



INNOVATE MEMPHIS
MOBILITY MANAGEMENT SOFTWARE DESIGN
RESPONSE TO QUESTIONS
5/18/2018

Question 1:

Section 24 of Exhibit G contains a standard FTA Rights in Data clause. As you may be aware, the FTA rights in data clause contains some language that is not entirely consistent with open source license terms. FTA seems to have recognized this issue based on a recent statement they issued in response to a question regarding open source software (<https://www.transit.dot.gov/funding/procurement/third-party-procurement/rights-data>) in which FTA states that it would be permissible to exclude the federal rights in data provisions from a contract when the contractor will be using open source code software to develop the deliverable items, as the federal rights in data provisions would not be appropriate for a situation where open source code software is being used. In the event a contractor proposes an open source solution, will Innovate Memphis consider acknowledging this open source exception recognized by FTA in a resulting contract?

Response 1:

We have reviewed the Federal Transit Administration's Third Party Contracting Guidance Circular, FTA C 4220.1F, and the FAQs regarding rights in data, cited below. We acknowledge the FTA response referenced below, dated 3/16/2016, and consider the FTA Rights in Data clause in Section 24 of Exhibit G of the agreement invalid.

"Is it permissible to exclude the Federal rights In Data provisions from a contract when the contractor will be using open source code software to develop the deliverable items?

Yes, the Federal rights In Data provisions would not be appropriate for a situation where open source code software is being used." (Posted: March, 2013) Updated: Wednesday, March 16, 2016"

Taken from: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/rights-data> on 5/14/2018.

Question 2: Will Innovate Memphis be willing to consider exceptions to the indemnification clause in Section 37 of Exhibit G to modify the language so that it is predicated on a negligence-standard, which would be customary for this type of work?

Response 2:

The clause has been updated to reflect the following:

37. Indemnification - The CONTRACTOR shall indemnify, save, defend, and hold MATA, the City of Memphis, TN, First Transit, Inc. and MTM, their officers, agents and employees free from all losses, damages, claims, and expenses in any wise arising or resulting from the negligent and/or intentional actions and omissions of the CONTRACTOR, its employees, agents, or contractors in the performance of its services hereunder.

Question 3:

Will Innovate Memphis be willing to consider exceptions to the termination language in Section 33.a of Exhibit G to clarify that payment will be made for services in progress in addition to services satisfactorily completed at the time of termination?

Response 3:



The clause has been updated to reflect the following:

33. Termination of Contract

- a. MATA may terminate this Contract without cause by giving fifteen (15) days written notice to the CONTRACTOR thereof, and specifying the effective date of termination.

If the Contract is terminated by MATA as provided herein, the CONTRACTOR will be paid for its satisfactory services completed through the date of termination specified by MATA. Payment for services in progress shall be considered at the sole discretion of MATA, the City of Memphis, TN, their officers, and agents.

Question 4:

Please confirm that the required Fee Proposal Form (Exhibit B) is not included in the 25-page limit.

Response 4:

The form should be omitted from the maximum page requirement.

Question 5:

Please confirm that submission of Exhibits C –G do not count against the page limit.

Response 5:

The Exhibits C –G are omitted from the maximum page requirement.

Question 6:

Please confirm that the maximum of 5 pages for Other pertinent information is not included in the 25-page limit.

Response 6:

"Other documents" were originally included in the proposal maximum. However, IM will amend this requirement to exclude them from the maximum page requirement.

Question 7:

Would it be acceptable to use a font size smaller than 10-point for text in figures and tables?

Response 7:

Please ensure that all font sizes are readable, 10-point font is recommended.

If the CONSULTANT finds that additional pages are needed, please request an exception to the maximum page requirement via email and specify the number of additional pages needed. We want you to have the flexibility needed to submit the requested information.