

Request for Proposals Real Time Information System (RTIS)

RFP # 19-1904

September 7 2018

Metropolitan MTTA Authority
510 South Rockford Avenue
Tulsa, Oklahoma 74120

Request for Proposals

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I. INTRODUCTION

Sealed proposals shall be received by the Metropolitan MTTA Authority (MTTA), Attention Accounting & Grants Manager, at 510 S. Rockford, Tulsa, Oklahoma at or before **October 11, 2018 4:30PM Central Standard Time, Thursday**, for **Real Time Information System (RTIS)** as described in this Request For Proposal (RFP) document. Proposals received after the date and time specified above shall be considered late proposals and shall not be considered.

MTTA reserves the right, in its sole and exclusive discretion to accept or to reject any and all proposals, in whole or in part. All proposals shall be subject to all applicable state and federal laws and shall be evaluated on a best value basis. Proposal documents shall be clearly marked with the RFP number and shall be mailed or delivered to:

Metropolitan MTTA Authority
ATTN: Jack Van Hooser
Accounting & Grants Manager
510 S. Rockford
Tulsa, Oklahoma 74120
Fax: 918-582-5209

The anticipated schedule for selection of a Proposer is as follows:

Request for Proposal Released	September 7th, 2018
Advertisement	September 9th & 16th, 2018
Deadline for Questions Regarding the RFP	September 27, 2018 @ 4:30 PM CST
Response to questions	October 4, 2018 @ 4:30 PM CST
Proposals Due	October 11, 2018 @ 4:30 PM CST
Contract Award	October 30, 2018 @ NOON

II. INSTRUCTIONS TO PROPOSERS

1. PROPOSAL FORMAT

MTTA requires five copies of all documents, one unbound original and four copies. Further, an electronic copy on a CD or jump drive is required. Each must be clearly labeled on the front sheet. Proposals shall be prepared simply and economically on letter sized paper with tabbed or marked sections. Documents can be stapled or assembled with a plastic spine. No three ring binders please. Prices must be included on the form provided in a separately sealed envelope appropriately labeled.

2. TERMS AND CONDITIONS

All proposals are subject to the provisions specified in this RFP. Terms and conditions included

as a part of published price lists, catalogs, and/or other documents submitted as a part of the proposal are waived and will have no effect either on the proposal, or any contract which may be awarded as a result of the proposal. The attachment of any other terms and conditions may be grounds for rejection.

3. DUE DATE

Sealed proposals must be received by MTTA no later than **4:30PM Central Standard Time on October 11, 2018.**

4. CONTACT INFORMATION

For questions or additional information, contact the buyer via email: Jack Van Hooser, Accounting & Grants Manager, jvhooser@tulsatransit.org, or call him at (918) 560-5609. Include the RFP number on the subject line of all email correspondence.

Proposers are encouraged to contact the Accounting & Grants Manager if there is anything in the specifications that would prevent you from submitting a proposal. Electronic submissions are the preferred method of answering questions, although written submissions via mail or fax will be accepted and must be received no later than **September 27th, 2018.**

5. BIDDER'S NOTICE OF INTENT TO SUBMIT A PROPOSAL

Email the Accounting & Grants Manager indicating your intent to submit a proposal. Include the RFP number on the subject line of the email. You will receive an email response indicating your notice was received. The same procedure will be followed to request clarification in writing of any point in the RFP. Responses to questions are considered official only when answered in writing in an addendum.

6. AMENDMENTS TO THE REQUEST FOR PROPOSALS

Any amendments to the solicitation will be posted on the MTTA web site at <http://tulsatransit.org/about-MTTA/procurements-and-dbe/>. In addition, any bidder that has submitted a Notice of Intent to Submit a Proposal via email will be notified of any amendment by email. The bidder will be required to acknowledge the receipt of all amendments as part of the proposal package.

7. ACCEPTANCE AND REJECTION

MTTA reserves the right to reject any and all proposals, to waive any informality in proposals, and unless otherwise specified by the offer, to accept any item in the proposal. If either a unit price or extended price is obviously in error or the other price is obviously correct, the incorrect price will be disregarded. MTTA reserves the right to make partial, progressive or multiple awards where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas, or other factors deemed by MTTA to be pertinent or peculiar to the purchase in question.

8. TIME FOR CONSIDERATION

The offer shall be valid for a minimum of 120 days from the date of proposal opening.

9. PAYMENT TERMS

Payment terms are Net 30 days after receipt of a correct invoice or acceptance of goods, whichever is later.

10. CONDITION OF GOODS

Unless otherwise indicated in the proposal, it is understood and agreed that any item offered or shipped pursuant to this RFP or resulting contract shall be new.

11. DEVIATIONS FROM SPECIFICATIONS

Any deviation from specifications indicated herein must be clearly stated by the proposer in writing; otherwise, all items offered by proposer shall be deemed to be in strict compliance with these specifications, and the successful proposer will be held responsible thereto.

Deviations must be explained in detail by proposer on an attached sheet(s). This paragraph shall not be construed as inviting or permitting any deviation whatsoever by proposer from the stated specifications, or implying that any such deviation will be acceptable to MTTA.

12. INFORMATION AND DESCRIPTIVE LITERATURE

Proposers are to furnish all information requested in the spaces provided on the proposal form. Further, as may be specified elsewhere, each proposer must submit with its proposal descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal does not satisfy this provision.

13. CONFIDENTIALITY OF PROPOSALS

Access to records received by or generated by MTTA is governed by Oklahoma law. Any information the proposer judges to be proprietary data should be submitted in a separate sealed envelope and clearly marked as proprietary information.

14. PRE-PROPOSAL CONFERENCE

A pre-proposal conference is not deemed to be necessary on this project. Should any proposer have a question you are directed to contact the Accounting & Grants Manager at (918) 560-5609 or by e-mail at jwhooser@tulsatransit.org. Email is the preferred method of asking questions.

15. PRICING / QUANTITY

Pricing information is required in accordance with the Price Proposal Sheet included in this RFP. Base quantities and priced option quantities are defined on the price proposal sheet.

16. CONFLICTS OF INTEREST

Proposer must identify any conflicts of interest that exist related to past, present or planned activities or interests, financial or otherwise, with regard to MTTA or organizations that may be substantially affected by MTTA activities. In the absence of any known conflict of interest, the proposer shall submit in its proposal a statement that no conflicts of interest exist.

17. POST AWARD

A post-award debriefing is provided to un-successful proposers upon written request. MTTA shall provide the following information, if applicable:

- The agency's evaluation of the proposer's proposal or bid, including any noted deficiencies or weaknesses.
- The overall evaluation summary, including rating for each evaluation criteria for the debriefed proposer.
- The overall ranking of all offers, when any ranking was developed by the agency during source selection.
- A summary of rationale for award.
- For acquisitions of commercial items, the make and model of the item to be delivered by the successful proposer.

18. PROTEST PROCEDURES

MTTA has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting MTTA's procurement officer. Any protest filed by a proposer in connection with the RFP must be submitted in accordance with MTTA's written procedures.

III. SCOPE OF WORK

See Attachment A: Real-time Information System (RTIS) Functional Specifications

IV. PROPOSAL FORMAT & REQUIREMENTS

A. SUBMITTAL REQUIREMENTS

Contractors that submit proposals in response to this “Request for Proposals” must have the capability of providing some or all of the services listed. MTTA assumes no obligation of any kind for expenses incurred by any respondent to this solicitation. All submittals become the property of MTTA and will not be returned. The submittal shall meet the following requirements or will be deemed non-responsive and will not be eligible for consideration of this project:

- Proposals shall be signed by an officer authorized to bind the proposer and shall contain a statement to the effect that the proposal constitutes a firm offer for at least 120 days from the last day of receipt of proposals set forth herein.
- Each criterion for selection must be addressed.
- There is a minimum twelve (12)-point font requirement for the basic text of the entire submittal. Any charts, graphs, table of organizations, etc., must be of readable size.
- Maximum length of proposal is 50 pages excluding required forms and Appendix B Price Proposal Form.
- One (1) original and four (4) copies of the submittals are due no later than 4:30 p.m., October 11th, 2018, to Jack Van Hooser, Accounting & Grants Manager 510 S. Rockford Avenue, Tulsa, OK 74120.
- Submittals shall be in a sealed, opaque envelope, clearly marked RFP # 19-1904 Real Time Information System (RTIS). The proposed fee schedule (Appendix B) shall be provided in a separate, sealed envelope.
- Late submittals, or those delivered by facsimile, electronic mail, or any other format other than bound paper copies, will be deemed non-responsive and will not be considered for the project.

MTTA has an overall Disadvantaged Business Enterprise (DBE) Goal of 1%.

There is no specific goal for this project. MTTA highly encourages disadvantaged, minority, and women-owned consultant firms to respond.

From the date of this RFP until 4:30 p.m. September 27th, 2018, all questions and inquiries should be submitted in writing by mail, fax or E-mail to the following: Questions regarding this Request for Proposals should be directed to Mr. Jack Van Hooser, jvhooser@tulsatransit.org or by fax at 918-582-5209 or by mail at MTTA, 510 South Rockford Avenue, Tulsa, OK 74120.

All prospective offerors will be notified of questions and responses by addendum by the close of business on October 4, 2018.

Prices shall not be made public until the contract is awarded. Proposals may not be withdrawn after the submission date.

This solicitation does not obligate MTTA to pay for costs incurred in the preparation of proposals or to award a contract. MTTA reserves the right to accept or reject any or all proposals, or to cancel in part or in whole, this solicitation.

B. PROPOSAL FORMAT

COVER LETTER

Include a Letter of Transmittal signed by the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the submitted proposal. Include the following information:

- Firm name, address, telephone number
- Contact Name & Title
- Year Business Established
- Type of Organization indicate whether a sole proprietor, partnership or corporation and whether or not a disadvantaged business enterprise (DBE).
- List of subcontractors, their role on the team and whether a DBE

STATEMENT OF QUALIFICATIONS

Please state qualifications and relevant experience in conducting business similar to that, which is required herein, within the last three (3) years. Include same information for proposed subcontractors.

REFERENCES

Provide three (3) client references from prior transit system consulting work conducted in the last five (5) years. Include organization name, address, telephone number, and name and title of a contact person. Include same information for proposed subcontractors.

RESUMES OF KEY PERSONNEL

Provide resumes showing the names, experience, and professional qualifications of the key personnel to be assigned to this project. If subcontractors, joint ventures, or both are contemplated, include the qualifications, experience, and references of the entire team.

QUALITY CONTROL PLAN

Submit a quality control plan describing how you intend to meet the requirements outlined in the scope of work.

DISCLOSURE OF PROPOSAL CONTENTS

Cost and price information provided in all proposals will be held in confidence and not revealed or discussed with competitors. The winning proposal will be chosen on a best value basis for the agency. All material submitted becomes the property of MTTA and may be returned only at MTTA's option. Proposals submitted to MTTA will be reviewed and evaluated by persons of MTTA's choosing, other than competing proposers. MTTA retains the right to use any and/or all ideas presented in reply to the RFP. Eventual selection or rejection of proposals does not affect this right.

V. EVALUATION SELECTION CRITERIA

Selection of the successful proposal shall be generally based on the information provided by the firm in response to the Request for Proposals and any subsequent interviews that may be conducted. MTTA will use a “best value” evaluation for this procurement.

Best Value describes a competitive procurement process in which the recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that the recipient believes offers the best value. The term “best value” also means the expected outcome of an acquisition that, in the recipient’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient.

The basic evaluation process is described below:

- Review and Ranking of Proposals (with cost schedule proposal remaining sealed)
- Establish a “short list”
- Interview “short-listed” firms (at the option and discretion of the MTTA)
- Identify best qualified firm(s)
- Award contract (s)

A project selection committee will be formed to evaluate the proposals and to make recommendation to MTTA Council. This committee may consist of representatives from various departments within MTTA and/or representatives from other stakeholders including the City of Tulsa. Composition of this committee is at the sole discretion of MTTA. Names of the committee members will not be released prior to the time of interviews.

The committee will review the proposals for format to ensure conformance with the requirements of the RFP and may select finalists to interview with the Committee as a part of the Committee’s evaluation process. MTTA does not guarantee that an interview will take place, thus reserving the right to select a firm based solely on the information provided in the proposals received in response to the RFP. MTTA may elect to inform the proposers of its recommended selection; however, the award of a contract is contingent upon approval by the Board of Trustees.

EVALUATION CRITERIA:

The following information and criteria will be used to evaluate and rank responses and the presentation, should MTTA choose to conduct interviews with short-listed firms. The successful proposal will be chosen on a best value basis for MTTA.

Criteria in order of importance

1. The proposers' experience with projects similar to those listed in Section III
2. The proposers' past record of performance on contracts, including factors such as cost control, quality of work, and ability to meet schedules.
3. Proposer Price
4. Capacity to facilitate close coordination and oversight during the project, including firm location and its subcontractors and provisions for regular meetings with staff and/or the steering committee during the project.

PROPOSAL FORMS

In addition to the federal certifications and representations that are required to be submitted with the proposal. The following additional forms shall be included.

- 1.0 Price Proposal Form See attached Appendix B
- 2.0 DBE Qualification Form
- 3.0 Statement of Bidder's / Proposer's Qualifications
- 4.0 Authorization for Information
- 5.0 Customer Reference Listing

1. PRICE PROPOSAL FORM (See Appendix B)

2. DBE QUALIFICATION FORM

___ Is your firm certified as a DBE with the Oklahoma Department of Transportation (ODOT)?

Does your firm meet the following requirements to qualify as a DBE under the DOT DBE program?

___ Disadvantaged owners are U. S. citizens or legal permanent residents.

___ Firm's annual gross income does NOT exceed \$17,20 million (averaged over 3 years).

___ Firm is at least 51% owned and controlled by socially and economically disadvantaged individuals.

___ Firm meets SBA small business size in the primary industry group (13 CFR part 121).

___ Firms owned by ANC's Indian Tribes, and Native Hawaiian Organizations, meet the small business size requirements and are controlled by socially and economically disadvantaged individuals.

___ Firms and owners meet the requirements of part 26 concerning licenses and credentials.

___ Firms must be for profit.

___ Please check here if this does not apply to your company.

Contact Liann Alfaro at lalfaro@tulsatransit.org should you need information regarding DBE Certification.

Please print the following information:

Firm Name _____

Authorized Signature _____

Title _____

Date _____

3. STATEMENT OF BIDDER'S/ PROPOSER'S QUALIFICATIONS (Page 1 of 2)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. Should this page not be part of the bid/proposal packet, you're bid will be classified as not in compliance and may be disqualified. The questions may be answered on separate attached sheets. Bidder/Proposer may submit additional information he/she desires.

1. Name of Bid/Proposer _____
2. Permanent Main Office Address _____
3. Office Phone _____ Cell Phone _____
4. Fax Number _____ E-mail Address _____
5. When Organized _____
6. If a Corporation, where Incorporated _____
7. How many years have you been engaged in business under your present firm or trade name? _____
8. List previous business names, if any _____
9. Have you ever failed to complete any work awarded to you? _____
10. Have you ever defaulted on a Contract Agreement? _____
11. If you answered yes to 9 or 10 above attach explanation.
12. Attach background and experience of the principal members of your organization, including the officers.
13. DUNS # _____ Provide D&B report or other statement of credit.

Bidder/Proposer may submit any additional information he/she desires.

STATEMENT OF BIDDER'S / PROPOSER'S QUALIFICATIONS (Page 2 of 2)

Dated this _____ day of _____, 20__

Being duly sworn deposes and says that he/she is _____ (Title)
and that the answers to the foregoing questions and all statements therein contained are true
and correct.

By: _____

Name of Corporation or Firm: _____

Authorized Signature: _____

State of _____

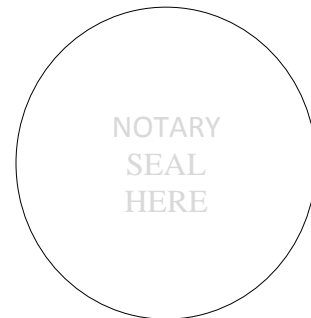
County of _____

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

Notary Public _____

Notary Number _____

My Commission Expires _____



4. AUTHORIZATION FOR INFORMATION

The undersigned hereby authorized and requests any person, firm, or corporation to furnish any information requested by MTTA in verification of the recitals comprising this Statement of Proposer's Qualifications that I, being duly sworn deposes and says that the answers to the foregoing questions and all statements contained and true and correct.

Dated this _____ day of _____, 20__

By: _____

Name of Corporation or Firm: _____

Authorized Signature: _____

State of _____

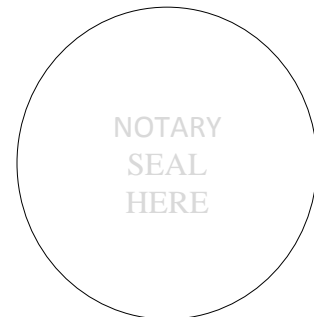
County of _____

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

Notary Public _____

Notary Number _____

My Commission Expires _____



5. CUSTOMER REFERENCE LISTING

Vendor shall furnish the names, addresses, agreement, telephone numbers, and length of services and size of property of a minimum of five (5) firms or government organizations for which the vendor is currently furnishing or has in the past furnished service for.

1. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

2. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

3. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

4. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

5. COMPANY NAME _____
ADDRESS _____
CONTACT PERSON _____
TELEPHONE NUMBER _____
MONTH/YEAR COMPLETED _____
VALUE OF CONTRACT _____

VI. GENERAL TERMS

The following clauses will be incorporated in any contract awarded pursuant to this RFP.

1. ASSIGNMENT

A. The successful proposer may not assign or subcontract its rights or obligations under the contract without prior written permission of MTTA, and no such assignment or subcontract will be effective until approved in writing by MTTA.

B. MTTA reserves the right to assign all or a portion of this contract to any other agency and/or governmental entity, or a Contractor of MTTA.

2. ADVERTISING

Proposer agrees not to use the existence of this contract or the name of MTTA as a part of any commercial advertising without the prior written approval of MTTA's General Manager or designee.

VII. FEDERAL TERMS AND CONDITIONS

The following terms and conditions apply to this procurement

1. ACCESS TO RECORDS AND REPORTS 49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17

Access to Records - The following access to records requirements apply to this contract:

(1) Where the Purchaser is not a state but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Proposer agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Proposer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and

transcriptions.

(3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(5) FTA does not require the inclusion of these requirements in subcontracts.

2. TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1F

(1) Termination for Convenience (General Provision): The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

(2) Termination for Default (Supplies and Service): If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract, or any extension, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

(3) Opportunity to Cure (General Provision): The Recipient, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the

terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(4) Waiver of Remedies for any breach in the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

3. BREACHES AND DISPUTE RESOLUTION **49 CFR Part 18 FTA Circular 4220.1F**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the MTTA Administrator of Grants and Procurement. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Grant and Accounting & Grants Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Grants and Accounting & Grants Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by MTTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MTTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Oklahoma.

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