



**DULUTH TRANSIT AUTHORITY
REQUEST FOR PROPOSALS
FEASIBILITY STUDY**

February 11, 2020

DTA Request for Proposals Feasibility Study

The Duluth Transit Authority (DTA) is seeking qualified individuals or firms to perform a development feasibility study for the DTA. Scope of work includes evaluating current conditions and applicable regulations, market survey, identifying potential partners and other work to provide a comprehensive feasibility study.

Sealed responses must be delivered to the DTA, 2402 West Michigan Street, Duluth, MN 55806, on or before **1:00 p.m. on Tuesday, February 25, 2020**. Specifications and submission requirements are available from the DTA and may be obtained by writing to: Procurement Manager, Duluth Transit Authority 2402 W. Michigan St., Duluth, MN 55806; or by email: nbrown@duluthtransit.com.

The DTA hereby notifies all respondents that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, no person will be discriminated against on the grounds of race, color, creed, national origin, sex, age or disability in consideration for an award. The DTA encourages the participation of small and disadvantaged business enterprises.

The DTA reserves the right to accept or reject any or all responses, or waive any informalities in the best interest of the DTA.

Request for Proposals

The Duluth Transit Authority (DTA) is soliciting Proposals for professional services to perform a Feasibility Study in preparation for a potential transit related development project in downtown Duluth. All Proposals received by the deadline will be evaluated and an interview may be part of the Evaluation Process.

BACKGROUND

The DTA currently owns and operates the Duluth Transportation Center (DTC) located at 228 West Michigan Street, Duluth, MN 55802. The DTC is the central hub for DTA transit services, serving over 3 million customers per year, and includes ticketing and connections for Jefferson Lines and Indian Trails intercity bus services. DTC also houses a Duluth Police Department substation, a 360-stall parking ramp, secure bike storage and connections to the Duluth Skywalk system.

The DTA also owns Transit Center East (TCE), located at 214 West Superior Street, and is linked to DTC via a skywalk, TCE is a three story building comprising of several rental spaces, and will be included in the Feasibility Study scope.

The DTA is requesting experienced firms to perform a Feasibility Study to assess the Duluth market potential for redevelopment in downtown Duluth that includes transit-related benefits such as increased ridership, increased transportation efficiencies, rider amenities, etc.

GENERAL INFORMATION

1. Request for Proposals
 - a) Proposals are requested for a Feasibility Study for the Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
 - b) Proposals shall be on the proposed rates and costs for the project under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents.
 - c) Proposal prices shall be good for ninety (90) days after the Proposal opening.
 - d) The DTA shall not be under any obligation for payment of precontractual expenses, including expenses for preparing or submitting a Proposal in response to this request, negotiating with the DTA on any matter related to this Proposal, and/or other expenses incurred by the Proposer prior to the date of award.
 - e) Proposals are due at **1:00 p.m. on Tuesday, February 25, 2020** at the DTA offices. 2402 West Michigan Street, Duluth, MN 55806.
 - f) The DTA will hold a **pre-proposal conference** on **Wednesday, February 19, 2020** at **10:00 a.m.** at the Duluth Transportation Center, 228 West Michigan Street, Duluth, MN 55802. A tour of the project site will be conducted after the meeting. Those who are unable to attend in person may contact the Procurement Manager at 218-623-4329 for conference call information.
 - g) The DTA intends to award the contract to the responsible Proposer as early as February 27, 2020.
 - h) Throughout these specifications the words equipment, materials, and work can be interpreted as interchangeable.

2. Whenever the following terms are used in these Proposal specifications, the intent and meaning of them shall be interpreted as follows:
 - a) DTA, customer, buyer, or Operator shall mean the DTA.
 - b) Project Manager shall mean Phil Pumphrey for all work performed.
 - c) Manufacturer, Vendor, Proposer, Offeror, Responder, Respondent, Contractor, or Consultant shall mean that firm submitting a responsive Proposal and subsequently receiving the Contract award from the DTA as the Contractor as detailed in these specifications.

3.
 - a) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager in writing no later than **2:00 p.m., Wednesday, February 19, 2020**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item under consideration. The supporting evidence for the approved equal must be submitted with the request for approval. All requests must be submitted via email (preferred) to nbrown@duluthtransit.com or US Mail unless otherwise approved by DTA in writing.
 - b) The replies to request under paragraph c) above will be emailed, mailed or faxed out on **Thursday, February 20, 2019** to all prospective proposers.
 - c) Changes to the specifications will be made only by written addendum. Addendum will be posted on the DTA website at www.duluthtransit.com. It is the Proposer's responsibility to obtain all documents available for this procurement.

4. **SELECTION CRITERIA**

The DTA reserves the right, in the determination of the most responsive and responsible Proposer, to consider the ultimate economy of the Proposal within the guidelines of these specifications, the best interests of the DTA and such other factors as may be reasonably determined to affect the ultimate economy of the award as stipulated in the Technical Specifications.

The Evaluation Committee may not necessarily make a recommendation to award to the Proposer with the highest technical ranking nor make a recommendation to award to the Proposer with the lowest price proposal, if doing so would not be in the best interest of the DTA.

5. Each Proposal and all papers bound and attached thereto and shall be submitted in a pdf attachment marked **"Feasibility Study"** and emailed to nbrown@duluthtransit.com, or secured in a sealed envelope delivered to: Procurement Manager, Duluth Transit Authority, 2402 West Michigan Street, Duluth MN 55806.

Proposals must be received by the Proposal deadline. Time means local time in Duluth, Minnesota; proposals received after such time will not be considered. The DTA reserves the right to accept or reject any and/or all Proposals in the best interest of the DTA.

6. Proposals and other documents submitted by the Proposer shall not stipulate any condition not contained in the specifications.
7. The chosen Proposer, within ten (10) days after the award of the Contract from the DTA shall sign the formal Contract.

A sample Contract is included in this RFP. Any proposed change in this Contract shall be submitted to the DTA for its prior approval prior to submission of the Proposal. Only written change orders, amendments or addenda, signed by the Procurement Manager and/or General Manager of the DTA shall be binding upon the DTA.

8. Questions concerning this RFP should be directed to Nancy Brown, Procurement Manager, (218) 623-4329 or nbrown@duluthtransit.com. Please note that DTA personnel other than the Procurement Manager are NOT allowed to discuss the RFP with anyone, including Responders, before the Proposal submission deadline.
9. This Request for Proposals (~~RFP~~) does not obligate the DTA to complete the project. The DTA reserves the right to cancel this RFP if it is considered to be in its best interest. The DTA may accept or reject any or all proposals, waive minor mistakes, informalities or irregularities in the best interests of the DTA.
10. All Proposals will be retained by the DTA and will not be returned.
11. The terms ~~Consultant~~, ~~Proposer~~, and ~~Responder~~ will be used interchangeably in this RFP.
12. Protests will only be accepted from prospective Proposers whose direct economic interests would be affected by the award of the Contract or refusal to award a Contract. Procedures for submitting a protest are available on the DTA website at www.duluthtransit.com/doingbusinesswithus.
13. Subcontractors. The Proposer must disclose all subcontractors and their involvement in the Contract at the time of Proposal submittal.
14. The DTA will not be liable for any costs incurred by the professional firm(s) in the preparation of Proposals submitted in response to this RFP, its presentation of the Proposal, or any other activity related to responding to this RFP.

PROJECT OBJECTIVES

Redevelopment will help spur redevelopment near DTC, provide for increased transit ridership, enable coordination with other transportation providers, and facilitate more efficient land use via denser housing and retail outlets.

The Feasibility Study will identify benefits to the DTA, including adding amenities for transit passengers and the public, fulfill other community needs, determine available locations and size of development sites, potential partners, and potential obstacles to the development.

I. Tasks

1. Briefly evaluate current conditions in the Duluth CBD
 - a. Identify underutilized property
2. Identify opportunities and community needs:
 - a. Housing
 - b. Daycare
 - c. Government services, including job training, etc.
 - d. Retail (including grocery stores)
 - e. Parking
 - f. Education
 - f. Transit availability
3. Obstacles:
 - a. Zoning restrictions
 - b. Environmental
 - c. Other
4. Potential partners
 - a. Private developers
 - b. Public agencies (Federal, State and Local government partners, including the FTA)
 - c. Other partners
5. Options
 - a. Scalability
6. Financial benefits and risks for the DTA
 - a. Revenue potential
 - b. Estimated construction costs for demolition, remediation, rebuilding
 - b. Management costs
 - c. Risks
7. Other
 - a. Include all other development considerations, as applicable

II. Meetings

1. The selected Consultant shall participate in the following meetings:
 - a. Kick off meeting with DTA staff to discuss project, timelines and deliverables
 - b. Regular telephone or video conference calls with project updates, questions and answers
 - c. Conduct at least one public meeting at DTC for input, surveys, etc.
 - d. Participate in one video or in-person meeting for preliminary findings and report overview
 - e. Provide a summary of the findings at a DTA Board of Directors meeting
 - f. Final meetings either in person or video conference for completion and follow up
2. Public information meeting(s) shall include a survey and informational presentation for public feedback on preferences.
3. The cost of these meetings shall be included in the Consultant's lump sum proposal, and shall include all applicable expenses. No per diem expenses will be paid.
4. Expenses for additional meetings, if so required, shall be approved by the DTA Project Manager in advance.

III. TIMELINE

1. Proposer shall submit a proposed timeline for the Tasks based on the number of days after notice to proceed from the DTA.

COST PROPOSAL

1. Proposer shall provide an all-inclusive cost for the above noted services, and include an hourly rate for personnel on the project.

PROPOSAL CONTENTS

Proposal must include:

1. Provide the Responder's full company name and address, indicate main contact people with titles and phone numbers (both fax and voice & Email), Federal I.D. number, DUNs number, and Minnesota tax I.D. number (if applicable). Responder should also include the addresses for all branch offices.
2. The name or names of the individuals to be directly responsible for providing services under the Contract. Include a summary of their prior experience and educational training. Especially important will be the identification and qualifications of the principals to be associated with this Contract.
3. A summary of previous work conducted by the Proposer similar in scope to that requested here. References on these projects should be furnished.
4. The names of other firms or individuals who will assist in performing the required work and a resume of each.

5. Total Cost proposal and hourly rates for the period from March 1, 2020 through December 31, 2020 for all applicable personnel and overhead costs.
6. Signed certificates A-E.

PROPOSAL EVALUATION

Cost is not the only determining factor that will be used to determine the successful firm. Proposals will be evaluated based on the following criteria:

- | | |
|---|-----|
| • Qualifications and ability of staff | 30% |
| • Prior Experience with Feasibility Studies | 30% |
| • Cost | 20% |
| • References | 10% |

At the DTA's option, interviews may be required to determine the successful firm. Proposals must be guaranteed for 90 days after date of opening.

SELECTION PROCESS

- a. Proposal Evaluation: All proposals submitted in response to this RFP will be reviewed for responsiveness prior to referral to the selection committee. A committee consisting of DTA representatives and/or others will then evaluate all responsive proposals, and make recommendations to the DTA Board of Directors. The award of a Contract, if made, will be made to the Responder whose proposal best meets the interest of the DTA. The DTA reserves the right to reject any and all proposals, to waive any informality or irregularity in the proposals received, and to make the award to the Responder whose proposal is deemed to be in the best interest of the DTA.
- b. Oral Presentation: Responders who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the selection committee. This provides an opportunity for the Responder to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Oral presentations are strictly at the option of the DTA and may or may not be conducted.
- c. Negotiation: After the DTA has selected the most responsive Responder, staff will negotiate final rates with the Responder to the point that the DTA deems fair and reasonable. If the first selected Responder does not agree to said terms, then the DTA will negotiate with the next most responsive Responder.

**REQUIRED BUDGET FORMAT
SUMMARY OF ESTIMATED TOTAL PROJECT COST**

1. All-inclusive cost to perform a Feasibility Study in accordance with the specifications herein:

\$ _____

2. DIRECT LABOR

Name, Project Position (add more lines as necessary)

Hourly Rate

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
	Total:	_____

Signature

Print Name

Address

City, State, ZIP

Phone

Email

SUBMISSION OF PROPOSALS

All Proposals must be signed and **one** copy delivered in a sealed envelope to:

Procurement Manager
Duluth Transit Authority
2402 West Michigan Street
Duluth, MN 55806

Attn: DTA Feasibility Study

OR in a pdf attachment to: nbrown@duluthtransit.com

General Information for Responders

1. Issuing Office: the DTA issues this RFP.
2. Economy of Preparation: Proposals should be prepared simply and economically, providing a straightforward, concise, unambiguous description of the Responder's ability to meet the requirements of RFP.
3. Oral Presentation: Responders who submit proposals may be required to make an oral presentation on their proposal to the DTA. Such presentations provide an opportunity for the Responder to clarify the proposal to ensure thorough mutual understanding. The issuing office will schedule any required presentations.
4. Disposition of Responses: All materials submitted in response to this RFP will become property of the DTA and will become public record after an evaluation process is completed and an award decision made. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Mn. Stat. 13.37, the Responder must:

Required Certificates

Certificate A. AFFIDAVIT OF NONCOLUSION

I hereby swear (or affirm) under penalty of perjury:

That I am the bidder (if the bidder is an individual), a partner of the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation, have authority to sign on its behalf (if the bidder is a corporation);

1. That the attached bid or bids have been arrived at by the bidder independently, and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition;

That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person prior to the official opening of the bid or bids; and

That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Additionally;

The _____ hereby certifies it is /is not (circle one)
Company Name

included on the United States Comptroller General's consolidated list of persons or firms currently debarred for violations of various public contracts incorporating labor standards provisions.

Signed

Date

Certificate B. **DEBARRED BIDDERS**

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters:

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Print Name and Title

Signature

Certificate C COMPLIANCE WITH SPECIFICATIONS

The bidder hereby states that it will comply with the technical specifications issued by the Duluth Transit Authority in all areas except those where approved equals were granted by the purchaser (s).

SIGNED _____

FIRM NAME _____

Certificate D.

Anti-Lobbying Disclosure

APPENDIX A, 49 CFR PART 20. CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized
Official

_____ Date

Certificate E. Code of Ethics and Organizational Conflict of Interest

The respondent hereby states that it has read and will comply the DTA's Vendor Code of Ethics and Organizational Conflict of Interest (both on the DTA website) as well as the applicable Federal Clauses and Requirements contained herein.

SIGNED _____

FIRM NAME _____

DULUTH TRANSIT AUTHORITY
Contract (example)
Feasibility Study

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Downtown Development Feasibility Study

010-20-0010.0

CONTRACT FOR PROFESSIONAL SERVICES (example for RFP)

THIS CONTRACT, by and between the Duluth Transit Authority, located at 2402 West Michigan Street, Duluth, MN 55806, hereinafter referred to as "DTA", and _____, (~~Consultant~~), a _____ (corporation, LLP, etc.) located at _____.

WHEREAS, the DTA desires to utilize Consultant's professional services for Feasibility Study services; and

WHEREAS, Consultant has represented that it is qualified and willing to perform these services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

Article I. Contract Documents

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract and any amendments thereto, Request for Proposals (procurement #052-20-0010.0) dated February 11, 2020, including the General and Technical Specifications, all addenda and modifications thereto issued prior to the execution of the Contract, the Consultant's Proposal, including executed forms and required certificates, all as fully a part of the Contract and if attached to this Contract or repeated herein.

Article II. Scope of Professional Services

Consultant will perform the services identified in its proposal dated _____, 2020. In the event of any conflict between the terms of Consultant's Proposal and this Contract, the terms and conditions of this Contract shall be deemed to be controlling.

Article III. Professional Fees and Payment

In consideration of the provision of the services referenced in Article I above in an acceptable manner, the DTA hereby agrees to reimburse Consultant for said services as set forth on Exhibit A attached hereto and made a part hereof. Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs. Requests for reimbursements shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in Exhibit A, as well as any documentation of actual costs incurred and

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paid by Consultant in performing the services hereunder, and such other documentation as the DTA shall reasonably request. A final invoice will be submitted by the Consultant within thirty (30) days of project completion or termination of this Contract. Upon receipt of said request and the appropriate documentation, the DTA shall promptly reimburse Consultant for the approved expenses in the amounts set forth in Exhibit A. Funding for this project is provided by a grant from the Federal Transit Administration. The DTA will not be held liable for any damages incurred due to changes in state or federal funding, including, but not limited to, a reduction or cancellation of the project.

Article IV. Assignability

Consultant shall not assign or transfer any of its rights or interests under this Contract in any way whatsoever, without the prior written consent of the DTA's General Manager.

Article V. Term

This Contract shall be effective upon ~~Notice to Proceed~~ from the DTA, and shall remain in effect until December 31, 2020 unless otherwise terminated as provided herein.

Article VI. Standard of Performance

Consultant agrees that all services to be provided to the DTA pursuant to this Contract shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

Article VII. Reports and Inspection

A. Establishment and Maintenance of Records

Records shall be maintained by the Consultant in accordance with the requirements prescribed by the DTA and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Contract.

B. Documentation of Costs.

Consultant will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be

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clearly identified and readily accessible.

C. Reports and Information.

Consultant shall be responsible for furnishing to the DTA, records, data and information as the DTA may require pertaining to matters covered by this Contract.

D. Audits and Inspection.

Consultant shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Contract. Consultant will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

E. Confidentiality of Information.

Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Consultant under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Consultant. If Consultant receives a request to release the data referred to in this clause, Consultant must immediately notify the DTA General Manager and consult with the DTA as to how Consultant should respond to the request. Consultant's response to the request must comply with applicable law.

F. Ownership of Data

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of the DTA when prepared, and shall be delivered to the DTA General Manager upon completion or termination of the service of Consultant or at such earlier time as requested by the DTA.

Article VIII. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Consultant as an agent, representative or employee of the DTA for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the

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Workers Compensation Act of the State of Minnesota on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, DTA shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant while performing the work specified by this Contract.

Article IX. Subcontractors

A. Disclosure. Consultant shall disclose all subcontractors it desires to perform work under this Contract at the time of execution of this Agreement. Thereafter Consultant shall promptly report any desired changes to the subcontractors of any tier in accordance with FTA requirements.

Such changes shall also require the prior written approval of the DTA General Manager.

Consultant shall insert the required Federal and State provisions into every subcontract of any tier in accordance with FTA requirements.

B. Prompt Payment to Subcontractors. Consultant shall pay any subcontractor or material supplier within ten (10) days of receipt by the party responsible for payment of payment of undisputed services provided by the party requesting payment.

Article X. Indemnity and Insurance

A. Indemnity. The Consultant shall defend, indemnify and save harmless, the DTA, ATE Management of Duluth, and First Transit, Inc., from all costs, charges, damages and loss of any kind that may grow out of the matters covered by this Contract. Said obligation does not include indemnification of the DTA, ATE Management of Duluth and First Transit, Inc. for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA, ATE Management of Duluth and First Transit, Inc., but shall include, but be limited to, the obligation to defend, indemnify and save harmless the DTA, ATE Management of Duluth and First Transit, Inc. which are derivative of the negligence or intentional acts or omissions of Consultant, such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Consultant and other such source of liability. In addition,

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Consultant will comply with all local, state and federal laws, rules and regulations applicable to this Agreement and to the work to be done and things to be supplied hereunder.

B. Insurance. During the term of this Contract, Consultant shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the DTA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, Automobile Liability and Contractual Liability. Consultant shall also provide Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit, provided further that in the event the professional malpractice insurance is in the form of claims made insurance, thirty days notice prior to any cancellation or modification shall be required, and in such event, Consultant agrees to provide the DTA with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the DTA, ATE Management of Duluth, and First Transit, Inc., or in the alternative, to purchase at its cost, extended coverage under the old policy for the period of the statute of repose runs; the protection to be provided by said claims made insurance shall remain in place until the running of the statute of repose for claims related to this Contract.

C. The Duluth Transit Authority, ATE Management of Duluth, and First Transit, Inc. shall be named as an Additional Insured under the General Liability, Excess Umbrella Liability (An Umbrella policy with a following form provision is acceptable if written verification is provided that the underlying policy names the DTA, ATE Management of Duluth, and First Transit, Inc. as an additional insured) and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming itself, the Duluth Transit Authority, ATE Management of Duluth, and First Transit, Inc., as additional insured. Consultant shall also provide evidence of Statutory Minnesota Workers Compensation Insurance if applicable. Consultant to provide certificate of insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

D. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the DTA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage evidenced by said certificate and shall further provide that failure to give such notice to the DTA will render any

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such change or changes in said policy or coverages ineffective as against the DTA, ATE Management of Duluth, and First Transit, Inc.

E. The DTA shall be entitled to copies of all insurance policies or certificates of insurance required by the Agreement evidencing that the DTA, ATE Management of Duluth, and First Transit, Inc. are so protected.

Article XI. Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of Duluth, and the DTA and their respective agencies which are applicable to its activities under this Contract.

Article XII. Notices

Telephone calls may be used to expedite communications, but shall not be official communication unless confirmed in writing. Notice to the DTA or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

Duluth Transit Authority
General Manager
2402 West Michigan Street
Duluth, MN 55806

Consultant:

Article XIII. Waiver

Any waiver by either party of any provision of this Contract shall not imply a subsequent waiver of that or any other provision.

Article XIV. Applicable Law

This Contract, together with all of its paragraphs, terms and provisions is made in the State of

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Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

Article XV. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Contract.

Article XVI. No Third Party Rights

Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract.

Article XVII. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Contract shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

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IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Duluth Transit Authority

By _____

Title: General Manager

Dated _____

Attest _____

Title: _____

Dated _____

By _____

Its _____

Dated _____

And By _____

Its _____

Dated _____

FEDERAL TRANSIT ADMINISTRATION

Contract Clauses

A.1 ACCESS TO RECORDS

49 U.S.C. § 5325(g)

- a. Records Retention. The Contractor will retain, and will requires its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract; including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall 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 records shall be maintained until the disposition of all such litigation claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

A.2 BONDING REQUIREMENTS

2 CFR §200.325; 31 CFR Part 223

Does not apply to this procurement

A.3 BUS TESTING

49 U.S.C. 5318(E), 49 CFR Part 665

Does not apply to this contract

A.4 BUY AMERICA REQUIREMENTS

49 U.S.C. 5323 (J), 49 CFR Part 661

Does not apply to this procurement

A.5 CARGO PREFERENCE REQUIREMENTS

46 U.S.C. §55.0546; C.F.R. Part 381

Does not apply to this procurement

A.6 CHARTER SERVICE

49 U.S.C.5323(d) and (r); 49 C.F.R. Part 604

Does not apply to this procurement

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A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT
49 U.S.C §§7401-7671q; 33 U.S.C §§1251-1387
2 C.F.R. Part 200, Appendix II (G)

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA List of Violating Facilities;+
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387.)

A.8 CIVIL RIGHTS LAWS AND REGULATIONS

The Duluth Transit Authority is an Equal Opportunity Employer. As such, the Duluth Transit Authority agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Duluth Transit Authority agrees to comply with the requirements of 49 U.S.C. §5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 C.F.R. Chapter 60, and Executive Order No. 11246, Equal Employment Opportunity in Federal Employment, September 24, 1965, 42 U.S.C. §2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, Age Discrimination in Employment Act, 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for the reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et. Seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et. Seq.*, and Federal transit law at 49 U.S.C. §4332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

It is the policy of the Duluth Transit Authority and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBEs), as defined herein and in the Federal regulations published at 49 C.F.R. Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the Duluth Transit Authority to:

1. ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Duluth Transit Authority shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the Duluth Transit Authority may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror/s documented history of non-compliance with DBE requirements on

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previous contracts with the Duluth Transit Authority.

Contractor Assurance

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Duluth Transit Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

DBE Participation

For purposes of this Contract, the Duluth Transit Authority will only accept DBEs who are:

1. Certified at the time of the bid opening or proposal evaluation by the Unified Certification Program; or
2. An out of state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the Duluth Transit Authority.

DBE Participation Goal

There is no DBE participation goal for this Contract.

The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Duluth Transit Authority or in accordance with state statutes, whichever is more restrictive. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

The Contractor must promptly notify Duluth Transit Authority, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Duluth Transit Authority.

A.10 EMPLOYEE PROTECTIONS
49 U.S.C. §5333(a), 40 U.S.C. §§3141-3148

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29 C.F.R. Part 5, 18 U.S.C. §874
29 C.F.R. Part 3, 40 U.S.C. §§3701-3708, 29 C.F.R. Part 1926

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),+29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

A.11 ENERGY CONSERVATION REQUIREMENTS
42 U.S.C. 6321 et seq.; 49 CFR Part 622, Subpart C

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

A.12 FLY AMERICA
49 U.S.C. §40118, 41 C.F.R. Part 301-10; 48 C.F.R. Part 47.4
Does not apply to this procurement

A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
2 C.F.R. Part 180, 2 C.F.R. Part 1200, 2 C.F.R. §200.213
2 C.F.R. Part 200, Appendix II (I)
Executive Order 12549, Executive Order 12689

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Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A. 14 LOBBYING RESTRICTIONS
31 U.S.C. 1352, 2 CFR §200.450
2 C.F.R. Part 200 Appendix II (J), 49 C.F.R. Part 20

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

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Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject

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to its provisions.

A.16 PATENT RIGHTS AND RIGHTS IN DATA
2 C.F.R. part 200, Appendix II (F); 37 C.F.R. part 401
Does not apply to this procurement

A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK
PURCHASES
49 U.S.C. 5323 (m), 49 C.F.R. Part 663
Does not apply to this procurement

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND
RELATED ACTS
49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812
18 U.S.C. § 1001, 49 C.F.R. part 31

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS
49 U.S.C. § 5333(b) ("13(c)", 29 C.F.R. part 215
Does not apply to this procurement

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A.20 RECYCLED PRODUCTS

42 U.S.C. § 6962 , 40 C.F.R. part 247; 2 C.F.R. part § 200.322

Does not apply to this procurement

A.21 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402, Executive Order No. 13043

Executive Order No. 13513, U.S. DOT Order No. 3902.10

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms %company-owned+and %company-leased+refer to vehicles owned or leased either by the Contractor or the Duluth Transit Authority.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

A.22 SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f), 49 C.F.R. part 605

Does not apply to this procurement

A.23 SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41

Executive Order (E.O.) 12699

Does not apply to this procurement

A.24 SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331, 49 C.F.R. part 655

49 C.F.R. part 40

Does not apply to this contract

A.25 TERMINATION

2 C.F.R. § 200.339, 2 C.F.R. part 200, Appendix II (B)

The Duluth Transit Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Duluth Transit Authority'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 the Duluth Transit Authority to be paid the Contractor. If

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the Contractor has any property in its possession belonging to the Duluth Transit Authority, the Contractor will account for the same, and dispose of it in the manner the Duluth Transit Authority directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Duluth Transit Authority may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Duluth Transit Authority that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Duluth Transit Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Duluth Transit Authority, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions to cure the defect.

If Contractor fails to remedy to the Duluth Transit Authority'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 the Duluth Transit Authority setting forth the nature of said breach or default, the Duluth Transit Authority 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 the Duluth Transit Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that the Duluth Transit Authority elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the Duluth Transit Authority shall not limit the Duluth Transit Authority's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

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 Duluth Transit Authority may terminate this contract for default. The Duluth Transit Authority shall terminate by delivering to the Contractor a

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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 Duluth Transit Authority.