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or Proposer or firm fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as BNPTS's GM may authorize in writing) after receipt of notice from BNPTS's GM specifying such failure.

If the Contract is terminated in whole or in part for default, BNPTS may procure, upon such terms and in such manner as BNPTS's GM may deem appropriate, supplies or services similar to those so terminated. Proposer or firm shall be liable to BNPTS for any excess costs for such similar supplies or services, and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractor or firms, Proposer or firm shall not be liable for any excess costs if the failure to perform the Contract arises

out of causes beyond the control and without the fault or negligence of Proposer or firm. Examples of such clauses include (1) Acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Proposer or firm. If the failure to perform is caused by the default of a subcontractor or firm at any tier, and if such default arises out of causes beyond the control of Proposer or firm and subcontractor or firm, Proposer or firm shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor or firm were obtainable from other sources in sufficient time to permit Proposer or firm to meet the required delivery schedule.

In the event of any termination, BNPTS shall pay the agreed rate only for services delivered up to the date of termination. BNPTS has no obligation to Proposer or firm, of any kind, after the date of termination. Proposer or firm shall deliver all records, equipment, and materials to BNPTS within five (5) working days of the date of termination. Failure to agree will be a dispute under subsection 3-19, Disputes, Claims and Appeals. BNPTS may withhold from these amounts any sum BNPTS determines to be necessary to protect BNPTS against loss, because of outstanding liens or claims of former lien holders.

If, after Notice of Termination of this Contract is served under the provisions of this clause, it is determined for any reason that the Proposer or firm was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to termination for convenience of BNPTS.

The rights and remedies of BNPTS provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. Opportunity to Cure

BNPTS in its sole discretion may, in the case of a termination for breach or default, allow Proposer or firm thirty (30) 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 Proposer or firm fails to remedy to BNPTS's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Proposer or firm or written notice from BNPTS setting forth the nature of said breach or default, BNPTS shall have the right to terminate the Contract without any further obligation to Proposer or firm. Any such termination for default shall not in any way operate to preclude BNPTS from also pursuing all available remedies against Proposer or firm and its sureties for said breach or default.

D. Waiver of Remedies for any Breach

In the event that BNPTS elects to waive its remedies for any breach by Proposer or firm of any covenant, term or condition of this Contract, such waiver by BNPTS shall not limit BNPTS's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

3-9 Lack of Funds

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, BNPTS may, upon written notice to Proposer or firm, terminate this Contract in whole or in part. Such termination shall be in accordance with BNPTS's rights to terminate for convenience or default.

3-10 Force Majeure

The timely receipt of BNPTS's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, BNPTS may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Proposer or firm any increased costs, thereby incurred together with all resulting incidental and consequential damages. BNPTS may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Proposer or firm obligations.

The Proposer or firm shall be entitled to a reasonable extension of time from BNPTS for the delays caused by damage to Proposer or firm's and/or BNPTS's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil or public disturbances beyond the control of the Proposer or firm and its subcontractor or firms causing the inability to perform the requirements of this Contract. Any delay other than one mentioned above shall constitute a breach of Proposer or firm's contractual obligations.

3-11 Taxes, Licenses, Laws, and Certificate Requirements

Proposer or firm shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by Proposer or firm and any subcontractor or firms and shall secure and at all times maintain any and all such valid licenses and permits as may be required to provide the services or supplies under this Contract. If for any reason, Proposer or firm's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, Proposer or firm shall immediately notify BNPTS in writing of such condition.

Proposer or firm will give all notices and comply with all federal, state, local and BNPTS laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these General Provisions of the Contract and the other Contract Documents. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws,

ordinances, rules, regulations, standards or orders by BNPTS in the Contract Documents shall be construed as an oversight and shall not relieve the Proposer or firm from his obligations to meet such fully and completely. Upon request, Proposer or firm shall furnish to BNPTS certificates of compliance with all such laws, orders and regulations. Proposer or firm shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

Applicable provisions of all federal, state, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a Proposal response hereto and BNPTS, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Proposer or firm shall not constitute a cognizable defense against the legal effect thereof.

3-12 Defective Work, Materials or Services

When and as often as BNPTS determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Proposer or firm. Within seven (7) calendar days of receiving such written notification, Proposer or firm must supply BNPTS with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. BNPTS may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Proposer or firm at Proposer or firm's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to BNPTS by law, including those available under the Uniform Commercial Code.

3-13 No Waiver of Warranties or Contractual Rights

Conducting of tests and inspections, review of specifications or plans, payment for a product or service, or acceptance of a product or service by BNPTS shall not constitute a waiver, modification, or exclusion of any express or implied warranty or any right under this Contract or in law.

3-14 Assignment

Proposer or firm shall not assign any interest, obligation, or benefit under or in this Contract or transfer any interest in the same, whether by assignment or notation, without the prior written consent of BNPTS. If an assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of Proposer or firm. This provision shall not prevent Proposer or firm from pledging any proceeds from this Contract as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee and the assignee must assume the written Contract and be responsible for the obligations and liabilities of Proposer or firm, known and unknown, under this Contract and applicable law.

BNPTS may assign its rights and obligations under the Contract to any successor to the rights and functions of BNPTS or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent BNPTS deems necessary or advisable under the circumstances.

3-15 Indemnification and Hold Harmless

To the maximum extent permitted by law and except to the extent caused by the sole negligence of BNPTS, Proposer or firm shall indemnify, defend and hold harmless BNPTS, their elected officials, officers, officials, agents, and employees, from and against any and all claims, suits, actions, losses, costs, penalties, and damages of any kind or nature whatsoever arising out of, in connection with, or incident to the goods and/or services provided by or on behalf of Proposer or firm. In addition, Proposer or firm shall, at BNPTS's option, assume the defense of BNPTS and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incident to such goods and/or services, and shall pay all defense expenses, including reasonable attorney's fees, expert fees, and costs incurred by BNPTS on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against BNPTS by an employee or former employee of Proposer or firm or its subcontractor, and Proposer or firm, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects BNPTS only, under any industrial insurance act, other Worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. This indemnification obligation shall also obligate Proposer or firm to protect, indemnify, defend, and save harmless BNPTS, their elected officials, officers, officials, agents, and employees from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights arising out of or in connection with Proposer or firm's provision of goods and/or services under this Contract. Notwithstanding anything provided in this section, BNPTS retains the right to provide its own defense against any suits, claims, or actions, and to assess any costs of such defense to Proposer or firm, including attorney's fees, expert witness fees, and court costs.

3-16 Applicable Law and Forum

All work done pursuant to any contract resulting from this IFB will be governed by and construed according to the laws of the State of Illinois. Any actions arising here from shall be filed in the County of McLean, Illinois.

3-17 Attorney Fees

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including attorney's fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

3-18 Conflicts of Interest and Non-Competitive Practices

- A. Conflict of Interest – Proposer or firm by entering into this Contract with BNPTS to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Proposer or firm or its agents, employees or representatives hereafter acquires such a conflict of interest, is shall

immediately disclose such interest to BNPTS and take action immediately to eliminate the conflict or to withdraw from this Contract, as BNPTS may require.

- B. Contingent Fees and Gratuities – Proposer or firm, by entering into this Contract with BNPTS to perform or provide work, services, or materials, has thereby covenanted:
1. No person or selling agency except bona fide employees or designated agents or representatives of Proposer or firm has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
 2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Proposer or firm or any of its agents, employees, or representatives, to any official, member or employee of BNPTS or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3-19 Disputes, Claims and Appeals

Proposer or firm shall address questions or claims regarding meaning and intent of the Contract or arising from this Contract in writing to the Procurement Director within ten (10) calendar days of the date in which Proposer or firm knows or should know of the question or claim. The Procurement Director will ordinarily respond to Proposer or firm in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth day following receipt by the Procurement Director.

In the event Proposer or firm disagrees with any determination or decision of the Procurement Director, Proposer or firm may, within five (5) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the GM. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The GM will review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the GM shall be a condition precedent to litigation hereunder.

All claims, counterclaims, disputes and other matters in question between BNPTS and Proposer or firm that are not resolved between the Procurement Director and/or GM and Proposer or firm or through alternative dispute resolution, pursuant to Paragraph 3-20 below, will be decided pursuant to Paragraph 3-16 above.

Pending final decision of a dispute hereunder, Proposer or firm shall proceed diligently with the performance of the Contract and in accordance with the direction of the Procurement Director and/or GM. Failure to comply precisely with the time deadlines under this Subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to BNPTS.

3-20 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties to this Contract may seek to resolve disputes pursuant to arbitration, but are not required to do so. Nothing in this paragraph precludes any Party from seeking further relief once the required alternative dispute resolution efforts have failed.

3-21 Reports, Record Retention, Audit Access and Proof of Compliance with Contract

- A. Reports: The Proposer or firm agrees to provide to the Federal Transit Administration those reports required by U.S. DOT's grant management rules and any other reports the Federal Government may require.
- B. Record Retention: The Proposer or firm agrees that, during the course of the Project and for three (3) years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require for the project.
- C. Audit Access:
 - 1. Federal, state, local, or BNPTS Proposers shall have access to Proposer or firm's and its subcontractors or firms' records for the purpose of inspection, cost or price analysis, audit, or other reasonable purposes related to this Contract. Federal, state, local, or BNPTS Auditors shall have access to records and be able to copy such records during Proposer or firm's normal business hours. Proposer or firm shall provide proper facilities for such access, inspection, and copying.
 - 2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to Proposer or firm and for any other reason deemed appropriate and necessary by BNPTS. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state, local, or BNPTS audit procedures, laws, or regulations. Proposer or firm shall fully cooperate with the Auditor(s).
 - 3. If an audit is commenced more than sixty (60) days after the date of final payment for contract work, BNPTS shall give reasonable notice to Proposer or firm of the date on which the audit shall begin.
- D. Proof of Compliance with Contract: Proposer or firm shall, upon request, provide BNPTS with satisfactory documentation of Proposer or firm's compliance with the Contract. In addition, Proposer or firm shall permit BNPTS, and if federally funded the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving the Contract.

3-22 Other Public Agency Orders

Other federal, state, county, and local entities may utilize the terms and conditions established by this Contract. BNPTS does not accept any responsibility or involvement in the purchase orders or contracts issued by other agencies.

3-23 Conflicts of Interest – Current and Former Employees

BNPTS seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former BNPTS employees in transactions with BNPTS. Consistent with this policy, no current or former BNPTS employee may contract with, influence, advocate, advise, or consult with a third party about a BNPTS transaction, or assist with the preparation of Proposals submitted to BNPTS while employed by BNPTS or within one (1) year after leaving BNPTS's employment, if he/she participated in determining the work to be done or process to be followed while a BNPTS employee.

All Bidders, Bidders, Proposers, or Proposer or firms who anticipate contracting with BNPTS must identify at the time of offer, such current or former BNPTS employees involved in preparation of Proposals/Bids or the anticipated performance of the work or services if awarded the Contract. Failure to identify former BNPTS employees involved in this transaction may result in BNPTS's denying or terminating this Contract. In addition, after award, Proposer or firm is responsible for notifying BNPTS's Procurement Director of current or former BNPTS employees who may become involved in the Contract any time during the term of the Contract.

Furthermore, no member, officer, or employee of BNPTS during their tenure or for two (2) years thereafter will have any financial interests, direct or indirect, in this Contract or the proceeds thereof.

3-24 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

3-25 Non-waiver of Breach

No action or failure to act by BNPTS shall constitute a waiver of any right or duty afforded to BNPTS under the Contract; nor shall any such action or failure to act by BNPTS constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by BNPTS in writing.

3-25 Use of BNPTS's Name in Proposer or firm Advertising or Public Relations

BNPTS reserves the right to review and approve all BNPTS-related copy prior to publication. Proposer or firm will not allow BNPTS-related copy to be published in Proposer or firm's advertisements or public relations programs until submitting BNPTS-related copy and receiving prior written approval from BNPTS's GM. Proposer or firm will agree that published information

on BNPTS or its program will be factual, and in no way imply that BNPTS endorses Proposer or firm's firm, service, or produc

SECTION 4 – SPECIFIC CONTRACTUAL TERMS & CONDITIONS

4-1 Type of Contract

Any contract resulting from this solicitation will be structured as a fixed fee contract. BNPTS is requesting proposals from Proposers of the maintenance review and the related services that will ensure an assessment that will detail the actual and potential impacts of the deficiencies identified. The Contractor's Final Report must contain an Executive Summary and a detailed listing of the findings and recommendations outlined in (Section 7). Proposers are instructed to NOT include any applicable taxes in their cost proposals.

4-2 Contract Documents and Precedence

The documents constituting the Contract between BNPTS and Proposer or firm are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the following order of precedence shall be applied:

- A. Any required federal and state regulations that may not be altered by BNPTS;
- B. Purchase order;
- C. Contract amendments;
- D. Results of negotiations;
- E. Solicitation and all issued addenda and approved equals;
- F. Any optional federal and state regulations elected by BNPTS as expressly set forth herein;
- G. Clarifications of and amendments to Proposer or firm's Proposal as accepted by BNPTS; and
- H. Proposer or firm's Proposal and Attachments, and all clarifications and amendments issued prior to contract award.

4-3 Contract Term

Any contract resulting from this solicitation will be structured as a fixed fee contract for Maintenance Review Services.

4-4 Contract

A Contract shall be issued referencing this solicitation. Contract shall define and authorize the work by Proposer or firm based on the prices agreed to by BNPTS. The Contract(s) issued by BNPTS may reflect agreed to modification of Contract terms, funding, or other matters subject to subsection 3-4, Contract Changes.

4-5 Payment Procedures

Payments for services rendered and expenses incurred shall be made after presentation of Proposer or firm's invoices upon delivery of goods ordered by BNPTS. Such invoices shall be computed in accordance with the fee schedule agreed to by BNPTS and Proposer or firm, and incorporated into the final contract, and are due and payable within thirty (30) days of receipt of a correct invoice as agreed upon by BNPTS. Each invoice shall contain Proposer or firm's list of services provided. Proposer or firm agrees to supply with each invoice, additional information as may be requested by BNPTS.

Invoices should clearly identify the BNPTS purchase order number and any prompt payment discount offered to BNPTS for paying within ten (10) days of receipt. BNPTS may, at any time, conduct an audit of any and/or all records kept by the Proposer or firm for this project. Any overpayment uncovered in such an audit may be charged against the Proposer or firm's future invoices. BNPTS may withhold payment for services it believes were improper, failed to meet with project specifications, or are otherwise questionable. Invoices should be submitted to: BNPTS

4-6 Advance Payment Prohibited

No advance payment shall be made for the work furnished by Proposer or firm pursuant to this Contract.

4-7 Price Adjustments

Price adjustments either upward or downward may be negotiated only at the time of renewal unless BNPTS requests a contract modification.

4-8 Summary Report

Proposer or firm shall, if requested, submit to BNPTS a monthly report of services provided to BNPTS under this Contract. The report, in a format acceptable to BNPTS, shall identify by item the amount of work completed, the status of the project in relation to the schedule, and any other information that may be relevant to project oversight.

4-9 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights: Conducting of tests and inspections, review of Scope of Work or plans, payment for a work, or acceptance or final acceptance of the work by BNPTS shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve Proposer or firm from its warranty/guarantee responsibility.
- B. Warranty: Proposer or firm warrants that the work performed under this Contract shall be free from defects in material and workmanship, and shall conform with all requirements of this Contract. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Proposers, Distributors, and Subcontractor or firms: Proposer or firm shall ensure that the warranty requirements of this Contract are enforceable through and against Proposer

or firm's suppliers, Proposers, distributors, and subcontractor or firms. Proposer or firm is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to BNPTS by Proposer or firm and those extended to Proposer or firm by its suppliers, Proposers, distributors, and subcontractor or firms. Such inconsistency or difference shall not excuse Proposer or firm's full compliance with its obligations under this Contract. Proposer or firm shall cooperate with BNPTS in facilitating warranty related work by such suppliers, Proposers, distributors, and subcontractor or firms.

4-10 Express Warranties for Services

Proposer or firm warrants that the services shall in all service respects conform to the requirements of this Contract. Proposer or firm warrants that qualified professional personnel with in-depth knowledge shall perform the services in a timely and professional manner; and that the services shall conform to the standards generally observed in the industry for similar services. Proposer or firm warrants that the services shall be in compliance with all applicable laws, rules, and regulations.

4-11 Warranty Remedies

If at any time before Final Acceptance of any work covered by this Contract, Proposer or firm or BNPTS discovers one or more material defects or errors in the work of any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein, Proposer or firm shall, at its own expense and within thirty (30) days of notification of the defect by BNPTS, correct the defect, error, or nonconformity.

Notice Required – BNPTS shall give written notice of any defect to Proposer or firm. If Proposer or firm has not corrected the defect within thirty (30) days after receiving the written notice, BNPTS, in its sole discretion, may correct the defect itself. In the case of an emergency where BNPTS believes delay could cause serious injury, loss, or damage, BNPTS may waive the written notice and correct the defect. In either case, BNPTS shall charge-back the cost for such warranty repair to Proposer or firm.

Proposer or firm is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements or scope of work, including charges, for work found defective before Final Acceptance, regardless of who actually corrects the defect.

4-12 Independent Status of Proposer or firm

In the performance of this Contract, the parties shall be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Proposer or firm relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Proposer or firm shall not make any claim or right, privilege or benefit, which would accrue to an employee.

4-13 Notices

Any notice which is required to be given hereunder shall be deemed sufficiently given or rendered if such notice is in writing and is delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by a national overnight courier service to the following addresses:

To BNPTS:

Isaac Thorne
Procurement Director
351 Wylie Dr.
Normal, IL 61761

Any notice given hereunder by personal delivery or express mail shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities. Either party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

4-14 Nondisclosure of Data

Data provided by BNPTS either before or after Contract award shall only be used for its intended purpose. Bidders, Proposers, Proposer or firms, and subcontractor or firms shall not utilize or distribute the BNPTS data in any form without the prior express written approval of BNPTS.

4-15 Non-Disclosure Obligation

While providing the work required under this Contract, Proposer or firm might encounter documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." Proposer or firm shall, with regard to such information and material received or used in performance of this Contract, employ practices no less than those used for the protection of Proposer or firm's own confidential information.

The Contract imposes no obligation upon Proposer or firm with respect to confidential information which Proposer or firm can establish that: a) was in the possession of, or was rightfully known by Proposer or firm without an obligation to maintain its confidentiality prior to receipt from BNPTS or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by Proposer or firm in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by Proposer or firm without the participation of individuals who have had access to BNPTS's or the third party's confidential information. Proposer or firm may disclose confidential information if so required by law, provided that Proposer or firm notifies BNPTS that the third party of such requirement prior to disclosure.

4-16 Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

If a Proposer or firm considers any portion of any documents which may be delivered to BNPTS pursuant to this Contract to be protected under the law, Proposer or firm shall clearly identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." If a request is made for disclosure of any such document, BNPTS will determine whether the document should be made available under the law. If the document or parts thereof are determined by BNPTS to be exempt from public disclosure, BNPTS will not release the exempted document. If the document is not exempt from public disclosure law, BNPTS will notify Proposer or firm of the request and allow Proposer or firm five (5) days to take whatever action it deems necessary to protect its interests. If Proposer or firm fails or neglects to take such action within said period, BNPTS will release the document deemed subject to disclosure. By signing a Contract, Proposer or firm assents to the procedure outlined in this paragraph and shall have no claim against BNPTS on account of actions taken under such procedure.

4-17 Patents and Royalties

Proposer or firm is responsible for paying all license fees, royalties, or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, Proposer or firm shall, if requested by BNPTS, furnish acceptable proof of a proper release from all such fees or claims.

4-18 Changed Requirements

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, Proposer or firm agrees to accept all changed requirements that apply to this Contract and require subcontractor or firms to comply with revised requirements as well. Changed requirements will be implemented through subsection 3-5, Change Order Procedure.

4-19 Counterparts

This Contract may be signed in two (2) counterparts, each of which shall be deemed an original and which shall together constitute one (1) Contract.

4-20 Contractual Relationships

No contractual relationship will be recognized under the Contract other than the contractual relationship between BNPTS and the Prime Proposer or firm.

SECTION 5 – INSURANCE REQUIREMENTS

5-1 Commencement of Work

Proposer or firm shall not commence work until all insurance required under this section has been obtained and the proper insurance verification has been provided to BNPTS.

5-2 General Requirements

All insurance policies shall be written with a company or companies licensed to conduct business within the State of Illinois and holding a current Best's Key Rating of A- VII or better. Proposer or firm agrees to name BNPTS as additional insured's on General, Business Automobile and Excess or Umbrella liability policies **by endorsement to the policies**. Insurance policies shall be endorsed to give BNPTS 30 days written notice (10 days in case of Workers Compensation) of cancellation for any reason, non renewal or material change in coverage or limits. In case of non-payment of premium by Proposer or firm, BNPTS retains the rights but is not obligated to pay any premiums and deduct such amounts from any payments due to the Proposer or firm.

There shall be no exclusions for punitive damages in the General or Business Automobile policies.

Complete, certified copies of all insurance policies applicable to this agreement will be sent to BNPTS within 60 days of each inception or anniversary date, so that these insurance policies may be reviewed by BNPTS. Until copies of policies are received, Evidence of Coverage in the form of an original Certificate of Insurance shall be submitted to BNPTS. The Proposer or firm also agrees to have deficiencies in the insurance policies amended as per the directions of BNPTS or its representative.

5-3 Required Coverages

The Proposer or firm agrees to provide the following coverages:

- A. **Commercial General Liability** (Occurrence Form), either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Each Occurrence (Bodily Injury, Property Damage)	\$1,000,000
Personal and Advertising Injury Limit	
\$1,000,000	
General Aggregate Limit	\$1,000,000
Products and Completed Operations Aggregate Limit	\$1,000,000
Fire Damage Limit	\$ 50,000
Medical Payments – Any One Person	\$ 5,000

- B. **Business Automobile Policy** either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Owned, Hired or Non Owned (Per Accident)	\$1,000,000
Uninsured Motorist (Per Accident)	
Medical Payments (Each Person)	\$ 5,000

Comprehensive (\$5,000 Deductible – Maximum)	Actual Cash Value
Collision (\$5,000 Deductible – Maximum)	Actual Cash Value

In the case of policies that list specific vehicles or specific drivers, proof of coverage is required to be provided to BNPTS for each vehicle or driver before it can be used in service. The Proposer or firm will be fully responsible for all physical damage deductibles to BNPTS owned vehicles. In addition, Proposer or firm will be fully responsible for all rental costs and other costs associated with any vehicles that replace any vehicle that sustains any type of physical damage.

C. Workers Compensation

Part A	
Statutory	
Part B – Employers Liability	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease (Policy Limit)	\$500,000
Bodily Injury by Disease (Each Employee)	\$500,000

All States and Voluntary Compensation endorsements shall be included in the Workers Compensation policy. Workers Compensation shall be provided to all employees of the Proposer or firm.

6-1 Applicability and Federal Grant Contract

Any contract resulting from this solicitation will be between the successful proposer and BNPTS, and is subject to financial assistance provided by the U.S. Department of Transportation, the Illinois Department of Transportation. The successful Proposer or firm is required to comply with all terms and conditions prescribed in third party contracts in the grant Contract between the U.S. Department of Transportation and BNPTS.

6-2 Interest of Members or Delegates of Congress

In accordance with 41 U.S.C. Section 22, the Proposer or firm agrees that it will not admit any member of or delegate to the United States Congress to any share or part of the Project or any benefit derived there from.

6-3 No Federal Government Obligations to Third Parties

Proposer agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub recipient, any third party Proposer or firm, or any person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, sub agreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any sub recipient or any third party Proposer or firm.

6-4 False or Fraudulent Statements or Claims

The Proposer or firm acknowledges and agrees as follows:

- A. The Proposer or firm recognizes that the requirements of the Program Civil Remedies Act of 1986, as amended, 31 U.S.C. subsection 3801 et seq. and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with the Project. Accordingly, by signing the contract, the Proposer or firm certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may apply, the Proposer or firm also acknowledges that if it makes 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, as amended, on the Proposer or firm to the extent the Federal Government deems appropriate.
- B. The Proposer or firm also acknowledges that if it makes a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. section 5307, the Government reserves the right to impose on the Proposer or firm the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5307 (n) (1), to the extent the Federal Government deems appropriate.

6-5 Access to Records

In accordance with 49 U.S.C. Section 5325(a) the Proposer or firm agrees to provide BNPTS, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, or their duly authorized representatives with access to all books, documents, papers and records of the Proposer or firm which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Proposer or firm agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Proposer or firm agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Proposer or firm agrees to maintain same until BNPTS, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, 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).

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

6-6 Federal Changes

Proposer or firm 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 (Form FTA MA (9) dated October, 2002) between BNPTS and FTA, as they may be amended or promulgated from time to time during the term of this contract. Proposer or firm's failure to so comply shall constitute a material breach of this contract.

6-7 Equal Employment Opportunity

In connection with this project, the Proposer or firm will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. The Proposer or firm will take affirmative action to ensure that qualified and approved applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, age, or national origin. Such action will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other compensation, and selection for training, including apprenticeship. Proposer or firm will also notify any and all subcontractor or firms or suppliers of its obligations under this contract related to this provision.

6-8 Civil Rights Requirements

- A. Nondiscrimination in Federal Transit Programs – Proposer or firm agrees to comply, and assures the compliance of each subcontractor or firm, with the provisions of 49 U.S.C. section 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- B. Nondiscrimination – Title VI of the Civil Rights Act – Proposer or firm agrees to comply, and assures the compliance of each subcontractor or firm, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of Civil Rights Act,” and 49 CFR Part 21, and any implementing requirements FTA may issue.
- C. Equal Employment Opportunity - The Proposer or firm agrees to comply, and assures the compliance of each subcontractor or firm, with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity requirements include, but are not limited to, those listed in the Master Agreement (Form FTA MA (12) dated October, 2005) Section 12c(1) between BNPTS and FTA.
- D. Access Requirements for Persons with Disabilities – The Proposer or firm agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Proposer or firm also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, Proposer or firm agrees to comply with all applicable requirements of those regulations and any subsequent amendments listed in the Master Agreement (Form FTA MA (12) dated October, 2005) Section 12g between BNPTS and FTA.
- E. The Proposer or firm 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.

6-9 Disadvantaged Business Enterprise (DBE) Participation

The DBE requirements of 49 CFR Part 26 applies to this Contract. These requirements are described in Section 1, Instructions to Proposers.

6-10 Prompt Payment

The prime Proposer or firm agrees to pay each subcontractor or firm under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime Proposer or firm receives from BNPTS. The prime Proposer or firm agrees further to return retainage payments to each subcontractor or firm within thirty (30) days after the subcontractor or firm's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of BNPTS. This clause applies to both DBE and non-DBE subcontractor or firms.

- A. If the prime Proposer or firm fails to pay the subcontractor or firm within thirty (30) days, the prime Proposer or firm must notify BNPTS and the subcontractor or firm, in writing, of its intention to withhold all or a part of the subcontractor or firm's payment with the reason for nonpayment.
- B. The Proposer or firm is obligated to pay interest to the subcontractor or firm on all amounts owed by the Proposer or firm that remain unpaid after thirty (30) days following receipt by the Proposer or firm of payment from BNPTS for work performed by the subcontractor or firm under that contract, except for amounts withheld as allowed in subdivision (A) of this section. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld. Notification of failure by the Proposer or firm to make prompt payment to the subcontractor or firm hereinbefore provided will result in notification to the Proposer or firm's bonding company by BNPTS.
- C. Should either the prime Proposer or firm or subcontractor or firm advise BNPTS of a payment issue involving a DBE Proposer or firm, the DBE officer shall be notified so as to investigate, as appropriate.
- D. BNPTS may conduct prompt payment audits that require prime Proposer or firm to submit appropriate documentation to verify compliance with this provision.

6-11 Energy Conservation

Proposer or firm agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Subsection 6321 *et seq.*

6-12 Certification Regarding Debarment, Suspension and Other Responsibility Matters

- A. Contractor agrees to comply, and assures the compliance of all subcontractors, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 CFR Part 29.
- B. By signing and submitting a bid, the prospective primary participant (i.e., bidder) is providing a signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered transactions (Attachment E). The signed certification must be submitted with the bid proposal.
- C. The inability of a person to provide the required certification will result in denial of participation in this covered transaction.
- D. The certification in this clause is a material representation of fact upon which reliance is placed when BNPTS enters into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BNPTS may terminate this transaction for cause of default.
- E. The prospective primary participant shall provide immediate written notice to BNPTS if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- F. The terms "covered transaction," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," "and" "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- G. The proposer agrees by submitting this proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BNPTS.
- H. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by BNPTS and included with these specifications, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- I. A participant in a covered transaction must rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Proposers shall submit with their proposals, Attachment F, if a lower tier participant is part of the proposal. Each participant must check the Nonprocurement List

issued by U.S. General Services Administration.

- J. The proposer further agrees that it and its affected subcontractors will provide immediate written notice if at any time the proposer learns that their subcontractor's certification was erroneous when submitted or has become erroneous because of changed circumstances.
- K. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- L. Except for transactions authorized under subdivision (F) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BNPTS may terminate this transaction for cause or default.

6-13 Incorporation of 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, dated June 19, 2003, 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. Proposer or firm shall not perform any act, fail to perform any act, or refuse to comply with any BNPTS requests which would cause BNPTS to be in violation of the FTA terms and conditions.

6-14 Requirements for the State of Illinois

A. Product Restrictions (Procurement and Construction)

Description shall not, in competitive procurements, contain features that unduly restrict competition. "Brand name or equal" description may be used only as a means to define the performance or other salient requirements of procurement, and when it is so used, the specific features of two brand names which must be met by offerors should be clearly specified.

B. Exclusion of Procurement (Construction Only)

Specifications and Proposal documents for building construction shall include only that work and the furnishing of those items necessary to the construction. Items that are integral to the construction, such as garage lifts, may be included. However, items such as shop equipment, office equipment or furniture, or others not considered being "real estate" should be bid separately, as procurements.

C. Rejection of Bids / Proposals

The right is reserved to accept any proposal or any part thereof or to reject any and all proposals. Acceptance of any bid or proposal is subject to concurrence by the Illinois Department of Transportation and the United States Department of Transportation.

D. Financial Assistance

This contract is subject to financial assistance contracts between the BNPTS and the Illinois Department of Transportation and the United States Department of Transportation.

E. Interest of Members of Congress

No member of or delegate to the Illinois General Assembly shall be admitted to any share or part of this contract or to any benefit arising there from.

F. Prohibited Interests

No member, or officer, or employee of the BNPTS or a local public body with financial interest or control in this contract during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

G. Contract Changes

Any proposed change in this contract shall be submitted to the BNPTS for its prior approval.

H. Subcontracts

The third party (agency, carrier, Proposer or firm) shall not enter into any subcontracts or agreements, or start any work by the work forces of the third party or use any materials from the stores of the third party, with respect to this contract, without the prior concurrence of the Illinois Department of Transportation. All such subcontracts, agreements, and force work and materials shall be handled as prescribed for third-party contracts, Agreements, and force-account work by the IDOT manual for Public Transportation Capital Improvement Grants. All requests for concurrence shall be submitted to the BNPTS for approval prior to submittal to IDOT.

I. Equal Employment Opportunity

The Proposer or firm will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

In the event of the Proposer or firm's noncompliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights the Proposer or firm may be declared ineligible for future contracts of subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or

remedies invoked as provided by statute or regulation. During the performance of this Contract, the Proposer or firm agrees as follows:

- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from the military service; and further that it will examine all job classifications to determine if minority / women are underutilized and will take appropriate affirmative action to rectify such under-utilization.
- (2) That, if it hires additional employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may be reasonable to recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- (3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- (4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Proposer or firm's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Proposer or firm in its efforts to comply with such Act and Rules and Regulations, the Proposer or firm will promptly so notify the Department and the contracting agency and will recruit employees from other resources when necessary to fulfill its obligations thereunder.
- (5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- (6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- (7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor or firm. In the same manner as with other provisions of this Contract, the Proposer or firm will be liable for compliance with applicable provisions of this clause by such subcontractor or firms; and further it will promptly notify the contracting agency and the Department in the event the subcontractor or firm fails or refuses to comply therewith. In addition, the Proposer or firm will not utilize any subcontractor or firm declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

J. Contract Period

The contract period for this procurement shall start with the signing of the contract and end within a reasonable time.

K. Compensation

This procurement is funded by the Federal Transit Administration and by the Illinois Department of Transportation.

SECTION 7 – SCOPE OF WORK

The Scope of Work described below shall serve as the general guide and is not intended to be a complete list of all work and materials to satisfy all requests for services.

The Contractor must employ industry specialists to perform the proposed review. These professionals must come from the vehicle maintenance industry and as consultants, have performed similar maintenance reviews.

7-1 General Requirements

The Contractor's project team must understand what to look for regarding the maintenance of transit vehicles and facilities, including standard operating processes, procedures, policies, and documentation.

The goal of the review is identify specific areas in need of improvement in the maintenance operations at the Bloomington Normal Public Transit System. The Contractor's maintenance review must produce factual information and implementable recommendations for improvement in the maintenance program that will result in increased efficiency and effectiveness of the operation. The Contractor will conduct a risk analysis that will detail the actual and potential impacts of the deficiencies identified. The Contractor's Final Report must contain an Executive Summary and a detailed listing of the findings and recommendations.

Prior to beginning the review, the Contractor shall use a proactive approach that ensures all parties understand the review process and requirements. Contractor will coordinate work schedules with BNPTS staff to ensure daily maintenance operations are completed with minimal interference.

The Contractors review team must become familiar with the BNPTS maintenance program. The Contractor will have access to, and is expected to schedule time to spend on site with fleet maintenance, finance and other appropriate staff. The contractor will have full access to the fleet facility to document and examine shop tools, inventory and equipment. The contractor will analyze workflow patterns and assess current staff productivity. The Contractor will review administrative processing, work orders, purchasing, staffing, inventory management, shop equipment, key policies, etc. The Contractor will be expected to indentify strategic and tactical gaps, isolate best practices, identify areas of opportunity and communicate findings.

Areas of review should include, but are not limited to:

7-2 Vehicle Maintenance Performance

- Evaluation of fleet
- Mechanical breakdown occurrences; Identify and interpret trends
- Proper and timely performance of preventative maintenance
- Effectiveness and efficiency of non-preventative repairs
- Proper monitoring of effectiveness and efficiency of contracted repairs
- Evaluate effectiveness and efficiency in scheduling of work

7-3 Facility Maintenance Performance

- Evaluation of facility
- Facility repair occurrences; Identify and interpret trends
- Proper and timely performance of preventative maintenance
- Proper upkeep of facilities
- Proper monitoring of effectiveness and efficiency of contracted services

7-4 Safety

- Workplace policies and procedures regarding repair of vehicles, both on and off transit property
- Workplace policies and procedures regarding handling of hazardous and potentially hazardous materials
- Workplace policies and procedures regarding facility maintenance
- Policies regarding non-major mechanical issues

7-5 Equipment Management

- Equipment necessary for effective maintenance operations on site
- Identify deficiencies and opportunities in the area of tools and equipment

7-6 Purchasing and Warranty Management

- Operational effectiveness and efficiency of parts ordering process
- Cost-effectiveness of parts ordering process
- Proper parts inventory levels
- Effective warranty administration

7-7 Staffing

- Evaluate staff skill levels at all levels of the department
- Identify training deficiencies and opportunities
- Evaluate effectiveness and efficiency of staff scheduling
- Accountability at all levels of the department
- Customer service focus of department

7-8 Reporting

- Transparency of operations
- Proper reporting of maintenance department performance
- Effective analysis of maintenance department performance

7-9 Distribution of Draft Observation Documents

Upon completion of the review and before preparation of the Final Report, the Contractor's team will provide preliminary findings to the BNPTS GM for review. BNPTS staff will have the opportunity to discuss the preliminary findings with the Contractor.

7-10 Final Report

A Final Report will be prepared and will include the assessment and risk analysis of current maintenance operations and recommendations for improvements to the department. Report will include general cost estimates associated with recommendations.

ATTACHMENT A

PROPOSER CHECKLIST

(to verify that all necessary documents are included)

This form must be completed and returned with the technical proposal. Failure to return this form may be cause for considering your proposal non-responsive.

	<u>Proposer Check-Off</u>	<u>B-NPTS Check-Off</u>
Cover Letter	_____	_____
RFP Cover Page	_____	_____
Attachment B Proposal Affidavit	_____	_____
Attachment C Addendum Page	_____	_____
Attachment D Requests for Approved Equal	_____	_____
Attachment E Ineligible Proposers Certification	_____	_____
Attachment F Ineligible Proposal Certification	_____	_____
Attachment G Non-Collusion Affidavit	_____	_____
Attachment H Firm Data Sheet	_____	_____
Attachment I Good Faith Effort	_____	_____
Attachment J DBE Letter of Intent	_____	_____
Attachment K DBE Affidavit	_____	_____
Attachment L DBE Approval	_____	_____
Cost Proposal	_____	_____

ATTACHMENT B

PROPOSAL AFFIDAVIT

The undersigned hereby declares that he/she has carefully read and examined the Advertisement, the Scope and Terms, the Specifications, Warranty and Quality Assurance Requirements with all supporting certificates and affidavits for the provision of services specified at the prices stated in the fee proposal.

SIGNED : _____

TITLE: _____

FIRM NAME: _____

Subscribed and sworn to before me this __ day of _____, 20____
Notary Public

My Commission Expires: _____

ATTACHMENT C

ADDENDUM PAGE

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give number and date of each)

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to this Request for Proposal, which will require rejection of the proposal.

Signature

Title

ATTACHMENT D

REQUEST FOR CLARIFICATIONS/APPROVED EQUAL

DATE: _____

PROPOSER: _____

SECTION: _____ PAGE: _____

PROPOSERS REQUEST: _____

B-NPTS RESPONSE: _____

APPROVED _____

DENIED _____

COMMENTS: _____

SIGNATURE _____

DATE _____

ATTACHMENT E

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Proposer or firm _____ certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or Agency.

Where the Proposer or firm is unable to certify to any of the statements in this certification, such Proposer or firm shall attach an explanation to this proposal.

Proposer or firm (Name) _____ certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

AUTHORIZED OFFICIAL: _____

SIGNATURE: _____

DATE: _____

ATTACHMENT F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND INVOLUNTARY EXCLUSION LOWER TIER TRANSACTIONS

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under an Federal Transit Administration Project), _____, certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or Agency.

Where the Lower Tier Participant (Applicant for a third party subcontract or sub-grant under a Federal Transit Administration Project) is unable to certify to any of the statements in this certification, such Proposer or firm shall attach an explanation to this proposal.

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant under a Federal Transit Administration Project) _____ certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

AUTHORIZED OFFICIAL: _____

SIGNATURE: _____

DATE: _____

ATTACHMENT G

AFFIDAVIT AND INFORMATION REQUIRED OF PROPOSERS

Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the proposer (if the proposer is an individual), a partner in the proposal (if the proposer is a partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the proposer is a corporation);
2. That the attached proposal(s) has been arrived at by the proposer independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other Proposer or materials, supplies, equipment, or service described in the invitation to proposal, designed to limit independent proposals or competition;
3. That the contents of the proposal or proposals has not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the proposal or proposals, and will not be communicated to any such person prior to the official opening of the proposal or proposals; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit:

Signed _____

Firm Name _____

Subscribed and sworn to before me this ____ day of _____, 20

Notary Public _____

My Commission expires _____, 20

Proposer's E.I. Number _____ (number used on Employer's Quarterly Federal Tax Return)

ATTACHMENT H

FIRM DATA SHEET

The prime consultant is responsible for submitting the information requested below **on all firms on the project team, both prime and all subconsultants**. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit complete data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE Status*	Firm's Age	Firm's Annual Gross Receipts

* Y = DBE-Certified by IDOT
N = Not DBE-Certified by IDOT

NA = Firm Not Claiming DBE Status
IP = DBE-Certification In-Process

ATTACHMENT I

GOOD FAITH EFFORT (For information only – not to be returned)

1. B-NPTS has not established a defined percentage contract goal on this contract. Therefore a proposer must, in order to be responsible and/or responsive, make a good faith effort to meet the goal. The proposer can meet this requirement in either of two ways. First, the proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the proposer can document adequate good faith efforts. This means that the proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
2. B-NPTS will use the good faith efforts mechanism as required by 49 CRF part 26. It is up to B-NPTS to make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good faith efforts. B-NPTS will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer has made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, B-NPTS's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
3. B-NPTS will not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the proposer makes an adequate good faith effort showing. The rule specifically prohibits B-NPTS from ignoring bona fide good faith efforts.
4. The following is a list of types of actions that B-NPTS will consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty.
 - b. the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

ATTACHMENT I

GOOD FAITH EFFORT (continued)

- d. participation, even when the prime Proposer or firm might otherwise prefer to perform these work items with its own forces.
- e. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- f. Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractor or firms and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractor or firms and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A proposer using good business judgment would consider a number of factors in negotiating with subcontractor or firms, including DBE subcontractor or firms, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Proposer or firm to perform the work of a contract with its own organization does not relieve the proposers of the responsibility to make good faith efforts. Prime Proposer or firms are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- g. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Proposer or firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the Proposer or firm's efforts to meet the project goal.
- h. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Proposer or firm.
- i. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- j. Effectively using the services of available minority/women community organizations; minority/women Proposer or firms' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE.

ATTACHMENT J

DBE LETTER OF INTENT

To: _____
(Name of Prime Proposer)

The undersigned intends to perform work in connection with the above project as a DBE (check one)

_____ individual _____ corporation
_____ partnership _____ joint venture.

The Disadvantaged Business status of the undersigned is confirmed:

- (a) on the reference list of Disadvantaged Business Enterprises dated _____, or
- (b) on the attached Disadvantaged Business Enterprise Identification Statement.

The undersigned is prepared to perform the following work in connection with the above project (Specify in detail particular work items or parts thereof to be performed):

At the following price:

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of a contract with B-NPTS.

Date _____
Name of Disadvantaged Business Enterprise

By _____

ATTACHMENT K

DBE AFFIDAVIT

STATE OF _____ (Date _____)

COUNTY OF _____

The undersigned being duly sworn, deposes and says that he/she is the

(sole owner, partner, president, treasurer or other duly authorized official of a corporation) of

(Name of DBE)

and certifies that since the date of its certification IL UCP, the certification has not been revoked nor has it expired nor has there been any change in the minority status of

(Name of DBE)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day _____, 20_____

(Notary Public)

NOTE: The offeror must attach the DBE's most recent certification letter or document to this affidavit.

ATTACHMENT L

DISADVANTAGED BUSINESS ENTERPRISE APPROVAL CERTIFICATION

I hereby certify that the Proposer has complied with the requirements of 49 CFR 26.49, Participation by Disadvantaged Business Enterprise in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

Signature of the Proposer's Authorized Official

Name and Title of the Proposer's Authorized Official

Date

COST PROPOSAL

The Proposer shall include the cost proposal with their proposal:

	Hours	Cost
7-2 Vehicle Maintenance Performance	_____	\$ _____
7-3 Facility Maintenance Performance	_____	\$ _____
7-4 Safety	_____	\$ _____
7-5 Equipment Management	_____	\$ _____
7-6 Purchasing and Warranty Management	_____	\$ _____
7-7 Staffing	_____	\$ _____
7-8 Reporting	_____	\$ _____
7-9 Distribution of Draft Observation	_____	\$ _____
7-10 Final Report	_____	\$ _____
Travel Costs (if applicable)	Number of Trips _____	Cost \$ _____
	Total Cost	\$ _____

Please include other miscellaneous cost that may apply and give brief description of the cost.