



Duluth Transit Authority

REQUEST for PROPOSALS

FOR

REMOVAL/REPLACEMENT OF DIESEL FUEL STORAGE TANKS

May 20, 2020

Duluth Transit Authority

2402 W. Michigan St · Duluth, MN 55806

(218) 623-4329 fax: (218) 722-4428

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Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks

041-20-0350.1

**Duluth Transit Authority
Request for Proposals
Removal/Replacement of Diesel Fuel Storage Tanks**

The Duluth Transit Authority hereby requests proposals from qualified firms to remove three existing diesel fuel tanks and design and build a new diesel fuel storage tank system at the DTA Operations Center, 2402 West Michigan Street, Duluth, MN 55806.

Proposals must be received no later than **2:00 p.m. on Wednesday, June 17, 2020**. Specifications may be emailed or mailed to prospective proposers, or picked up at 2402 West Michigan Street, Duluth, MN 55806. Contact (218) 623-4329 or nbrown@duluthtransit.com for more information.

The DTA hereby notifies all respondents that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, equal opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, gender, marital status, disability, or age in consideration for an award. The DTA encourages participation of small or disadvantaged business enterprises in DTA contracts.

This request does not obligate the DTA to complete the work contemplated in this notice. The DTA reserves the right to accept or reject any and/or all responses or waive any informalities, or to delay or cancel this request in the best interest of the Authority. All expenses incurred in responding to this notice shall be borne by the responder.

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Section 1.

General Conditions

G-1 REQUEST FOR PROPOSALS

- a) Proposals are requested from qualified firms for **Removal/Replacement of Diesel Fuel Storage Tanks** work at the Duluth Transit Authority (DTA) Operations Center, 2402 West Michigan Street, Duluth, MN 55806.
- b) This project is funded in part by a grant from the Federal Transit Administration, CFDA number 20.500, in the amount of \$1,325,525.00.
- c) Proposals shall be on the basis of total project costs for the project under the following requirements and conditions, which shall be considered an essential part of the Contract Documents.
- d) The DTA reserves the right to accept and/or refuse any or all Proposals, to add or delete work without penalty, in the interest of the DTA.
- e) Proposers must adhere to all terms of this RFP.
- f) Proposer will bear all costs incurred in responding to this RFP.
- g) Proposal shall be accompanied by a certified check or a corporate surety bond in the amount of 5% of the base Proposal amount.
- h) Prices shall be good for ninety (90) days after the Proposal opening.
- j) This Contract is subject to the approval of the DTA Board of Directors.

G-2 INQUIRIES

All inquiries and other correspondence relating to this Request for Proposals should be emailed or addressed to: Duluth Transit Authority Procurement Manager, 2402 West Michigan Street, Duluth, MN 55806, 218-623-4329, or nbrown@duluthtransit.com.

G-3 DEFINITION OF TERMS

Whenever the following terms are used in these 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 Mr. Jim Caywood, Director of Maintenance.
- c. Manufacturer, Vendor, Proposer, or Contractor shall mean that firm subsequently receiving the Contract award from the DTA as detailed in these specifications.

G-4 SUBSTITUTIONS AND OR EQUAL

- a) Whenever brand, manufacturer model or product names are indicated in the specifications, they are included for the purpose of establishing identification and a general description of the item. Whenever a process is designated or a manufacturer's name, brand, model or item description is given, or whenever a process or material covered by a patent is designated or described, it will be understood that the words "or approved equal" follow such name, designation or description, whether or not they do so follow.
- b) Please note that DTA personnel are NOT allowed to discuss the RFP with anyone, including Proposers, before the Proposal submission deadline without permission, except that prime contractors and /or subcontractors may make appointments to discuss these specifications with the Procurement Manager. This, however, does not relieve them from the written, documented request required by paragraph c) below. Where prior approval is called for in the specifications it means prior to Proposals opening. Minutes of discussions and responses to questions will be provided to all Proposers in the form of an addendum to this RFP.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager in writing via email or regular mail no later than **2:00 p.m. on Friday, June 5, 2020**. Any request for an approved equal must be

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- 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 or US Mail unless otherwise approved by the DTA Procurement Manager in writing.
- d) The replies to request under paragraph c) above will be posted in the form of an addendum to this RFP on the DTA website at www.duluthtransit.com/doingbusinesswithus on **Monday, June 8, 2020**.
 - e) It is at the sole discretion of the DTA Project Manager to accept or deny requests for approved equals. The Contractor cannot challenge the DTA Project Manager's denial of an approved equal submittal either before Proposal opening or after award of the Contract.
 - f) It should be understood that using a specified brand name component and/or equipment in the specifications does not relieve the Contractor from its responsibility to accomplish the work in accordance with the warranty and other Contract requirements herein. The Contractor is responsible for notifying the DTA Procurement Manager of any inappropriate brand name component and/or equipment that may be called for in the specifications, and for proposing a suitable substitute for consideration.
 - g) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made **only** by **written** addendum. Addendum will be posted on the DTA website at www.duluthtransit.com.

G-5 PREPARATION OF PROPOSAL

Proposals must be submitted on the forms attached. Cost Proposals must be in a separate sealed envelope attached to the Proposal. All blanks in the Proposal form must be completed with ink or typewriter. Proposals containing alterations or erasures may be rejected unless the alteration or erasure is corrected by crossing out the error, inserting the correction adjacent thereto with ink or typewriter and initialing the correction in ink by the person signing the Proposal. In the event any price term is expressed by the Proposer in both written and numerical form, the **written** representation shall govern in the event of an inconsistency.

Proposals shall not stipulate any condition not contained in the specifications and other documents submitted for Proposal.

Each Proposal and all papers bound and attached thereto, along with a Cost Proposal in a separate sealed envelope together with the Proposal security, shall be placed and securely sealed in an envelope marked: ***“Removal/Replacement of Diesel Fuel Storage Tanks”*** and mailed or delivered to:

DTA Procurement Manager
2402 West Michigan Street
Duluth MN 55806

Sealed Proposals must be received no later than **2:00 p.m. on Wednesday, June 17, 2020**. Time means local time in Duluth, Minnesota. Late Proposals will not be considered. Fax or email Proposals will not be considered. The DTA reserves the right to accept or reject any and/or all Proposals in the best interest of the Authority.

No Proposal may be modified after submission except by written modification physically received by the DTA prior to the time set for the opening of Proposals. Modifications must be signed by the person submitting the Proposal or accompanied by an explanation as to why it is not and must

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indicate that it modifies the original Proposal. Modifications shall be submitted in a securely sealed envelope marked as indicated on the Proposal Form.

G-6 WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its Proposal at any time before the time set for the opening of the Proposals only in writing addressed to the DTA marked %WITHDRAWAL OF PROPOSAL+and physically received by the DTA prior to the time for the opening of Proposals.

G-7 CONSIDERATION OF PROPOSAL

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, to reject any and/or all Proposals, including, but not limited to the determination that the Proposal was incomplete, non-responsive, obscure or lacking the necessary details and specificity, that the Proposer lacks qualifications, experience and/or responsibility necessary to provide the goods and services, or that Proposer failed or neglected to complete and submit any information within the time specified. The DTA may cancel the RFP, issue subsequent RFPs, or waive any errors or informalities in any Proposal, in the best interests of the DTA.

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 Cost Proposal, if doing so would not be in the best interests of the DTA.

G-8 PROPOSAL DOCUMENTS, ADDENDA

It is the Proposer's responsibility to assure the receipt of all procurement documents, including addenda, pertaining to this Request for Proposals. All documents will be posted online at www.duluthtransit.com/doingbusinesswithus. In addition, Proposers may inspect ad/or obtain copies of the Proposal documents at the DTA offices, 2402 West Michigan Street, Duluth, MN 55806, during business hours. The DTA may, at its sole discretion, limit the number of people at one time inspecting the Proposal documents, and/or may require Proposers to wear protective personal equipment, including face masks, gloves, high visibility vests or other PPE that may be reasonably necessary to ensure safety of DTA staff and Proposers, and encourages responsible social distancing and other measures to prevent the spread of infectious or dangerous contagions.

G-9 PROPOSAL CONTENTS CERTIFICATION

By submitting a Proposal, the Proposer warrants that the information provided is true, correct and reliable for purposes of Contract award. The submission of inaccurate or misleading information may be grounds for disqualification from Contract award and may be subject the Proposer to suspension or debarment proceedings, as well as other remedies available to the DTA.

G-10 DUE DILIGENCE

As required of the Proposer receiving a Contract under this RFP, due diligence is the measure of diligence and skill required of a good and competent Contractor in Proposing and performing the work as contemplated by peers in the industry and measured by standard Contracting practices commensurate with the duty to be performed and the individual circumstances of the project.

G-11 CONTRACT FORM AND CHANGES

The chosen Proposer, within twenty (20) 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 changes to this Contract shall be submitted to the DTA Procurement Manager no later than ten (10) days prior to Proposal due

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date for DTA consideration. Approval of requested changes shall be solely at the DTA's discretion. 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.

The Proposer shall at once report to the Procurement Manager any error, inconsistency, or omission it may discover in the Contract Documents. Failure to report such errors, inconsistencies or omissions immediately when the Proposer discovers them, or should have discovered them if the Proposer had conducted the Due Diligence required of the Proposer, will void any claim by the Proposer for an equitable adjustment based on the errors, inconsistencies or omissions. Additionally, if the failure to report such errors, inconsistencies or omissions results in damages to the DTA, the selected Proposer will be responsible to compensate DTA for those damages to the extent that the damages could have been avoided had the Proposer reported the errors, inconsistencies or omissions when it first discovered them, or should have discovered them.

G-12 BONDING REQUIREMENTS

Proposers must provide a certified check or Bond in the amount of five percent (5%) of the total Proposal price at the time of Proposal submittal. A one hundred percent (100%) performance and payment bond is required from the successful Proposer in accordance with the requirements herein.

G-13 PRICE COMPLETE

The price quoted in any Proposal submitted shall include all items of services, labor, material, alterations, tools, equipment and other costs necessary to fully complete the production and delivery of the equipment pursuant to these specifications. It is the intention of these specifications to provide and require complete equipment of the type prescribed herein. Any items omitted from the specifications which are clearly necessary for the operation of such equipment shall be considered included in the Proposal specifications although not directly specified or called for in these specifications. No advantage shall be taken by the Proposer, manufacturer or supplier in the omission of any part or detail which goes to make the equipment complete and ready for service or use.

Proposer acknowledges and agrees that it will not and cannot assume conditions affecting the work based upon documents and information provided by the DTA or representations and statements made by DTA personnel. The DTA assumes no responsibility for any conclusions or interpretations made by the Proposer based on the information made available by the DTA. Nor does the DTA assume responsibility for any understanding reached or representations made concerning conditions which can affect the work by any of its officers or agents before the execution of the Contract, unless that understanding or representation is expressly stated in this Contract.

G-14 STATE, FEDERAL, OSHA SAFETY REQUIREMENTS

All work performed under this Contract shall conform to all latest local, state, and federal safety requirements and shall, in all cases, meet OSHA requirements. It shall be the Contractor's responsibility to ensure complete compliance with these requirements. The selected Contractor is required to know the applicable general and local codes, statutes, ordinances, rules standards, guidelines promulgated by any government agency that controls or affects the work. Should the Contract Documents have specifications, drawings, figures, footnotes etc. that violates any of the general or local codes, statutes, rules or regulations, such Contract Documents are considered to contain errors, inconsistencies, or omissions requiring the Contractor, under this Section, to report them to the DTA Procurement Manager as soon as discovered, or should have been discovered had the Contractor exercised Due Diligence as required herein. Failure to report

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items in the Contract Documents that violate general or local codes, statutes, rules, or regulations voids any claim the Contractor may have based on the errors and subjects the Contractor to the liability of such errors or omissions.

G-15 DISPOSITION OF RESPONSES

All materials submitted in response to this RFP will become the property of the DTA, and will become public record in accordance with Minnesota Statutes §13.591 after the award process is complete. Pursuant to the statute, If a Proposer submits information in response to this RFP that it believes to be trade secret materials as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the Proposer must:

“Clearly mark all trade secret materials in its Proposal at the time of Proposal submittal
 “Include a statement with the Proposal justifying the trade secret designation for each item; and
 “Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the DTA, ATE Management of Duluth, and First Transit, Inc., their agents and employees, from any judgements or damages awarded against the DTA, ATE Management of Duluth, and First Transit, Inc., in favor of the party requesting the materials, and all and all costs connected with that defense. This indemnification survives the DTA’s award of a Contract. In submitting a Proposal in response to this RFP, the Proposer agrees that this indemnification survives as long as the trade secret materials are in possession of the DTA. DTA is required to keep all basic documents related to its contracts, including responses to RFPs, for a minimum of seven years.

G-16 PROTEST PROCEDURES

Protests will only be accepted from prospective Proposers or offerors whose direct economic interest would be affected by the award of a Contract or refusal to award a Contract. The General Manager will consider all such protests, whether submitted before or after the award of a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protest must include at least the following information:

- “ Name, address, and telephone number of protestor
- “ Identification of the solicitation or contract number
- “ A detailed statement of the legal and factual grounds of protest including copies of relevant documents
- “ A statement as to what relief is requested

All protest documents received by the General Manager shall be stamped with date and time received and logged into a protest file folder with a copy to the Master File.

PROTESTS BEFORE AWARD

Protests before award must be submitted within the time as specified herein. If the written protest is not received by the time specified, the evaluation process shall continue in the normal manner unless the Finance Director, upon investigation, finds that remedial action is desirable, in which event such action shall be taken.

The protests addressing the adequacy of Invitation for Bids, RFPs, including, without limitation, the pre-award procedure, the Instructions to Bidders or Proposers, General Terms and Conditions, Technical Specifications and Scope of Work, must be filed at the Finance Department no later than three days before the scheduled opening date or the bid or proposal. Thereafter, such issues are deemed waived by all interested parties.

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Notice of protest and the basis therefor shall be given to all bidders or proposers. In addition, when a protest against the making of an award is received and the Finance Director determines to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance of their bids or proposals, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for readvertising.

When a written protest against the making of an award is received, award shall not be made until five days after the matter is resolved, unless the General Manager determines that:

- “ the items to be procured are urgently required; or
- “ delivery or performance will be unduly delayed by failure to make the award promptly; or
- “ failure to make prompt award will otherwise cause undue harm to DTA or the State or the Federal Government.

In the event the General Manager determines that the award is to be made during the five-day period or during the pendency of protest, he/she shall notify the FTA prior to make such award. FTA preserves the right not to participate in such procurement.

If award is made, the Finance Director shall document the file to explain the need for an award, and shall give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned.

PROTESTS AFTER AWARD

Protests against award must be filed at the Finance Department within five days immediately following the award. The Finance Director shall review the protests. The contractor shall be furnished with the notice of protest and the basis therefor. Also, when it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to DTA's interest, the Finance Director shall inform the contractor that DTA will not be responsible if the award is set aside and that the contractor proceeds with performance at his/her own risk.

DECISION ON PROTEST

The General Manager shall render his/her decision in writing within 14 days from the receipt of the written protest and shall provide written notice of such decision to all interested parties.

Following an adverse decision by the General Manager, the protestor may file a protest with FTA. For details, see FTA Circular 4220.1F, as amended, which states that FTA will only review protests regarding the alleged failure of a grantee (here, the DTA) to have written protest procedures or alleged failure to follow such procedures.

G-17 ORGANIZATION CONFLICTS OF INTEREST

- a. An organization conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the DTA, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Organizational conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective assistance is or may be impaired or may otherwise result in a biased work product because of any past, present or planned interest, financial or otherwise, in the DTA.
- b. The Contractor is responsible for maintaining and providing up to date conflict of interest information to the DTA's Director of Finance. If, after award of this Contract or task order, the Contractor discovers a conflict of interest with respect to this Contract or task order which could not reasonably have been

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known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the DTA's Director of Finance as set forth below.

c. The Contractor's notice called for in paragraph 2 above shall describe the actual, apparent or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the DTA's Director of Finance in analyzing the situation.

d. The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the DTA's Director of Finance, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest. Corporate counsel review of the proposed mitigation plan is necessary to ensure a timely review and final determination by the DTA's Director of Finance.

e. If the DTA's Director of Finance, in his/her discretion, determines that the Contractor's actual, apparent or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the DTA's Director of Finance will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of contract performance, the DTA's Director of Finance has the discretion to terminate the contract for default. No determination by the DTA's Director of Finance under this clause shall be reviewable under FAR Clause 52.233-1, Disputes Clause (MAY 2014), which is also incorporated by reference herein.

f. The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this Contract.

G-18 TAXES

All local sales and use taxes which are due are to be paid by the Contractor and should be included in the Proposal price. The DTA is exempt from payment of the Federal excise, transportation tax, Minnesota State sales tax and City of Duluth City sales tax. The Proposer shall include sales tax for materials included in its Proposal, and shall retain records of the amount of sales tax paid for materials for DTA review. The DTA may, at its sole discretion, elect to purchase and take immediate possession of the materials directly for incorporation into the project.

Contractor shall submit a Minnesota Form IC 134 with the request for final payment.

Unless a Certificate of Exemption is provided, any out of state Proposer receiving a Proposal award will have eight percent (8%) retained from invoice payments on any contracts over \$50,000. Submit a signed copy from the State of Minnesota when submitting Payment and Performance Bonds. This form may be found at the following web address:
<http://taxes.state.mn.us.formsandinstructions/sde.pdf>.

G-19 PROMPT PAYMENT TO SUBCONTRACTORS.

In accordance with Minnesota § 337.10 (3), Contractor 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. The Contractor shall pay interest of at least one and one-half percent (1-1/2%) per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment. A party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

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Contractor shall further require this provision to be included in all contracts between subcontractors and sub-subcontractors of any tier.

G-20 SUBCONTRACTOR REPORTING

- a. The Contractor shall disclose all Subcontractors and their involvement in the project at the time of Proposal submittal.
- b. The Contractor shall ensure that procurement activities for its Subcontractors (of any tier) and Suppliers on the project comply with the DTA's guidelines and requirements. The DTA reserves the right to reject any Subcontractor (of any tier) or Supplier without cause, and prior to award, upon notice from the DTA Procurement Manager, Contractor shall seek a different Subcontractor or Supplier in compliance with the above provisions.
- c. The Contractor shall insert the required Federal and State provisions into every subcontract, along with the applicable prevailing wage determination(s) and require submission of weekly reports in accordance with the specifications herein.
- d. If any Subcontractor employed by the Contractor or any person employed by the Contractor or by a Subcontractor fails to perform the assigned Work in a proper and skillful manner, or becomes intemperate, disorderly, abusive or harassing, the Contractor shall remove that Subcontractor or person from the project as directed in writing by the DTA. The Contractor shall not employ that Subcontractor or person again on any portion of the project unless otherwise approved by the DTA in writing. If the Contractor fails to provide suitable and sufficient personnel for the proper execution of the Work, the DTA may suspend Work until the Contractor complies with the direction from the DTA.
- e. Contractor shall provide with each pay application submitted to the DTA, a separate, itemized summary of all retainage Contractor has withheld from subcontractors and suppliers on the project.
- f. Contractor shall provide a copy to the DTA of any notices to proceed, default notifications, notice to cure, termination notices, lien waivers, contract close-out documents, notice of acceptance, or other correspondence with Subcontractors (of any tier) and suppliers relevant to the project.
- g. In the event a subcontractor (of any tier) or supplier is found in default of any applicable federal, state or local law, ordinance, regulation or requirement promulgated by any agency as it relates to the project, or in default of their contract, Contractor shall immediately report such default to the DTA in writing along with any documents, reports or other information pertinent to the default.

G-21 REQUIRED INSPECTIONS

The Contractor is responsible for requesting and scheduling any required building code inspections for all work on the project, including work completed by any subcontractor of any tier, and shall provide the DTA with a copy of all inspection reports.

G-22 MINNESOTA NONDISCRIMINATION REQUIREMENTS

In accordance with Minnesota §181.59, **NONDISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT**

The Contractor hereby agrees and shall cause this provision to be inserted in every Subcontract the following:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section,

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or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, or the Duluth Transit Authority, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

G-23 MINNESOTA RESPONSIBLE CONTRACTOR

Respondents to this solicitation document shall submit a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria for a responsible contractor found in Minnesota Statutes, section 16C.285 subdivision 3. The term responsible contractor means a contractor as defined in Minnesota Statutes section 16C.285, subdivision 3.

Any prime contractor or subcontractor that does not meet the minimum criteria in Minnesota Statutes, section 16C.285 subdivision 3, or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded the construction contract for the project or to perform work on the project.

G-24 SINGLE RESPONSE

If only one Proposal is received in response to this RFP, a detailed cost/price analysis may be requested of the Proposer. A cost or cost and price analysis and evaluation, and/or audit of the cost may be performed in order to determine if the price is fair and reasonable. If the DTA Procurement Manager determines a cost analysis is required, the Proposer must be prepared to provide, upon request, cost summaries of estimated costs (i.e. labor, equipment, supplies, overhead, etc.) and documentation supporting all cost elements.

G-25 NO ENDORSEMENT

The Contractor must not claim that the DTA or the Federal Transit Administration endorses the Contractor's products or services.

G-26 SUSPENDED/DEBARRED VENDOR

The DTA will not utilize any funds received to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a Contract under this RFP. This restriction applies whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier.

SIGNIFICANT DATES OF PROCUREMENT

Item	Date	Time
Date of Release	May 20, 2020	
Preproposal Meeting	June 3, 2020	10:00 a.m.
Request for Clarifications	June 5, 2020	2:00 pm
Response to Clarifications	June 8, 2020	10:00 a.m.
Proposal Opening	June 17, 2020	2:00 pm
Award	June 25, 2020	

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Section 2.**FEDERAL TRANSIT ADMINISTRATION****Contract Clauses****A.1 ACCESS TO RECORDS****49 U.S.C. § 5325(g)****Applicability to Contracts**

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and subcontract at every tier.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

- 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****Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000. The State of Minnesota requires a 100% performance and payment bond. This supersedes the Federal Requirement.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed one hundred seventy five thousand dollars (\$175,000) under Minnesota law.

Bond Requirements

Proposers shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Duluth Transit Authority. The amount of such guaranty shall be equal to 5% of the total bid price for bids over one hundred seventy five thousand dollars (\$175,000.00).

In submitting this bid, it is understood and agreed by Bidder that the Duluth Transit Authority reserves the right to reject any and all bids, or part of any bid, and it is agreed that the bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the Duluth Transit Authority.

It is also understood and agreed that if the undersigned Bidder should withdraw any part of all of his bid within ninety (90) days after the bid opening without the written consent of the Duluth Transit Authority, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance as provided herein, it shall forfeit its bid guaranty to the extent the Duluth Transit Authority damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

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It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense the Duluth Transit Authority for any damages occasioned by default, then the undersigned Bidder agrees to indemnify the Duluth Transit Authority and pay over to the Duluth Transit Authority the difference between the bid guarantee and the Duluth Transit Authority's total damages so as to make the Duluth Transit Authority whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee

A Performance Guarantee in the amount of one hundred percent (100%) of the Contract value for contracts over one hundred thousand dollars (\$100,000) is required by the Duluth Transit Authority to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Duluth Transit Authority within ten (10) business days from Contract execution. The Duluth Transit Authority requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Duluth Transit Authority and listed as a company currently authorized under 31 C.F.R. Part 22 as possessing a Certificate of Authority as described hereunder. The Duluth Transit Authority may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in the Contract price. The Duluth Transit Authority may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Duluth Transit Authority if:

1. A bank in good standing issues it. The Duluth Transit Authority will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, ~~standby~~ Letter of Credit.
4. The Duluth Transit Authority is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract.
7. The expiration date of the Letter of Credit coincides with the terms of this Contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Duluth Transit Authority and the Contractor for the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft similar to the forms attached herein to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds

A Labor and Materials Payment Bond equal to the full value of the Contract must be furnished by the Contractor to the Duluth Transit Authority as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to the Duluth Transit Authority and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority as described thereunder.

Sample Bond Certifications

Performance Guarantee Certification

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided: (example only)

_____ Performance Bond

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Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: _____
Authorized Signature: _____
Title: _____

Performance Bond (example)

KNOW ALL MEN BY THESE PRESENTS: that _____ (insert full name and address and legal title of Contractor) as Principal, hereinafter called Contractor, and

_____ (insert full name and address or legal title of Surety) as Surety, hereinafter called Surety, are held and firmly bound unto the Duluth Transit Authority as Obligee, hereinafter called DTA, in the amount of _____ dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, Contractor has by written agreement dated _____, entered into a contract with the Duluth Transit Authority for Contract Number _____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Duluth Transit Authority.

Whenever Contractor shall be, and is declared by the Duluth Transit Authority to be in default under the Contract, the Duluth Transit Authority have performed the Duluth Transit Authority's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the Duluth Transit Authority elects, upon determination by the Duluth Transit Authority and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Duluth Transit Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by the Duluth Transit Authority to the Contractor and any amendments thereto, less the amount properly paid by the Duluth Transit Authority to the Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Duluth Transit Authority or the heirs, executors, administrators or successors of the Duluth Transit Authority.

Signed and sealed this _____ day of _____.

PRINCIPAL

(example) _____ (seal)

(title)

WITNESS _____ SURETY _____
(example) _____ (SEAL)

(Title)

Attach hereto proof of authority of officers or agents to sign bond.

Irrevocable Stand-By Letter of Credit Certificate (example)

The undersigned states that he/she is _____ (Title) of the _____ (Name of Beneficiary), known as the Beneficiary and hereby certifies on behalf of the Beneficiary to

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_____ (Name of Issuing Bank) known as the %Bank+with Reference to Irrevocable Standby Letter of Credit No. _____ Issued by the Bank (%Letter of Credit+) that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract number _____
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this _____ day of _____.

(NAME OF BENEFICIARY)

By: (example) _____

ITS: _____

Bank Draft (example)

FOR VALUE RECEIVED

Pay on presentment to _____ (Name of Beneficiary) the sum of _____ dollars (\$)
 Charge the Account of _____ (Name of Issuing Bank) Irrevocably Standby Letter of Credit
 No. _____, dated _____.
 To _____ (Name of Issuing Bank)

NAME OF BENEFICIARY

By (example) _____

Its _____

End of Section

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

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: [The Federal Transit Administration's Buy America website.](#)

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Clause Language

Buy America

The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless all steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. §661.11.

The Bidder or Offeror must submit to the Duluth Transit Authority the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

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In accordance with 49 C.F.R. §661.6, for the procurement of steel, iron or manufactured products, use the certification below.

Certificate of Compliance with Buy America Requirements. (example)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.

Certificate of Non-Compliance with Buy America Requirements. (example)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for a n exception to the requirement pursuant to 49 U.S.C. 5323 (j)(2) as amended, and applicable regulations in 49 C.F.R. §661.7.

A.5 CARGO PREFERENCE REQUIREMENTS
46 U.S.C. §55.05; 46 C.F.R. Part 381

Applicability to Contracts

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material or commodities by ocean vessel.

Clause Language

Cargo Preference- Use of United States-Flag Vessels

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) days following the date of loading of shipments originating outside of the United States, a legible copy of a rated, on-board+commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington DC, 20590 and to the FTA recipient (through the contractor in the case of a sub-contractor's bill-of-lading); and
- c. to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

A.6 CHARTER SERVICE

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

Does not apply to this procurement

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)

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000.

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and subcontracts at every tier.

Clause Language

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;+

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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

Applicability to Contracts

Federal Civil Rights laws and regulations apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contract at every tier.

Clause Language

Civil Rights and Equal Opportunity

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 be 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.
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

Flow Down

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient. For all DOT-assisted contracts, each FTA recipient must include assurance that third party contractors will comply with the DTA

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program requirements of 49 C.F.R Part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts.

Clause Language

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).

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 previous contracts with the Duluth Transit Authority.

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

The DBE participation goal for this Contract is set at five percent (**5%**). This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** 5% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBEs with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has

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reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the Duluth Transit Authority.

3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the Duluth Transit Authority will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the Duluth Transit Authority will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the Duluth Transit Authority's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the Duluth Transit Authority generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and

5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Duluth Transit Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Duluth Transit Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the Duluth Transit Authority that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the Duluth Transit Authority's DBE Officer, Carla Montgomery. The DBE Officer will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Duluth Transit Authority will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the s prior written consent. The Duluth Transit Authority may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the

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DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the Duluth Transit Authority in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The Duluth Transit Authority shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the Duluth Transit Authority that summarize the total DBE value for this Contract.** These reports shall provide the following details:

~ DBE utilization established for the Contract;

~ Total value of expenditures with DBE firms for the quarter;

~ The value of expenditures with each DBE firm for the quarter by race and gender;

~ Total value of expenditures with DBE firms from inception of the Contract; and

~ The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the Duluth Transit Authority DBE Officer, Carla Montgomery and a copy to the Duluth Transit Authority Procurement Manager. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The Duluth Transit Authority to have access to necessary records to examine information as the Duluth Transit Authority deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

- The authorized representative(s) of the Duluth Transit Authority, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.

- All data/record(s) pertaining to DBE shall be maintained as stated herein.

Sanctions for Violations

If at any time the Duluth Transit Authority has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the Duluth Transit Authority may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and

- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of 5% DBE utilization on this contract.

_____ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of 5% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

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Name and Address	Name and Telephone Number	Percent (Of Total Contract Value)	Of Work To Be Performed	Race and Gender of Firm

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. 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.

A.10 EMPLOYEE PROTECTIONS

49 U.S.C. §5333(a), 40 U.S.C. §§3141-3148

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

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier. The Davis-Bacon Act and the Copeland Anti-Kickback Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Clause Language

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland Anti-Kickback Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction. In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland Anti-Kickback Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States. The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the

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purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

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

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier.

Clause Language

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**

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions(b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

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Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Clause Language

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.

Flow Down

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

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

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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

Applicability to Contracts

The No Obligation clause applies to all third party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

No Federal 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 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

Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

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

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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) (~~§3(c)~~), 29 C.F.R. part 215

Does not apply to this procurement

A.20 RECYCLED PRODUCTS

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

Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Clause Language

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), Comprehensive Procurement Guideline for Products Containing Recovered Materials,+40 C.F.R. part 247.

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

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, ~~Increasing~~ Seat Belt Use in the United States,+April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

Clause Language

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Safe Operation of Motor Vehicles

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)

Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

Termination for Convenience (General Provision)

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 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

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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 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.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision 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 Notice of Termination specifying the nature of the default. In this event, the Duluth Transit Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Duluth Transit Authority resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Duluth Transit Authority in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God or Nature, acts of the Duluth Transit Authority, acts of another contractor in the performance of a contract with the Duluth Transit Authority acts of another contractor in the performance of a contract with the Duluth Transit Authority, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within three (3) days from the beginning of any delay, notifies the Duluth Transit Authority in writing of the causes of delay. If, in the judgment of the Duluth Transit Authority, the delay is excusable, the time for completing the work shall be extended. The judgment of the Duluth Transit Authority shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Duluth Transit Authority.

A.26 VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A)

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Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Clause Language**Rights and Remedies of the Duluth Transit Authority**

The Duluth Transit Authority shall have the following rights in the event that the Duluth Transit Authority deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include, but not be limited to, failure to proceed with Work, failure to perform, failure to supervise, failure to comply with Duluth Transit Authority written directives in accordance with this Contract.

Rights and Remedies of Contractor

In as much as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Duluth Transit Authority, the Contractor expressly agrees that no default, act or omission of the Duluth Transit Authority shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Duluth Transit Authority will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Duluth Transit Authority takes action contemplated herein, the Duluth Transit Authority will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

~ **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Duluth Transit Authority's Procurement Officer. 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 Duluth Transit Authority General 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 General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

~ **Example 2:** The Duluth Transit Authority and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Duluth Transit Authority and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Duluth Transit Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Duluth's direction or decisions made thereof.

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Performance during Dispute

Unless otherwise directed by the Duluth Transit Authority, 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 its employees, agents or others for whose acts it 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 or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Duluth Transit Authority 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 in which the Duluth Transit Authority is located.

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 Duluth Transit Authority 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.

DULUTH TRANSIT AUTHORITY

CONTRACT Example FOR

Removal/Replacement of Diesel Fuel Storage Tanks

**Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks**

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Section 3. Contract (example for Proposal)

This Contract, made this ____ day of ____, 2020, by and between _____, a _____ (corporation) _____, hereafter referred to as %Contractor+, and the Duluth Transit Authority, 2402 W. Michigan St., Duluth, MN, hereafter referred to as %DTA+. The DTA and Contractor agree as set forth below.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents in priority order consist of Federal Transit Administration Contract Clause, this Contract; Request for Proposals (Procurement # 041-20-0350.1) dated May 20, 2020, General, Special and Technical Specifications and Drawings; prevailing wage schedules, all addenda issued prior to and all modifications issued after execution of the Contract; and the executed Proposal form and Required Certificates, all as fully a part of the Contract as if attached to this Contract or repeated herein.

ARTICLE 2 THE WORK

The Contractor shall perform the work required by the Contract Documents for this Request for Proposal in accordance with the generally accepted standards of the profession for services of this type.

ARTICLE 3 TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall begin upon %notice to proceed+from the DTA and completed no later than December 31, 2020, unless otherwise terminated as set forth herein.

ARTICLE 4 CONTRACT SUM

The DTA shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Orders as provided in the Contract Documents in the amount accepted.

ARTICLE 5 PAYMENTS TO CONTRACTOR

The DTA will reimburse Contractor based on monthly billings for service. DTA may withhold payment for Contractor's services where the services are in dispute, where the services or any claimed reimbursable expenses are not documented or warranted, or when the service was not performed in accordance with the terms of the Contract Documents. Retainage will be held on payments until all conditions of final payment are met.

Terms of payment shall be thirty (30) days net from the conclusion of the month for which payment is due, unless a discount for earlier payment is solicited by the DTA and offered by the Contractor.

Payment does not imply acceptance of work. The granting of any progress payment or payments by the DTA, or receipt thereof by Contractor, shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the requirement of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not

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have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instructions of these Contract requirements or specifications which are not equal to the samples submitted to and approved by the DTA Project Manager will be rejected and shall be replaced by the Contractor without delay.

ARTICLE 6 INVOICES

All invoices shall include supporting documentation of the quantities and details to the DTA's Director of Finance's satisfaction to support the pay request. Invoices should be forwarded to:

Duluth Transit Authority
Director of Finance
2402 West Michigan Street
Duluth, MN 55806

ARTICLE 7 DELAYS

Contractor shall notify DTA in writing of any delays, including all relevant details, immediately upon encountering any difficulties which threaten to delay the timely performance of this Contract, and may at that time or subsequently request an extension of the delivery date or schedule. However, such notification or request or acceptance of belated equipment shall not constitute acceptance of the delay or request for extension, without written acceptance by DTA as a change in the Contract.

ARTICLE 8 CONTRACTOR CHANGES

The DTA or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the DTA and the Contractor, shall be incorporated in written amendments to the Contract.

ARTICLE 9 INDEMNIFICATION

The Contractor shall defend, indemnify and save the DTA, ATE Management of Duluth, and First Transit, Inc. harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter 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 DTA, ATE Management of Duluth, and First Transit, Inc., but shall include, but not be limited to, the obligation to defend, indemnify and save harmless the DTA, ATE Management of Duluth, and First Transit, Inc. in all cases where claims of liability against the DTA, ATE Management of Duluth, and First Transit, Inc. arise out of acts or omissions of DTA, ATE Management of Duluth, and First Transit, Inc. which are derivative of the negligent or intentional acts or omissions of Contractor, 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 Contractor and other of such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the work to be done and things to be supplied hereunder.

ARTICLE 10 INSURANCE

- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and DTA, ATE Management of Duluth, and First Transit, Inc. from all liability described in the paragraph above.

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- (1) Workers compensation in accordance with the laws of the state of Minnesota.
- (2) Public Liability and Automobile Liability Insurance with limits not less than \$2,000,000 Single Limit and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance, shall be in a company with an A.M. BEST rating of A-(minus); Financial Size Category (FSC) VII or better and must be authorized in the State of Minnesota; and shall provide for the following: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, Product and Completed Operations Liability, and Independent Contractors Liability.
- (3) Contractor shall provide a builder's All Risk or equivalent Builder's Risk policy insuring the interest of the DTA, Contractor and any tier of Subcontractor. Builder's Risk limit of liability shall be equal to the amount of the Contract sum, plus the value of any subsequent Contract modifications, comprising the total value of the project on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made. Property Insurance shall be on an all-risk or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, testing and startup, temporary buildings or fixtures, debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss. This property insurance shall cover portions of work stored offsite and portions of the work in transit.
 If the Property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.
- (4). Premises Liability and excess liability policies shall not have explosion, collapse or underground property damage hazard exclusions.
- (5) Professional Liability insurance of not less than \$2,000,000.
- (6) Pollution Liability insurance of not less than \$2,000,000.
- (7) DTA, ATE Management of Duluth, and First Transit, Inc. shall be named as an **Additional Insured** under the Public Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the DTA, ATE Management of Duluth, and First Transit, Inc. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor 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 Contractor's interests and liabilities.

**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.*

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- (8) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the DTA without fail not less than thirty (30) days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DTA will render any such change or changes in said policy or coverages ineffective as against the DTA, ATE Management of Duluth, and First Transit, Inc.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Contract and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Contract.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.
- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA, ATE Management of Duluth, and First Transit, Inc.
- e. The Contractor's policy(ies) will be primary to any other valid and collectible insurance available to the DTA with respect to any claim arising out of the successful performance under this Contract.
- f. The Contractor is responsible for payment of Contract-related insurance premiums and deductibles.
- g. If the Contractor is self-insured, a Certificate of Self-Insurance must be provided to the DTA.
- h. The Contractor's policy(ies) must include legal defense fees in addition to its liability limits, with the exception of Professional or Technical Errors and Omissions insurance.

ARTICLE 11 RECORDS AND INSPECTIONS

- a. Establishment and Maintenance of Records

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Records shall be maintained by Contractor in accordance with requirements prescribed by 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**
Contractor will ensure that all costs shall be supported by properly executed payrolls, time records, 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 Contract shall be clearly identified and readily accessible.
- c. **Reports and Information**
Contractor shall be responsible for furnishing to DTA records, data and information as DTA may require pertaining to matters covered by this Contract.
- d. **Audits and Inspections**
Contractor shall ensure that at any time during normal business hours and as often as DTA may deem necessary, there shall be made available to DTA for examination, all of its records with respect to all matters covered by this Contract. Contractor will also permit 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**
Contractor 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 Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release the data referred to in this clause, Contractor must immediately notify the DTA and consult with the DTA as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.
- f. **Ownership of Data**
All survey notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of DTA when prepared and shall be delivered to the DTA upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA.

ARTICLE 12 INDEPENDENT CONTRACTOR

That at all times and for all purposes hereunder, Contractor shall be an independent contractor and is not an employee of the DTA for any purpose. No statement contained in this Contract shall be construed so as to find Contractor to be an employee of the DTA, and Contractor shall not be entitled to any of the rights, privileges, or benefits of employees of the DTA, including, but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

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ARTICLE 13 COMMUNICATIONS

Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Communications in connection with this Contract shall be in writing and shall be delivered personally; or by e-mail; or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of the DTA and of the Contractor designated to receive such communications.

Designation for DTA

Designation for Bidder

Jim Caywood, Director of Maintenance

ARTICLE 14 EXTENT OF AGREEMENT

This Contract represents the entire and integrated agreement between the DTA and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both DTA and Contractor.

ARTICLE 15 GOVERNING LAW

This Contract shall be governed by the applicable laws of the City of Duluth and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in Federal Courts involving the parties shall be in the appropriate federal court in the State of Minnesota.

ARTICLE 16 RIGHTS AND REMEDIES

The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 17 NO THIRD PARTY RIGHTS

This Contract is to be construed and understood solely as a Contract between the DTA and the Contractor and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Contract or of any of the terms and conditions hereof, which, as between the DTA and Contractor, may be waived at any time by mutual agreement.

ARTICLE 18 CANCELLATION

The DTA shall have the right to cancel this Contract if the DTA's governing body does not appropriate moneys to the department or agency in an amount equal to the cost of this Contract.

ARTICLE 19 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 20 COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Contract transmitted by facsimile, by

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electronic mail in portable document format (.pdf) or by any other electronic means which preserves the original graphic and pictorial appearance of the Contract shall have the same effect as physical delivery of the paper document bearing an original signature.

This Contract entered into as of the day and year first written above.

Proposal Sheets

DULUTH TRANSIT AUTHORITY

Removal/Replacement of Diesel Fuel Storage Tanks

May 20, 2020

**Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks**

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Section 4. FORMAL PROPOSAL SHEET Removal/Replacement of Diesel Fuel Storage Tanks

NOTE: All Proposals must be written, signed and transmitted in a sealed envelope, plainly marked with Proposal number, subject matter and opening date. The Cost Proposal must be in a separate, sealed envelope attached to the Proposal.

PROPOSAL DEPOSIT REQUIREMENTS: 5% of total bid.

Deposit shall mean cash, cashier's check, or corporate bond payable to **Duluth Transit Authority**

PERFORMANCE BOND and Payment Bond required as per specifications.

Proposer must provide the following:

1. Provide the Proposer's full company name and address, indicate main contact people with titles and phone numbers and email contact information, Federal I.D. number, DUNS number, and Minnesota tax I.D. number (if applicable), along with the names of the individual(s) to be directly responsible for providing services under the Contract. Include a summary of prior experience and educational training.
2. A summary of previous work conducted by the Proposer and the individuals directly responsible for providing services similar in scope to that requested here, along with references.
3. The names of subcontractors (firms and individuals) who will assist in performing the required and a list of examples of similar projects performed by the proposed staff for this project.
4. A list of current projects under the direct management of the Proposer.
5. Technical Specifications for the proposed Aboveground Storage Tanks, including warranty provisions.
6. A proposed schedule/timeline.
7. A signed proposal form and required certificates.
8. A Cost Proposal in a separate sealed envelope.
9. DBE documentation as required herein.

Firm Name: _____

Mailing Address: _____

CITY STATE ZIP CODE

By: _____
(PRINT NAME) TITLE

Signature: _____

Addendum Acknowledgment
Number Date Rec'd

PHONE NO. _____

Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks

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4.1 **Proof of Responsibility Statement**

The Duluth Transit Authority requires anyone submitting a bid or proposal to complete a sworn statement consisting of information relating to their capacity to complete the work requested, including financial stability, equipment, experience in the work prescribed, etc. If the Duluth Transit Authority is not satisfied with the sufficiency of the answers to the questionnaire and financial statement, it may reject the bid or disregard the same or require additional information. Attach separate sheets as necessary.

Statement of Bidder Qualifications and Responsibility

1. Name of Bidder or Proposer: _____
2. Address: _____
3. Legal form of company (partnership, corporation, joint venture, etc.) _____ (If a joint venture, identify the members of the joint venture and provide all information required in this section for each member.)
4. When Organized: _____
5. Where Incorporated (as applicable): _____
6. How many years has the firm or organization been engaged in the contracting business under the present firm name? _____

Questions 7-13: If the answer is ~~Yes~~ please provide details in a separate attachment.

7. Have you ever failed to complete any work awarded to you? No___ Yes___
8. Have you ever defaulted on a contract? No___ Yes___
9. Have you ever been sued for services you provided? No___ Yes___
10. Has your firm been charged with or convicted of, a violation of a wage schedule?
No___ Yes___
11. Does your organization possess all valid licenses, registrations and certifications required by federal, state, county or city law necessary for the work it seeks to perform? No___ Yes___
12. Has your organization had any type of business, contracting or trade license, certification or registration revoked or suspended in the last three years? No___ Yes___
13. Is your firm or organization a part of a multi-entity corporation, a wholly-owned subsidiary, or more than 51% owned by another firm or organization? No___ Yes___ If yes, provide documentation on the parent organization, audited statements of financial standing, working capital financing, authorization to enter into contracts, and other proof of responsibility.
14. Does your firm have experience in similar type of projects or work, and have sufficient equipment, personnel, expertise, and financial reserves to perform the work successfully? No___ Yes___ (If no, please explain on a separate sheet. If yes, please provide the names and contact information of three (3) references.)
15. Has your firm or organization been a debtor in a bankruptcy proceeding in the last ten years?
No___ Yes___ If yes, on a separate sheet of paper titled ~~Bankruptcy Information~~, state date, court of jurisdiction, amount of liabilities and amount of assets.
16. List the average range of annual gross receipts of the firm or organization for the past three years:

___ Less than \$500,000	___ \$500,000 to \$1 million
___ between \$1 million and \$5 million	___ between \$5 million and \$10 million
___ between \$10 million and \$15 million	___ above \$15 million
17. Identify any conditions (e.g., pending litigation, planned office closures, impending merger, etc.) that may impede the proposed firm or organization's ability to complete the work.

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18. Please provide a Proof of Responsibility Statement for each subcontractor or supplier providing goods or services in excess of fifty thousand dollars (\$50,000.00) listed in the bid or proposal.

Warranty:

The Contractor,

- (i) if it is a corporation, is duly incorporated, organized, validly existing and in good standing as a corporation under of the laws of the jurisdiction of its incorporation;
- (ii) if it is a partnership, non-profit organization, individual or sole proprietorship, is duly organized and validly existing under the laws of the jurisdiction in which it was organized;
- (iii) is duly qualified and in good standing under the laws of each jurisdiction where its existing ownership, lease, or operation of property in the conduct of its business requires, and
- (iv) has the power and legal right to conduct the business in which it is currently engaged and
- (v) attests that the execution, delivery and performance of the Contract does not and will not violate any provision of any applicable existing law, regulation or of any order, judgment, award or decree of any court or government applicable to the Contractor or the charter or by-laws of the Contractor or any mortgage, indenture, or other obligation.

Signed:

Title _____

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

Notary Public

My Commission Expires _____, 20____

**Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks**

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4.2. Small or Disadvantaged Business Enterprise, Veteran-owned Business (including Service Disabled Veteran Business Enterprises)

- 1. Is the Contractor's firm or organization registered as a Small Business under the Small Business Administration's 8(a) Business Development Program, HUBZone business, or other development program through the SBA? No ___ Yes ___ (If yes, please provide a copy of the registration.)
- 2. Is the Contractor's firm or organization certified or registered as a Small Business, a Disadvantaged Business Enterprise, or a Veteran-owned business (including Service-Disabled Veteran-owned business) by a government agency authorized to certify or register the above noted entities?

No ___ Yes ___ (If yes, please provide details and copies of the applicable registration or certification.)

The Contractor agrees to take all necessary steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract.

The Contractor or Subcontractor shall not discriminate on basis of race, color, national origin or gender in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as the DTA deems appropriate.

Signed this ___ day of _____, 20___:

Title _____

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4.3 Subcontractors and Suppliers Listing

List each subcontractor and/or supplier included in the bid or proposal, and include a Proof of Responsibility Statement for each subcontractor (of any tier) or supplier proposing to provide services or goods in excess of fifty thousand dollars (\$50,000. 00.) Subcontractors or Suppliers that are registered or certified S/DBEs must provide proof and the name of the certifying agency **prior to commencing work.**

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Changes to this list must be in writing and approved by the Duluth Transit Authority **prior to the commencement of subcontractor or supplier's work.**

Signed: _____

Firm Name: _____

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Section 5.

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

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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, 49 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), 49 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

Subscribed and sworn to before me
this ____ day of _____, 201__

Notary Public

My Commission Expires _____, 20__

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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 _____

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Certificate D. BUY AMERICA CERTIFICATION

Proposals or Offers not accompanied by a completed Buy America certification will be rejected as nonresponsive. Complete only one certification, Certificate of Compliance or Certificate of Non-Compliance with Buy America Requirements

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks

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CERTIFICATE E. **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

**Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks**

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Certificate F. 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 _____

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Certificate G

In accordance with Minnesota §181.59, ~~%~~**DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT+**

The Contractor hereby agrees and shall cause this provision to be inserted in every subcontract the following:

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, or the Duluth Transit Authority, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

_____ Signature of Contractor ~~or~~ Authorized Official

_____ Name and Title of Contractor ~~or~~ Authorized Official

_____ Date

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Certificate H RESPONSIBLE CONTRACTOR MINNESOTA STATUTE, SECTION 16C.285

Applicable to prime contracts and subcontracts over \$50,000.

Respondents to this solicitation document shall submit a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in Minnesota Statutes, section 16C.285. The term "responsible contractor" means as contractor as defined in Minnesota Statutes section 16C.285, subdivision 3.

Any prime contractor or subcontractor that does not meet the minimum criteria in Minnesota Statutes, section 16C.285 subdivision 3, or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded the construction contract for the project or to perform work on the project.

The bidder hereby states that is in compliance with each of the minimum criteria in Minnesota Statutes, section 16C.285. A false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract on the project and may result in termination of a contract awarded to a prime contractor or subcontractor that submits a false statement.

A prime contractor shall submit to the Owner upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to Minnesota Statutes, section 16C.285, subdivision 3, clause 7.

The contractor hereby agrees and shall cause this provision to be inserted in every subcontract as required pursuant to Minnesota Statutes, section 16C.285.

SIGNED _____

TITLE _____

FIRM NAME _____

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

Notary Public

My Commission Expires _____, 20__

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Certificate I. Performance and Payment Guaranty

Performance Guarantee Certification

The undersigned hereby certifies that the Bidder shall provide a Performance and Payment Guaranty in accordance with the Specifications upon award.

Designate below which form of Performance and Payment Guaranty shall be provided:

_____ Performance and Payment Bond

_____ Irrevocable Stand-By-Letter of Credit

PROPOSER'S NAME: _____

Authorized Signature: _____

Title: _____

Date: _____

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Certificate J DBE Utilization Form

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of 5% DBE utilization on this contract.

_____ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of 5% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

PROPOSER'S NAME: _____

Authorized Signature: _____

Title: _____

Date: _____

TECHNICAL AND SPECIAL SPECIFICATIONS

FOR

Removal/Replacement of Diesel Fuel Storage Tanks

May 20, 2020

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SECTION 6. TECHNICAL/SPECIAL SPECIFICATIONS

A. GENERAL

A.1 The DTA is seeking qualified firms to provide all labor, materials and tools to remove three underground storage tanks (USTs) and replace them with two 20,000 gallon above ground storage tanks for diesel fuel and one 5,000 gallon above ground storage tank for heating oil at the DTA Operations Center located at 2402 West Michigan Street, Duluth, MN 55806.

A.2 This is a Design-Build+Contract. Scope of work includes, but is not limited to, the design, installation and delivery of a turnkey diesel fuel storage system, including utility locates, dewatering shoring, removal and disposal of petroleum products and sludge from the existing tanks, pumps or supply lines, removal and disposal of the tanks, petroleum testing of the area beneath and around the tanks, contaminated soil remediation as may be required, backfill, paving and preparation for installation of above ground storage tanks (ASTs), installation of new ASTs, all pumps, controls, communications conduits, and ancillary equipment for a fully functional fuel storage and dispensing system in accordance with all applicable federal, state and local regulations.

A.3 The DTA will provide an allowance for contaminated soil remediation as may be needed, as agreed upon between the DTA and the Contractor.

A.4 The DTA received approval of its application for a Categorical Exclusion (CE), defined by the US EPA as a project that does not, individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4) and applicable FTA regulation of CEs defined at 23 CFR 771.118. Adherence to these requirements is required by the selected Contractor.

A.5 The DTA intends to award a Contract to one firm. Proposers must be able to demonstrate at least three (3) years experience in the past five (5) years in similar work, and must supply three (3) references with the Proposal. Proposers that are unable to demonstrate previous experience will be deemed non-responsible and their Proposal will be rejected. Contractors who have failed to perform similar projects satisfactorily or to complete similar projects on time may be disqualified at the sole discretion of the DTA.

A.6 The Proposer is solely responsible for determining the actual field measurement of the project area prior to Proposal submission. Proposers must satisfy themselves by examination of the Contract documents, the work site and the conditions and obstacles to be encountered in the field, and by such other means as may be necessary, as to the accuracy of the schedule of quantities of the work to be done and the intent of the Contract documents. After submission of the Proposal, no complaint nor claim that there was any misunderstanding as to the quantities, conditions or nature of the work will be entertained and no extra compensation shall be allowed by reason of any matter or thing concerning which Proposer might have informed himself prior to Proposal.

A.7 All equipment supplied must be commercial grade equipment suitable for a heavy use industrial setting.

A.8 There will be a preproposal meeting at **10:00 a.m. on Tuesday, June 2, 2020**. Attendance is not mandatory, but strongly encouraged. Attendees will be provided a tour of the facilities after the meeting. Those who are unable to attend may call 218-623-4329 to participate via conference call.

A.9 The DTA is relying on the Proposer to provide its professional experience and expertise with

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regard to industry standards for the project. If the Proposer believes the specifications are not within industry standards, the Proposer must bring its objection or concern to the DTA's attention prior to the Proposal deadline.

A.10 Please note that the prevailing wage schedule attached to the Proposal document indicates that prevailing labor hours are defined in accordance with MN Statute 177.42(4): eight hours per day or forty hours per week. Contractors with workers who work four (4) ten-hour days must pay overtime for any hours over 8 hours per day, regardless of how many hours they work in a week. For example, if a worker works one ten hour day in a week, they must be paid at rate of regular pay for eight hours, and time and half for two hours. Questions on this requirement can be directed to the DTA at nbrown@duluthtransit.com or 218-623-4329.

A.11 Proposals must be accompanied by a Proposal security of five percent (5%) of the total Proposal amount in the form of a check, certified cashier's check, or bid bond payable to the Duluth Transit Authority. Such deposits will be held by the DTA until all Proposals submitted have been reviewed and have either been rejected or a Contract has been awarded. The Proposal deposit of the successful Proposer will be held until the Contract is duly executed. Proposal deposits will be returned to the unsuccessful Proposer(s) as soon as possible after award of the Contract.

A.12 Prior to beginning work, the Contractor shall attend a mandatory preconstruction meeting with designated DTA staff to establish schedule, contact information, staging, work progression, approval process, change order procedures, etc., to ensure a timely and successful project.

A.13 Contractor shall obtain any and all applicable permits required for the work, and shall provide a copy of them to the DTA prior to commencing work, along with any MSDS sheets or other documents related to the materials used in the work, as applicable. Permit fees are the responsibility of the Contractor.

A.14 Staging areas are limited and must be approved prior to project commencement. Temporary storage on the interior of the building may be permitted upon approval of the DTA Project Manager.

A.15 The DTA will allow a temporary portable toilet to be placed at the project site while work is in progress, the cost of which will be borne by the Contractor. The toilet must be removed from the property prior to submission of final payment request.

A.16. Work shall comply with the latest applicable standards for this type of work, including applicable of the:

- International Building Code (IBC)
- National Fire Protection Association, Flammable and Combustible Liquids Code, including NFPA 30 and 30A, Flammable and combustible Liquids code, as applicable, and NFPA 70
- National Electric Code
- International Fire Code (IFC) 2000, Chapter 34
- Underwriters Laboratories Inc.
- National Electrical code (NEC)
- American National Standards Institute, (ANSI)
- National Electrical Code (NEC)

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National Electrical Manufacturers Association (NEMA)
American Society for Testing and Materials (ASTM)
United States Environmental Protection Agency and Federal Register
Uniform Fire Code
Minnesota Pollution Control Agency
All other entities having jurisdiction

A.17. Invoices must be signed by an authorized officer of the Contractor and shall be itemized with a schedule of values, including change orders, as applicable. Data in the schedule of values shall include a dollar value in each line item for each portion of the work performed and for stored products.

A.18 No advance payments are permitted. The DTA will only pay for materials received or services rendered, including mobilization costs.

A.19 All materials used in the project must be new and in sufficient quantity to complete the project in its entirety. Any items damaged during shipment or installation must be replaced with new items at the Contractor's sole cost and expense.

A.20 Contractor shall provide all temporary protection requirements for work areas during and after installation.

A.21 Contractor shall be solely responsible for monitoring weather conditions and shall not permit employees to work when weather presents a danger to Contractor's employees. Contractor should consider the impact of inclement weather on the progress of the project in its Proposal; no additional compensation shall be permitted for weather delays. Contractor shall proceed with work only when existing and forecasted weather conditions permit materials to be installed according to manufacturer's written instructions and warranty requirements.

A.22 Contractor shall not impede staff or vehicles entering or leaving the building without advance approval from the DTA Project Manager.

A.23 Contractor shall require all workers on the project to follow all DTA safety guidelines while performing work under this Contract, including provisions for COVID-19 protection such as wearing masks and gloves while inside the building, and wearing safety vests and/or safety glasses where required.

A.24 Contractor and any subcontractors shall provide all necessary safety equipment to perform the work in accordance with OSHA standards, and shall be solely responsible for enforcing those standards. The DTA reserves the right to halt work if in its sole discretion, safety or security protocols or weather conditions are not adequate to perform the work. No additional compensation shall be afforded to the Contractor in the event the DTA suspends work due to safety, security or weather conditions. Contractor shall promptly rectify any identified shortcomings to the DTA's satisfaction prior to resuming work.

A.25 The DTA reserves the right to keep all existing equipment it desires for possible reuse or sale. If the equipment is retained by the DTA, Contractor shall remove the equipment undamaged and place them on a pallet as directed by the DTA Project Manager.

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A.26 Contractor shall remove and dispose all construction debris daily. Placement of dumpsters must be approved by the DTA Project Managers prior to delivery. Dumpsters must be removed from DTA property prior to request for final payment or ten (10) days after work is complete, whichever is sooner. Removal of dumpster(s) is a condition of final payment.

A.27 The DTA intends to hire a licensed individual or firm to act as the DTA's Owner's Representative on this project, at the DTA's sole discretion. The Contractor will cooperate with the Owner's Representative as if the individual or firm were the DTA.

A.28 Contractor shall coordinate work hours and the work progression with DTA Project Manager to ensure as little inconvenience to the building operations as possible.

A.29 Upon completion of work, Contractor shall participate in a joint walk-through with DTA staff to review completed work and prepare a punch list for Contractor. Contractor shall immediately commence work on punch list items, and shall complete the punch list work in a timely manner.

A.30 Upon conclusion of the project, Contractor shall supply a complete summary of all work completed, warranty documents and other maintenance documents provided by the manufacturer.

A.31 Project must be completed by December 31, 2020, unless otherwise approved by the DTA Procurement Manager. Failure to complete the work in a timely manner may cause penalties under this Contract, up to, and including, termination.

B. CURRENT CONDITIONS

B.1 The DTA has three twenty-thousand gallon underground storage tanks; two for diesel fuel and one for heating oil, that were installed when the building was constructed in 1980.

B.2 UST Cathodic Protection System Evaluations are performed annually on the fuel tanks, (exceeding the State of Minnesota requirement.) No issues have been found to date. A copy of the most recent inspection report is attached for reference

B.3 The fuel tanks are accessible at the northeast corner of the DTA Operations Center, adjacent to the employee parking lot. Diesel is piped underground to an interior fueling station for buses, and an interior boiler for building heat. The DTA does not anticipate changes to the interior fueling island for the buses.

B.4. The fueling tank system is monitored by a Veeder Root system for tracking and reporting fuel usage.

B.5 The tanks were cleaned in 2015 as a proactive measure to protect them and preserve the integrity of the fuels. No issues with the tanks were discovered during the cleaning process.

B.6 The DTA anticipates that new tanks will be above ground in the general area where the existing fuel tanks are, but will entertain alternative locations that best serve the DTA's needs. Additional trenching for piping must not interfere with bus operations.

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B.7 Staging areas for materials, Contractor parking and other items will be designated by the DTA Project Manager prior to the start of work. Minimal storage is available inside the building. All staged equipment and materials, including dumpsters, must remain within the footprint of the project unless approved by the DTA Project Manager in advance.

B.8 The Contractor will be responsible for temporary fuel storage systems to ensure continuing transit bus operations during removal and replacement of the diesel fuel storage tanks. Provision for the temporary fuel storage system will be included in the Contractor's Schedule of Values.

B.9 The DTA anticipates that the new heating oil tank will be smaller than the present tank. Optimal size is 5,000 gallons, however a standard size slightly larger or smaller may be considered.

B.10 The DTA does **not** require temporary provision for building heating fuel.

B.11 The DTA averages 36,000 gallons of diesel fuel per month, with highest usage in the cold weather. In 2019, fuel usage was 35,400 gallons in August, 32,900 in September, 36,000 gallons in October, and 40,400 gallons in November. Temporary fuel provisions must ensure there will be no interruption to the fuel supply for the transit buses.

C. TERMS AND DEFINITIONS

C.1. As-Built Drawings: As-built drawings are prepared by the Contractor showing actual quantities, location and dimensions of the work performed under this Contract. The final form is to be certified by a Professional Engineer. Submission of as-built drawings are required before submission of the final pay application.

C.2 Changes:

C.2.1 The Procurement Manager may, at any time, without written notice to the sureties, by written Change Notice or Contract Directive, make changes in the work within the general scope of the Contract, including changes:

- a. In the specifications, including drawings and designs
- b. In the method or manner of performance of the work
- c. In the DTA furnished equipment, materials or services
- d. In the Contract Schedule of Performance

C.2.2 Change Notice: A notice issued to the Contractor specifying a change in the assumed conditions of the site or a proposed change to the Contract documents or work in progress. A Change Notice may be either for design change or field change. A Cost Proposal is required to be submitted by the Contractor.

C.2.3 Contract Directive (%CD+): A written unilateral order signed by the DTA Procurement Manager that directs the Contractor to perform as the DTA Project Manager directs either in compliance with the work scope/technical specifications or directing a change in the work scope/technical specifications, and which may or may not list the DTA's decision as to an increase (or decrease) in the Contractor's cost and/or schedule. The CD is issued pursuant to the %Contract Changes+article Change Order-a written bilateral order signed by the

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Procurement Manager and the Contractor that directs the Contractor to change the work scope, and which is issued pursuant to the %Contract changes+terms and conditions.

C.2.4 The cost or credit to the DTA resulting from a CD in the work and/or the changes to the Contract Schedule shall be determined in one or more of the following ways:

- a. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. By unit prices stated in the Contract.

C.2.5 Change Order (CO)/Contract Amendment (CA): A bilateral document signed by the Procurement Manager and Contractor, acknowledging agreement and consent of both parties, within the parameters of the original scope of work.

C.2.6 A Change Order does not, by itself, authorize the Contractor to perform the work described in it unless a Contract Directive specifically authorizes the Contractor to do the work. Contractor should not perform the work until it receives specific authorization.

C.2.7 The DTA specifically reserves the right to have the work described in the Change Order performed by another Contractor or DTA personnel, at its sole discretion.

C.2.8 Change Order Proposal (COP): A written notice from the Contractor indicating that it believes that it is entitled to an increase in the Contractor's Cost and/or schedule. A COP may be in response to a Request for Change Order Proposal (RCOP), or independent of an RCOP. Contractor shall provide a COP within five (5) business days of a written Change Order or Contract Directive issued by the DTA.

- a. Proposals for a CO shall contain at a minimum, a brief description and a detailed cost breakdown which itemizes the costs;
- b. Both added costs or deleted costs proposed by the Contractor must be detailed sufficiently for the DTA to evaluate the costs in full. Cost Proposals must be broken down into the following categories: actual labor, actual materials, overhead, and profit, subcontractor actual labor, actual materials, overhead and profit. Failure to provide this detail will result in rejection of the COP.
- c. Contractor must comply with the Federal Acquisition Regulations Part 31, %Cost principles and audit of indirect costs+for the purposes of change order estimation of overhead costs in accordance with 49 U.S.C. 5325(b)(2)(B).
- d. Data provided for Change Order Proposals will be kept confidential in accordance with 49 U.S.C. 5325(b)(2)(D) and the Minnesota Data Practices Act, and shall not be accessible or provided by the DTA except by written permission of the Contractor.

C.2.9 The cost or credit to the DTA resulting from a CD or CO to the work and changes to the schedule shall be determined in one or more of the following ways

- a. By mutual agreement of a lump sum properly itemized and supported by sufficient substantiated data to permit evaluation.
- b. By unit process stated in the Contract, in the Proposal documents or subsequently agreed upon.
- c. The Contractor shall proceed diligently with performance of this Contract and any authorization under a CD, CO or CA, pending an agreement on a COP. If the parties cannot agree upon an equitable adjustment to the Contract for the cost or credit and/or

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the change to the term of the Contract, the Contractor is required to proceed with the authorized work and the COP automatically becomes a Written Notice of Claim. The parties must then proceed as directed in the Claims and Disputes Article as provided herein.

C.2.10 It time is also an element of consideration, a breakdown showing the impact on the schedule must be included with the rationale for the schedule change.

C.3 Contract Schedule or Term of Performance: The period or term of performance allowed in the Contract for completion of the work herein. The Contract Schedule is established by the DTA in the Contract and does not change unless changed by a Contract Amendment.

C.4 Design-Build: The selected Contractor shall meet with DTA representatives to define the site layout and use, improvements, selection of materials and equipment, and value engineering options. Contractor shall provide recommendations on design and construction feasibility, time required for material and equipment acquisition, site preparation, and other elements to ensure a timely and economical project.

C.5 Differing Site Conditions:

Prior to submitting a Proposal, Contractor is required to perform Due Diligence by taking all reasonable steps necessary to ascertain the nature and condition of the work site which can affect the work or costs. Within five (5) business days of discovery, and before such conditions are disturbed, the Contractor shall give written notice to the DTA Procurement Officer of:

- a. Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract or that the Contractor could not have ascertained under this Section, or
- b. Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided in this Contract. The Contractor shall not disturb the differing site condition for at least seven days after notice of the condition has been given to the Procurement Manager, unless permission is granted by the Procurement Manager.
- c. Upon investigation by the DTA, which shall be no more than five business days after notification, the DTA will issue a finding and make a determination for a contract modification that may or may not include a change in Contract price or schedule.

C.6 Drainage, Erosion and Silting: The Contractor shall take all necessary measures to control erosion and silting of rivers, streams and impoundments, (ponds, lakes and reservoirs). Contractor will follow all requirements of local, state and Federal agencies on erosion and sediment control.

C.7 Dust Control: Contractor shall be responsible for dust control related to its construction activities during the performance of this Contract. The DTA Project Manager shall be the sole judge in determining the sufficiency of the Contractor's dust control measures. Non-toxic substances to control dust shall be required.

C.8 Environmental Protection: the Contractor shall be responsible for the protection and preservation of the general environment along and adjacent to the project site from its activities, and shall use every precaution necessary to prevent damage or injury thereto, unless the removal, alteration, or destruction of such property is provided under the Contract.

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C.9 Final Acceptance: Final Acceptance of the work occurs when the work is fully, completely and finally accomplished in full, absolute and in compliance with the Contract. The DTA will provide written notice of the Final Acceptance date.

C.10 Guaranteed Maximum Price (%GMP+): The total cost paid by the DTA for the design, build and delivery of a fully functional diesel fuel storage tank system, subject to the terms herein and any mutually agreed changes between the Contractor and the DTA.

C.11 Materials and Equipment: All materials and equipment used in the work shall be new and meet the highest applicable federal, state or local standards or regulations. No reconditioned equipment will be accepted.

C.12 Meetings: Upon commencement of work, Contractor shall attend meetings at least weekly, with DTA representatives, as may be requested by the DTA Project Manager. Cost of these meetings shall be included in the GMP. Per diem expenses will not be paid.

C.13 Noise, Vibrations: In performance of this Contract, Contractor shall comply with all applicable noise and vibration laws. Contractor shall maintain its equipment in good working order to minimize noise and shall use its best efforts to ensure that significant vibration and noise-generating activities occur only during daylight hours.

C.14 Shop Drawings: Items such as detail drawings, calculations and catalog cuts that are prepared by the Contractor which are required to detail the work to be performed. Shop drawings must be submitted to the DTA's Project Representative at least ten-days prior to commencement of the work.

C.15 Record Drawings: The Contractor shall keep onsite a copy of all drawings, specifications, and related documents in good order and marked to record all changes made during construction to reflect actual conditions, and shall at all times give the DTA Project Manager and/or the DTA Owner's Representative access to them. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not in the specifications shall be of like effect as if shown or mentioned in both. Contractor's records shall include work performed, inspections and other pertinent information.

C.16 Substantial Completion: Substantial Completion occurs when all work is sufficiently complete to allow the DTA full use of the fuel tank system for its intended purpose, and such terms of work that remain to be done are minor in nature and can be accomplished without significant interference to DTA operations. The DTA will supply written notification of the date of Substantial Completion.

C.17 Project Schedule: The design-build schedule will have periodic milestones for completion throughout the project, including preliminary design, final design, excavation, tank removal, testing, tank installation, systems commissioning, and other major benchmarks for planning and execution of the project. The Contractor shall periodically update the Project Schedule for DTA review and approval.

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C.18 Project Commencement: The date of commencement of the work is the date on the written Notice to Proceed from the DTA. Contract time will be measured from the date of commencement until Final Acceptance, subject to adjustments as may be provided herein.

C.19 Liquidated Damages. Time is of the essence of this Contract. If the Contractor fails to achieve Substantial Completion by the date under this Contract, the Contractor may be subject to Liquidated Damages in the amount of \$250 per day for the remainder of the project through Final Acceptance. The DTA and the Contractor acknowledge and agree that it is difficult or impossible to determine the amount of damages that would or might be incurred by the DTA as a result of the Contractor's failure to timely achieve Substantial Completion of the work. It is understood and agreed by the DTA and the Contractor that any sums payable under this section are in the nature of liquidated damages and not a penalty; such payment would represent a compensation for the losses that may be reasonably anticipated from such failure.

C.20 Schedule of Values: Before the first Application for Payment, where the Contract sum is based on a Guaranteed Maximum Price, the Contractor shall submit to the DTA Procurement Manager an initial Schedule of Values allocated to various portions of the Work, including Contractor's fee for the project, prepared in such form and supported by such data to substantiate its accuracy as the DTA Finance Director may require. This schedule, unless objected to by the DTA Procurement Manager, shall be used as a basis for reviewing the Contractor's Application for Payment. The Schedule of Values may be updated periodically to reflect changes in the allocation of the Contract Sum.

- a. Such Schedule of Values shall not include amounts for preparation of Proposal documents or other costs incurred prior to Notice to Proceed from the DTA on this Contract.
- b. The Schedule of Values may include costs for mobilization, which shall not exceed five percent of the total, unless approved in advance by the DTA Procurement Manager.

C.21 Progress Payments: Based on Applications for Payment submitted to the DTA Project Manager or designee, the DTA will make payments no more often than monthly, due at the end of the calendar month after the date of the submittal.

- a. The DTA will either approve or reject in writing an Application for Payment within fifteen days after the DTA Project Manager receives the Application for Payment.
- b. Application for Payments must be accompanied by payroll reports, receipted invoices for materials received, or other proof that evidence that may be required by the DTA Director of Finance may require to demonstrate that payment equals or exceeds work completed, less retainage, as applicable. No advance payments are permitted.
- c. In paying on the Application for Payment, the DTA will rely on the accuracy and completeness of the information furnished by the Contractor, and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with the specifications herein, to have made exhaustive or continuous on-site inspections, or to have made examinations to determine how or for what purposes the Contractor has used amounts previously paid under this Contract.
- d. Contractor agrees that it will (i) comply with payment and disbursing requirements established by the DTA or the DTA's funding agencies for this project, including, without limitation, timing requirements that may be different from these specifications, (ii) prepare, at no

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additional cost to the DTA, documentation required by the DTA or its funding agencies, including, without limitation, budgets, schedule, and sworn construction statements.

C.22 Prior to final payment, Contractor shall submit the following:

- a. A complete set of record (as-built) drawings and submit them to the DTA.
- b. Certified payrolls and lien waivers from the prime contractors and all subcontractors and/or suppliers.
- c. Copies of all local inspection reports, as applicable
- d. A statement that all punch list items are complete and accepted by the DTA Project Manager
- e. A final invoice including retainage, as applicable.
- f. Provide in a rigid binder, three (3) sets of equipment and system operating bulletins and instructions, including parts lists, maintenance manuals, system diagrams and electrical and control schematics (as applicable.)
- g. Maintenance Data: Contractor shall provide maintenance and inspection data, replacement part numbers and availability and service location and telephone number.
- h. Prior to DTA's acceptance of the completed work, deliver to the DTA the Contractor's guarantee and manufacturer's guarantee and warranty certificates for equipment and materials.
- i. Clean up. Before acceptance of the work, the Contractor shall clean the work site and all grounds occupied in connection with the work of all rubbish, excess materials, temporary structures, and equipment, including removal of dumpsters, portable toilets, temporary fuel tanks and pumps, etc., and all parts of the work shall be left in a neat and presentable condition. Full compensation for cleaning up as herein specified shall be considered as included in the prices paid for the contract items of work and no additional allowance will be made therefore.

C.23 Final Payment: Final payment constituting the unpaid balance of the Contract shall be made by the DTA within thirty days after the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct non-conforming work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

C.24 The Contractor is entitled to rely on the information contained in this Scope of Work, but not that such information complies with applicable laws, regulations, and codes, which are the obligation of the Contractor to determine. If the event that a specific requirement conflicts with applicable laws, regulations and codes, the Contractor, with the approval of the DTA Project Manager, will complete the work that complies with the laws, regulations and codes. A Change Order may be issued for such change in the work, unless the Contractor recognized the non-compliance prior to execution of this Contract and failed to notify the DTA.

C.25 Submittals. The Proposer shall submit with its Proposal, technical specifications of the proposed ASTs, including warranty provisions, for DTA review. Upon award of a Contract, the DTA and/or the Owner's Representative may review and approve or take other appropriate action upon Contractor's submittals, including, but not limited to design and construction documents, but only for the limited purpose of checking the conformance with information given and the design concept expressed in these technical specifications. The DTA and/or Owner's Representative will be reasonably prompt so as not to unreasonably delay the project. Review of the submittals is not conducted for determining accuracy and completeness or other details such as dimensions or

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quantities, or for substantiating instructions for installation and performance of equipment or systems, all of which remain the responsibility of the Contractor.

C.26 Design Services and Responsibilities

C.26.1 When applicable law requires that services be performed by licensed professionals, including engineered design of the fuel tank system, the Contractor shall provide those services through the performance of qualified persons or subcontractors duly licensed to practice in the State of Minnesota. All agreements with third party engineered design services shall be in writing and shall be provided to the DTA upon execution.

C.26.2 The Contractor is responsible to the DTA for acts or omissions of the Contractor's employees, engineers, architects, subcontractors, suppliers, their agents or employees, or other persons or entities, performing any portion of the Contractor's obligation under this Contract.

C.26.3 The Contractor shall provide to the DTA Project Manager and Owner's Representative, as may be applicable, certified engineered drawings and construction documents, including any structural, mechanical and electrical systems, excavation, drainage, or other systems associated with the project for review and written approval prior to commencing work. The construction documents and drawings shall be signed and sealed by the licensed design professional, including all drawings, calculations, specifications and certifications. Shop Drawings related to the Work prepared by other professionals, shall include the Contractor's written approval.

C.26.4 The construction documents shall detail the requirements for construction of the project, including estimated quantities, and including specifications that establish the quality levels of the materials and systems to be installed. Documents customarily required by regulatory agency approval must also be included.

C.26.5 The DTA and its consultants shall be entitled to rely upon the accuracy, adequacy, and completeness of the services, and representations and statements contained in the certified documents.

C.26.6 Upon approval of the DTA Project Manager, the Contractor, with the assistance of the DTA, shall prepare and file documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Project.

C.27 Water Pollution: The Contractor shall exercise every reasonable precaution to prevent pollution of rivers, streams, ponds or reservoirs. Pollutants such as chemicals, fuels, lubricants, bitumen, and other harmful wastes shall not be discharged into or alongside rivers, streams, ponds, reservoirs, etc., or into natural or manmade channels leading thereto.

D. CONSTRUCTION

D.1 The construction work shall be in accordance with the approved submittals. Deviations from the submittals must be noted in writing and approved by the DTA Project Manager or Owner's Representative. The Contractor shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the DTA Project Manager's approval thereof.

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D.2 The Contractor will be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work under the Contract Document.

D.3 The Contractor is solely responsible for the supervision and direction of the work, and for safety on the worksite.

D.4 The Contractor is responsible for inspection of the work, or any portion thereof.

E. SCOPE OF WORK

E.1 The DTA makes not representations of the soils composition at the site. Proposer shall become familiar with current ground conditions prior to submitting a Proposal.

E.2. Scope of Work, includes, but is not limited to:

- a. Site Preparation
- b. Disconnection of existing fuel system, remove and dispose of fuels and sludge from the system
- c. Installation of temporary fuel provisions
- d. Excavation, removal and disposal of existing tanks
- e. Testing and removal of contaminated soils (if discovered)
- f. Backfill
- g. Site preparation for ASTs, including concrete slab(s) and spill containment provisions that may be required
- h. Supply and install double walled steel tanks in compliance with MN Pollution Control Agency requirements
- i. Install fill tubes, dispensers, vents, gauges, nozzles, etc.
- j. Install all electric hook up, including conduit, wiring emergency shut off switch in accordance with NFPA standards
- k. Make all tie-ins to equipment and existing Veeder Root monitor
- l. Install fire extinguishers as may be required by code
- m. Perform system start up
- n. Disconnect temporary fuel provisions
- o. Surround concrete slab with 7-foot high fencing and concrete reinforced bollards
- p. Install signage and placards as required
- q. Assist DTA in receiving approval from city and state agencies having jurisdiction
- r. All other labor, materials, or equipment for a fully functional turn-key fueling system.
- s. Prepare and submit all permit and licensing applications for operation of the system, as applicable

E.3 The DTA is redesigning employee and guest parking in the area near the ASTs to better utilize the area and reduce the number of trucks coming into the parking area. The Contractor will work with the DTA to design a fuel storage system that minimizes the requirement for the tanker trucks to enter the DTA parking area to dispense the fuel. Remote fill outside of the gate is preferred. Preliminary parking lot designs are available for review prior to Proposal submission.

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E.4 The fuel storage system will include all ladders and safety platforms required for servicing the tanks. All stair and ladders will be constructed of heavy duty materials. All fasteners, braces and other fixtures and attachments shall be galvanized or stainless steel and approved by the DTA Project Manager prior to installation.

E.5 The Contractor will endeavor to preserve as much permeable surface as possible within the project area.

F. CONSTRUCTION BY DTA OR BY SEPARATE CONTRACTS

F.1 The DTA reserves the right to perform construction or operations related to the Project with the DTA's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Contractor shall cooperate with the DTA and separate contractors whose work might interfere with the Contractor's work. If the Contractor claims that delay or additional cost is involved because of such action by the DTA, the Contractor shall make such claim as provided herein.

F.2 The DTA shall provide for coordination of the activities of the DTA's own forces and separate contractors with the work of the Contractor. The Contractor shall participate in reviewing their construction schedules with the DTA and other contractors, as may be requested by the DTA Project Manager. The Contractor shall make any revisions to the DTA project schedule deemed necessary after a joint review and mutual agreement. The DTA project schedule shall then constitute the schedule to be used by the Contractor, separate contractors and the DTA until subsequently revised.

F.3 Taxes. The DTA is NOT appointing the Contractor as its purchasing agent under MN Department of Revenue Notice #17-10, Sales and Use Tax-Construction Contracts with Exempt Entities. The Contractor will pay all sales, consumer, use and similar taxes for the material and work provided herein.

F. 4. All fees for permits, licenses, inspections and other government fees directly related to the project are the responsibility of the Contractor.

F.5 The Contractor shall give all notices relating to the project as required by law, ordinance, rule or regulation and lawful orders of public authorities.

F.6 If the Contractor performs work contrary to applicable laws, ordinances, codes, rules and regulations, the Contractor shall assume responsibility for such work and shall bear the costs attributable to correction.

G. ALLOWANCES

G. 1. An allowance is an amount for a portion of the project yet to be designed and not capable or appropriate for design at the time the Contract is awarded, but is still a part of the project. The description and amount of the allowance must be approved by the DTA Project Manager in writing. The Contractor shall include all allowances in the Contract total. Items covered by allowances shall be supplied for such amounts and by such entities to which the Contractor has reasonable objection.

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- G.2 Unless otherwise provided in the Contract Documents, the
- a. Allowances shall cover the cost to the Contractor for materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - b. Whenever actual costs are more than or less than allowances, the Contract shall be adjusted by Change Order.

H. WARRANTY

H.1 In addition to any other warranties in the Contract, including those found in the specifications, drawings, figures and footnotes, the Contractor warrants, except as provided below, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor of any subcontractor or supplier of any tier.

H.2. The Warranty shall continue for a period of one year from the date of Final Acceptance of the work. If the DTA takes possession and begins using any part of the work before final acceptance, the Warranty on that portion of the work that DTA is using shall continue for a period of one year from the date DTA begins its use. The one year Warranty on the portion of the work that DTA has not been using begins on the date of final acceptance. To the extent that the Contractor's standard Warranty exceeds one year, the Contractor's standard Warranty shall apply.

H.3 The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to real or personal property when that damage is the result of:

- a. The Contractor's failure to conform to the Contract requirements; or
- b. Any defect of equipment, material or workmanship.

H.4 With regard to repaired or replaced work:

- a. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Contract.
- b. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of the repair or replacement.
- c. Landscaping replacement shall be warranted for one year and, if the year ends in a growing season, the warranty extends through the remainder of the growing season unless otherwise specified.

H.5. The DTA Procurement Manager shall notify the Contractor in writing within a reasonable time after discovery of any failure, defect or damage.

H.6 If the Contractor fails to remedy any failure, defect, or damage within thirty days of the notifications from DTA, the DTA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

H.7 With respect to all warranties, express or implied, from subcontractors, manufacturers or suppliers for the work performed and materials furnished under this Contract, the Contractor shall:

- a. Obtain all warranties that would be given in normal commercial practice.
- b. Assign all rights in the warranties to the DTA. Contractor shall require all warranties to be executed in writing for the benefit of the DTA, and

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c. Enforce all warranties for the benefit of the DTA if directed by the DTA Procurement Manager.

H.8 This Warranty shall not limit the Contractor's rights with respect to defects, latent defects, negligence, mistakes, or fraud.

H.9 Contractor acknowledges and agrees that performance of the Contract includes the performance of all work required under the Warranty provisions. Contractor's failure to perform under a Warranty provision is a breach of the Contract and a default. The Performance Bond must include a provision stating that it covers and guarantees the performance of the Warranty provisions.

H.10 Uncovering and correction of work.

H10.1 If a portion of the work is covered contrary to the requirements specifically expressed in the Contract documents, it must be uncovered for the DTA Project Manager or designee's examination and be replaced at the Contractor's expense without change in the Contract schedule.

H10.2 If a portion of the work has been covered which the DTA Project Manager or designee has not specifically requested to examine prior to it being covered, the DTA Project Manager or designee may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract documents, costs of uncovering the work and replacement shall be at DTA's expense via an appropriate Change Order. If such work is not in accordance with the Contract documents, correction shall be at the Contractor's expense, unless the condition was caused by the DTA or a separate contractor, in which the DTA will be responsible for payment of such costs.

H.11 Correction of Work. The Contractor shall promptly correct work rejected by the DTA Project Manager or designee, or failing to confirm to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of corrections such rejected work, including additional testing, shall be at the Contractor's expense.

H.12 In addition to the Contractor's obligations herein, if, within one year after the date of Substantial Completion or after the date for commencement of Warranties established herein, any of the work found not in accordance with the Contract documents, the Contractor shall correct it promptly after receipt of written notice from the DTA Project Manager to do so unless the DTA Project Manager has previously given the Contractor written acceptance of such condition. The DTA Project Manager or designee will give written notice promptly after discovery of the condition. If the Contractor fails to correct non-confirming work within a reasonable time, the DTA may correct the work and withhold the cost of such corrected work from payments to the Contractor.

H.13 The one-year Warranty period for corrected of work shall be extended to one year after corrections are completed by the Contractor.

H.14 The Contractor will bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, caused by the Contractor's correction or removal of work that is not in accordance with the requirements of the Contract.

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H.15 Nothing herein shall be construed to establish a period of limitation with respect to other obligations the Contractor might have under this Contract. Establishment of the one-year period for correction of work relates only to the specific obligation of the Contractor to correct the work and has no relationship to the time within which the obligation to comply with the Contract documents may be sought to be enforced, not to the time within which proceedings may be commenced to establish the Contractor's obligations other than specifically to correct the work.

H.16 If the DTA Project Manager prefers to accept work not in conformance with the requirements herein, the DTA Project Manager may do so instead of requiring its removal and correction, in which case, the Contract sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

I. TERMINATION

I.1 Termination by the DTA for Cause

I.1.1 The DTA may terminate this Contract if the Contractor:

- a. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- b. Fails to make payment to subcontractors for services, materials or labor on the project;
- c. persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- d. otherwise is guilty of breach of a provision of the Contract documents.

I.1.2 When any of the above reasons exist, the DTA may, without prejudice to any other rights or remedies of the DTA, and after giving seven days written notice to the Contractor and any sureties, as applicable, terminate this Contract, and may, subject to any prior rights of the surety:

- a. Take possession of the project and all materials, equipment, tools and construction equipment owned by the Contractor and finish the work by whatever reasonable method the DTA may deem expedient. Upon request of the Contractor, the DTA will furnish a detailed accounting of the costs incurred by the DTA to finish the work.

I.1.3 When the DTA terminates the Contract for one of the reasons above, the Contractor shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Contract exceeds the cost of finishing the work and other damages incurred by the DTA, such excess will be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor will pay the difference to the DTA.

I.2 Suspension for convenience. The DTA may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time that the DTA may determine. The Contract sum and timeline shall be adjusted for increases in the cost and time caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- a. that performance is, was or would have been so suspended, delayed or interrupted by another cause that the Contractor is responsible for;
- b. that an equitable adjustment is made or denied under another provision of the Contract.

I.3 Termination for convenience.

I.3.1 The DTA may, at any time, terminate the Contract for the DTA's convenience without cause. Upon receipt of written notice from the DTA General Manager, the Contractor shall:

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- a. cease operations as directed by the notice
- b. take action necessary , or that the DTA may direct, for the protection and preservation of the work, and,
- c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and into no further contracts and purchase orders.

I.3.2 In the event of termination for the DTA's convenience prior to commencement of construction, the Contractor shall be entitled to receive payment for design services performed, costs incurred by reason of termination. In case of termination for the DTA's convenience after commencement of construction, the Contractor shall be entitled to receive payment for work executed and costs incurred by reason of such termination.

J. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

J.1 This project has a Disadvantage Business Enterprise (%DBE+) goal of five percent (5%). In connection with the performance of this Contract, the Contractor shall cooperate with the DTA in meeting its commitments and goals with regard to the utilization of small and disadvantaged businesses, and shall use its best efforts to ensure that small and disadvantaged businesses shall have the opportunity to compete for and participate in subcontract work under this Contract.

J1.1 To be considered responsive under this Contract, the Contractor agrees to make reasonable efforts to encourage participation of small business enterprises (%SBE+) and DBEs through the use of several or all of the following non-exclusive methods to attract SBEs and DBEs:

- a. Unbundling the project to make it more accessible to DBEs and SBEs.
- b. Ensuring that DBEs and SBEs are included on mailing lists for potential bidders.
- c. Providing bid information in languages other than English where appropriate.
- d. Ensure that Contract solicitations do not contain unnecessary restrictive requirements.
- e. Waive bond requirements for DBEs or SBEs on subcontracts of \$75,000 or less.
- f. Waive retainage for DBEs or SBEs on subcontracts of \$75,000 or less.

J.2 Proposers must submit with their Proposals, written confirmation of their commitment to use DBE subcontractor(s), whose participation it submits to meet a Contract-specific goal, and identify all DBEs proposed to participate in the Contract, regardless of their percent of participation. The list of proposed DBEs will include:

- a. A description of how DBE firms will participate in this Contract. The DBE goal may be satisfied by a commitment to DBE participation in the Contract as a prime contractor, joint venture partner, subcontractor, trucker, or supplier.
- b. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the Proposer intends to credit toward the DBE goal. The complete legal business name as used for DBE certification shall be identified on the form.
- c. A description of the work to be performed or materials to be supplied by each DBE.
- d. The estimated dollar value of each DBE's participation in the Contract.
- e. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE business must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR Section 26.55.

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- J.3 All Proposers must submit in their Proposal written confirmation from the DBE(s) participating in the contract as provided in the prime contractor's commitment. J.4 If the list of proposed DBEs does not demonstrate meeting the Contract-specific goal, bidders must complete and submit a Good Faith Efforts Summary form with the Proposal.
- J.5 The DBE Liaison Officer will determine whether a Proposer made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR Section 26.53. The Proposer must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:
- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, unbundling or breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBE businesses. The bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE firms that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE firms to perform the work.
 - e. A Proposer, using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Proposer's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Contractor to perform the work of a Contract with its own organization does not relieve the Proposer of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBE firms if the price difference is excessive or unreasonable.
 - f. Not rejecting DBE firms as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes

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for rejection or non-solicitation of Proposals in the Contractor's efforts to meet the project goal.

- g. Making efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- h. Making efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials or related assistance or services.
- i. Effectively using the services of available minority/women, small business or veteran community organizations; minority/women, small business or veteran contractors groups; local, state and Federal offices of minority/women, small business or veteran business assistance, and other organizations as allowed on a case-by-care basis to provide assistance in the recruitment and placement of DBE firms.
- j. The performance of other Proposers in meeting the Contract. For example, when the apparent successful Proposer fails to meet the Contract goal, but others meet it, the DTA may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Proposer could have met the goal. If the apparent successful Proposer fails to meet the goal but meets or exceeds the average DBE participation obtained by other Proposers, the DTA may view this, in conjunction with other factors, as evidence of the apparent successful Proposer having made good faith efforts.

J.6 Any of the following conditions will constitute failure to meet the goal:

- a. The total percentage participation by DBE firms reflected on the list of proposed DBEs is less than the DBE goal set forth in the procurement.
- b. Firms on the list of proposed DBEs whose participation are being credited toward meeting the DBE goal, but are not certified by the MnUCP as DBEs as of the execution of the Contract.

J. 7 Administrative Reconsideration

J. 7.1 The DTA reconsideration official is Philip O. Pumphrey, DTA General Manager. Mr. Pumphrey is:

- a. Familiar with the DTA's DBE program and its requirements, and
- b. Does not have any involvement in any decisions that a bidder's good faith efforts were inadequate for which they are serving as reconsideration official.

J.7.2 Within five days of being informed by the DTA that it is not responsible because it has not documented sufficient good faith efforts, a Proposer may request administrative reconsideration. Proposer should make this request in writing to the following reconsideration official:

Philip O. Pumphrey, General Manager
Duluth Transit Authority
2406 West Michigan Street
Duluth, MN 55806
218-722-4426
ppumphrey@duluthtransit.com

J.7.3 As part of this reconsideration, the Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the DTA General Manager to discuss the issue of whether it met the goal or

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made adequate good faith efforts to do. The DTA General Manager will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the Proposer did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

J.7.4 If the DTA General Manager determines that the apparent successful Proposer has failed to meet the Good Faith Efforts required by the Contract, it will, before contract award, provide the Proposer an opportunity for administrative reconsideration. The Proposer will have the opportunity to

- a. Provide written documentation or argument concerning the issue of whether the Proposer met the goal or made adequate good faith efforts to do so.
- b. Meet in person with the DTA General manager to discuss the issue of whether the Proposer met the goal or made adequate good faith efforts to do so.

J.7.5 The DTA will send the Proposer a written decision on its reconsideration, explaining the basis of whether it met the goal or made adequate good faith efforts to do so.

J.7.6 In accordance with 49 CFR Section 26.53, the result of the DTA's reconsideration process is not subject to administrative appeal to the U.S. Department of Transportation.

J.8 Good Faith Efforts when a DBE is Replaced on a Contract.

- a. The DTA requires that prime Contractors not terminate for convenience DBE subcontractors listed on the list of proposed DBE firms (or an approved substitute DBE) and then perform the work of the terminated subcontractor with its own forces or those of any affiliate without prior written consent of the DTA's DBE Liaison Officer.
- b. If a DBE subcontractor is terminated or fails to complete its work on a contract for any reason, the Contractor must make good faith efforts to find another DBE subcontractor or substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract-specific goal.
- c. The good faith efforts requirement also apply to DBE Proposer as a prime Contractor. The work to be performed with its own workforce as well as work committed to DBE subcontractors and suppliers will count toward the Contract-specific goal.

J.9 In accordance with 49 CFR Section 26.13, the Contractor assures that:

The contractor, sub recipient 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 the recipient 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.

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J.10 Alternative Dispute Resolution. The Contractor is required to employ alternative dispute resolution methods for disputes between the Contractor and DBE subcontractors. The Contractor must notify the DTA Procurement Manager of any disputes that may involve withholding payment to a DBE subcontractor, and may not withhold payment to a DBE subcontractor without advance written consent of the DTA DBE Liaison Officer. Any delay or postponement of payment among the parties may take play only for good cause.

J.11 . Counting DBE Participation. The DTA will count DBE participation toward the overall Contract goal as provided in 49 CFR Section 26.55:

In accordance with 49 CFR Section 26.55, the DTA will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. If a firm is not currently certified as a DBE in accordance with the standards of Subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR Section 26.87(j).
2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
3. The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
4. When a DBE or participates in a contract, the value of the work actually performed will be counted as follows:
 - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR Part 26.55) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided that the DTA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, the DTA will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals. The DTA will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
 - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the DTA will

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evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the DTA must examine similar transactions, particularly those in which DBEs do not participate.

- b. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DTA must presume that it is not performing a commercially useful function.
 - c. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. The DTA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - d. The DTA's decisions on matters of whether a DBE performs a commercially useful function are subject to review by the concerned operating administration, but is not subject to an administrative appeal to FTA.
6. The DTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The S/DB must itself own and operate at least one fully licensed, insured, and operational truck used on its contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - f. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm.
7. The DTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a. The DTA will count one hundred percent (100%) of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles,

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or equipment required under the contract and of the general character described in the specifications.

- b. The DTA will count sixty percent (60%) of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
8. To be a regular dealer, the firm must be an established, regular business that engages, as its principle business and under its own name, in the purchase and sale or lease of the products in question.
9. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR Section 26.55(e)(2)(ii)(B) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
10. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR Section 26.55(e)(2)(ii)(C).
11. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the DTA will count the entire amount of fees or commissions charged for assistance in the procurement of materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site toward DBE goals, provided that the DTA has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The DTA will not count any portion of the cost of the materials and supplies themselves toward the DBE goal however.

K. RETAINAGE, JOINT CHECKS

K.1 The DTA will withhold five percent (5%) retainage on invoiced amounts until the project is completed and accepted by the DTA.

K.2 Retainage of DBE subcontractors. The Contractor will not withhold retainage from DBE subcontractor with a subcontract value of less than \$75,000. Retainage withheld from DBE contractors shall be separately reported in the pay application, and shall be paid promptly within ten days of payment for the pay application by the DTA to the Contractor. The DTA may withhold subsequent payments to the Contractor until the Contractor provides documentation that the subcontractors have been paid for work covered under previous applications for payment.

The DTA may, consistent with regulations and applicable state and local law, implement other mechanisms at its discretion to ensure that SBEs and DBEs and other subcontractors are fully and promptly paid.

K.3 Contractors who wish to use joint check arrangements with subcontractors must obtain prior written approval from the DTA DBE Liaison Officer. The Contractor must have a written agreement with the SBE or DBE in a form acceptable to the DTA containing all information concerning the

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parties obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.

1. Payments to a DBE subcontractor or supplier made by a prime contractor, subcontractor or DBE in the form of a cashier's check, bank check or other alternate payment form (including cash) must be reviewed and approved by the DTA prior to payment.
2. Prime contractors and/or subcontractors utilizing joint checks must make the ability to use joint checks available to all subcontractors, (DBEs and non-DBEs.)
3. In order to facilitate the independence of the subcontractor, the use of joint checks should be limited to procurement of specific materials and not a long-term, open-ended arrangement.
4. Joint checks issued by the prime contractor and/or subcontractor must be delivered or mailed to the DBE for presentment and payment to the DBE's suppliers or subcontractors. Prime contractors or non-DBE contractors should not make payment directly to the supplier or subcontractor.
5. The DTA reserves the right to reject requests for joint check arrangements at any time, and/or to cancel such arrangements as it deems necessary.

K.4 Noncompliance by the Contractor with the DBE requirements herein constitute a breach of Contract and may result in termination of the Contract, liquidated damages or other appropriate remedy as set forth in section 6.5.1 of the DTA DBE Program.

L. PAYMENTS TO DBES AND SBES.

The Contractor is required to submit, on a monthly basis, evidence of actual payments to each DBE or SBE listed on the Contract. The evidence will consist of a summary of subcontracts awarded and paid report, signed affidavits, copies of checks or other such documentation the DTA deems necessary to determine prompt payment compliance.

The DTA Procurement Manager will review and monitor the amount actually paid to each DBE and non-DBE.

M. COST PROPOSAL

M.1 Proposer shall submit a Guaranteed Maximum Price (~~%GMP+~~) for the work contemplated herein. All costs shall be included in the GMP, including costs for designing the system, all materials, labor, permits, overhead, and all other items to complete a turnkey fuel storage system.

M.2. The Cost Proposal shall be in a separate, sealed envelope with the Proposer's name and clearly marked ~~%Cost Proposal+~~.

M.3 Respondent's Cost Proposal shall include all incidental costs such as costs for copies, miscellaneous supplies, telephone expenses, etc. No additional costs will be permitted for these items.

M.4 Costs for travel to and from meetings shall be included in the base Cost Proposal. **No per diem expenses will be permitted.** Compensation for additional meetings will be evaluated and approved if reasonable at the time of request by the DTA Project Manager.

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M.5 Included in the Cost Proposal shall be the Proposer's Allowance request for contaminated soil removal and other components of the project that are not able to be predicted until the tanks are uncovered.

M.6 Proposer shall also include a cost breakdown of the proposed equipment by cost of materials, overhead and profit, along with technical specifications of the proposed equipment. Overhead and profit information will be kept confidential in accordance with the Minnesota Data Practices Act.

Section 7 PROPOSAL EVALUATION

PROPOSAL RESPONSES MUST INCLUDE:

1. Provide the Proposer's full company name and address, indicate main contact people with titles and phone numbers and email contact information, Federal I.D. number, DUNS number, and Minnesota tax I.D. number (if applicable), along with the names of the individual(s) to be directly responsible for providing services under the Contract. Include a summary of prior experience and educational training.
2. A summary of previous work conducted by the Proposer and the individuals directly responsible for providing services similar in scope to that requested here, along with references.
3. The names of subcontractors (firms and individuals) who will assist in performing the required and a list of examples of similar projects performed by the proposed staff for this project.
4. A list of current projects under the direct management of the Proposer.
5. Technical Specifications for the proposed Aboveground Storage Tanks, including warranty provisions.
6. A proposed schedule/timeline.
7. A signed Proposal form and required certificates.
8. A Cost Proposal in a separate sealed envelope.
9. DBE documentation as required herein.

PROPOSAL EVALUATION:

All Proposals received by the deadline will be evaluated by the designated selection committee members. A total of up to 50 points will be awarded and weighted by the respective categories.

The DTA reserves the right to award on the basis of initial Proposal submittals without any negotiations or discussions.

The factors and weighting on which proposals will be judged are:

- | | |
|---|-----|
| • Qualifications and ability to perform needed services | 40% |
| • Proposed schedule | 20% |
| • Quality and cost of proposed materials | 20% |
| • References | 15% |
| • Other Matters | 5% |

It is anticipated that the evaluation and selection will be completed by June 24, 2020. The DTA may request clarifications to the Proposer's submittal, or at the DTA's option, interviews may be required before final evaluations are completed.

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Qualifications and ability to perform needed services

Proposer must have specific experience with all phases of supplying and installing Fuel Tank Storage systems. The Proposer's Project Manager's experience must be within the past five years and be similar in scope and objective with this project.

Proposed Schedule

The Proposer should provide a proposed project schedule, provide a list of current projects in process and demonstrate sufficient capacity to perform the projects related tasks within the proposed schedule.

Quality and Cost of Proposed Materials

Proposed materials must be commercial grade, reasonably priced products that best meet the needs of the DTA.

References

Proposer must provide a minimum of three references, including contact person, telephone number and email address.

Other Matters

Other matters may include, but are not limited to, DBE participation, completeness of proposal, Proposer's performance on prior DTA contracts, use and qualifications of subcontractors, or other matters as determined by the Evaluation Committee.

EVALUATION OF THE COST PROPOSAL

Evaluation of the Cost Proposal shall be on the following basis:

Unacceptable, Marginal, Acceptable, Highly Acceptable, or Outstanding based on the technical merits of the Proposal and the Project Budget.

All costs related to the Proposal will be evaluated. 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 Cost Proposal if doing so would not be in the best interests of the DTA.

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Section 8.**WAGE REQUIREMENTS**

1. This contract is subject to the requirements of 49 U.S.C. §5333(a), the Davis-Bacon Act, the U.S. Department of Labor Fair Labor Standards Act, and the implementing regulations of the Department of Labor at 29 CFR Part 5, and Minnesota Statute 177.41 and 177.43, and the rates as set by the MN Department of Labor and Industry. The Contractor shall comply with and assure compliance with all applicable wage regulations, and shall not cause the Owners to be in violation of same.
2. The Contractor hereby agrees that all persons employed by it in the performance of work covered by prevailing wage classifications shall be paid wages which are not less than the prevailing wage rates which are attached to this contract and incorporated herein by reference.
3. The Contractor hereby agrees to keep and to require all subcontractors to keep full and accurate records for a period of not less than six (6) years, clearly indicating the name and trade or occupation of every laborer, worker or mechanic employed by him in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefore.
4. The Owner shall post any applicable prevailing wage determinations at the project site and/or at a place normally used to post public notices. The Contractor is responsible for providing the prevailing wage scale as provided in the contract at the job site to all subcontractors. These hours, rates and classifications must be posted on the project by the Contractor in at least one conspicuous place for the information of employees and all employees of subcontractor(s) working on the project.
5. Certified WEEKLY payroll reports are required and are to be submitted to the Duluth Transit Authority for all Contractor and subcontractor covered work in accordance with Duluth Transit Authority Certified Payroll Checklist.
6. Overtime Basis
All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be paid at a rate of one and one half (1 ½) times the basic hourly rate.
7. The Contractor is required to pay the highest of the two wage scales.

POSTED WAGE SCALE

Department of Labor General Decision Number MN 20200129 Building Prevailing Wage Decision dated 5/15/2020 and MN 20200040 Heavy Construction Prevailing Wage Decision dated 5/15/2020 is attached and incorporated herein. Wage decisions are subject to change due to lock-in rules and revisions near the bid opening.

Minnesota Department of Labor and Industry Prevailing Wages for State-funded Construction Projects, Construction Type, Commercial, County Number 69, St. Louis County, revised 1-27-2020 is attached and incorporated herein.

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"General Decision Number: MN20200129 05/15/2020

Superseded General Decision Number: MN20190129

State: Minnesota

Construction Type: Building

County: St Louis County in Minnesota.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available

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at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	05/15/2020

ASBE0034-001	06/01/2019	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....			
		\$ 38.15	33.40

BOIL0647-008	03/01/2018	Rates	Fringes
BOILERMAKER.....			
		\$ 37.22	27.14

BRMN0001-010	05/01/2018	Rates	Fringes
BRICKLAYER.....			
		\$ 34.99	24.64

BRMN0001-019	05/01/2018	Rates	Fringes
TILE FINISHER.....			
		\$ 25.13	5.54
TILE SETTER.....			
		\$ 25.89	24.34

CARP0361-008	06/01/2018	Rates	Fringes
CARPENTER (Includes Drywall Hanging, and Form Work, and Excludes Soft Floor Layer).....			
		\$ 33.60	19.03
SOFT FLOOR LAYER.....			
		\$ 33.25	16.94

ELEC0242-002	06/02/2019	Rates	Fringes
ELECTRICIAN.....			
		\$ 38.46	27.13

ENGI0049-019	05/01/2019	Rates	Fringes
POWER EQUIPMENT OPERATOR			
		Bulldozer.....	\$ 40.08 20.55
		Crane.....	\$ 41.84 20.55
		Drill.....	\$ 40.08 20.55
		Forklift.....	\$ 40.08 20.55
		Loader.....	\$ 40.08 20.55

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Oiler.....	\$ 37.45	20.55
Roller.....	\$ 40.08	20.55

* IRON0512-025 05/03/2020	Rates	Fringes
IRONWORKER (Structural and Reinforcing).....	\$ 33.99	30.70

LABO1091-025 05/01/2018	Rates	Fringes
LABORER		
Asbestos Abatement (Removal from Ceilings, Floors, and Walls).....	\$ 30.83	18.70
Common or General.....	\$ 28.04	16.17
Mason Tender - Brick/Cement/Concrete.....	\$ 27.99	15.32
Pipelayer.....	\$ 35.68	16.92

PAIN0106-007 05/01/2017	Rates	Fringes
GLAZIER.....	\$ 30.58	18.02

PAIN0106-009 05/01/2017	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 30.33	17.27

PAIN0386-010 05/01/2014	Rates	Fringes
PAINTER (Spray).....	\$ 25.08	13.99

PLAS0633-008 05/01/2019	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER....	\$ 33.41	19.33

PLAS0633-011 05/01/2019	Rates	Fringes
PLASTERER.....	\$ 26.47	15.28

PLUM0011-007 07/03/2018	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe Installation and Excludes HVAC Unit		

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Installation).....	\$ 34.59	17.34
PLUMBER (Excludes HVAC Pipe and Unit Installation).....	\$ 34.59	17.34

ROOF0096-019 07/01/2019	Rates	Fringes
ROOFER.....	\$ 34.15	17.97

SHEE0010-034 04/30/2018	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct and Unit Installation).....	\$ 33.75	27.21

* UAVG-MN-0024 01/01/2019	Rates	Fringes
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 36.89	20.30

* UAVG-MN-0025 01/01/2019	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 29.50	17.64

SUMN2015-064 06/22/2018	Rates	Fringes
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 32.03	14.80

TRUCK DRIVER: Dump Truck.....	\$ 23.43	12.33
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide

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employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of

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the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate

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that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

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"General Decision Number: MN20200040 05/15/2020

Superseded General Decision Number: MN20190040

State: Minnesota

Construction Type: Heavy

County: St Louis County in Minnesota.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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Modification Number	Publication Date
0	01/03/2020
1	02/14/2020
2	05/15/2020

BOIL0647-004 03/01/2018

	Rates	Fringes
BOILERMAKER.....	\$ 37.22	27.14

CARP0361-020 05/01/2019

ST LOUIS COUNTY (Southern 1/3 including Cotton, Floodwood, Fond Du Lac, and Proctor)

	Rates	Fringes
CARPENTER (Including Form Work).....	\$ 36.35	22.08

CARP0361-021 05/01/2019

ST LOUIS (Duluth)

	Rates	Fringes
CARPENTER (Including Form Work).....	\$ 36.35	22.08

CARP0606-010 05/01/2019

ST LOUIS COUNTY (Northeast 2/3 including Cook, Cusson, Ely; and Western part including Chisholm, Greaney, and Orr)

	Rates	Fringes
CARPENTER (Including Form Work).....	\$ 36.35	22.08

ELEC0242-012 06/02/2019

ST. LOUIS (South part bounded on the north by the north line of Kelsey Township extended east & west)

	Rates	Fringes
ELECTRICIAN.....	\$ 38.46	27.13

ELEC0294-006 06/02/2019

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ST. LOUIS (North part bounded on the south by the south line of Ellsburg Township, extended east & west)

	Rates	Fringes
ELECTRICIAN.....	\$ 40.66	28.91

ENGI0049-064 05/01/2019

	Rates	Fringes
OPERATOR: Power Equipment		
Group 2.....	\$ 38.64	20.50
Group 3.....	\$ 38.09	20.50
Group 4.....	\$ 37.79	20.50
Group 5.....	\$ 34.75	20.50
Group 6.....	\$ 33.54	20.50

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 2: Crane with over 135' Boom, excluding jib; Dragline & Hydraulic Backhoe with shovel-type controls, 3 cubic yards and over; Grader/Blade finishing earthwork and bituminous.

GROUP 3: Dragline & Hydraulic Backhoe with shovel-type controls up to 3 cubic yards; Loader 5 cu yd and over; Mechanic; Tandem Scraper; Truck Crane; Crawler Crane

GROUP 4: Bituminous Roller 8 tons & over; Crusher/Crushing Plant; Drill Rig; Elevating Grader; Loader over 1 cu yd; Grader; Pump; Scraper up; to 32 cu yd; Farm Tractor with Backhoe attachment; Skid Steer Loader over 1 cu yd with Backhoe attachment; Bulldozer over 50 hp.

GROUP 5: Bituminous Roller under 8 tons; Bituminous Rubber Tire Roller; Loader up to 1 cu yd; Bulldozer 50 hp or less.

GROUP 6: Oiler; Self-Propelled Vibrating Packer 35 hp and

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over.

CRANE OVER 135' BOOM, EXCLUDING JIB - \$.25 PREMIUM;

CRANE OVER 200' BOOM, EXCLUDING JIB - \$.50 PREMIUM

UNDERGROUND WORK:

TUNNELS, SHAFTS, ETC. - \$.25 PREMIUM

UNDER AIR PRESSURE - \$.50 PREMIUM

HAZARDOUS WASTE PROJECTS (PPE Required):

LEVEL A - \$1.25 PREMIUM

LEVEL B - \$.90 PREMIUM

LEVEL C - \$.60 PREMIUM

* IRON0512-028 05/03/2020

	Rates	Fringes
IRONWORKER, STRUCTURAL AND REINFORCING.....	\$ 33.99	30.70

LABO1091-006 05/01/2019 ST LOUIS (South of T. 55 N)

	Rates	Fringes
LABORERS		
(1) Common or General.....	\$ 34.28	17.77
(2) Mason Tender		
Cement/Concrete.....	\$ 34.48	17.77
(6) Pipe Layer.....	\$ 36.78	17.77

LABO1091-007 05/01/2019 SOUTHERN ST. LOUIS COUNTY

	Rates	Fringes
LABORER		
Common or General (Natural Gas Pipeline only).....	\$ 34.28	17.77

LABO1097-002 05/01/2018 NORTHERN ST. LOUIS COUNTY

Rates Fringes

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LABORER

Common or General (Natural
Gas Pipeline only).....\$ 32.09 18.01

LABO1097-005 05/01/2018 ST LOUIS (North of T. 55 N)

Rates Fringes

LABORERS

(1) Common or General.....\$ 32.09 18.01

(2) Mason Tender

Cement/Concrete.....\$ 32.29 18.01

(6) Pipe Layer.....\$ 34.59 18.01

PLAS0633-036 05/01/2019 ST. LOUIS COUNTY (North of T 55N)

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 36.10 19.83

PLAS0633-039 05/01/2019 ST. LOUIS COUNTY (South of T 55N)

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 36.10 19.83

TEAM0160-018 05/01/2019 Rates Fringes

TRUCK DRIVER (DUMP)

(1) Articulated Dump Truck..\$ 33.25 19.01

(2) 3 Axles/4 Axles; 5

Axles receive \$0.30

additional per hour.....\$ 32.70 19.01

(3) Tandem Axles; & Single

Axles.....\$ 32.60 19.01

SUMN2009-072 09/28/2009 Rates Fringes

LABORER: Landscape.....\$ 12.88 4.61

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

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A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted

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because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor

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200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

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**MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED
CONSTRUCTION PROJECTS**

 **THIS NOTICE MUST BE POSTED ON THE JOBSITE IN A CONSPICUOUS PLACE**

Construction Type: Commercial**County Number: 69**

County Name: ST. LOUIS

Effective: 2019-12-16 Revised: 2020-01-27

This project is covered by Minnesota prevailing wage statutes. Wage rates listed below are the minimum hourly rates to be paid on this project.

All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be paid at a rate of one and one half (1 1/2) times the basic hourly rate.

Violations should be reported to:

Department of Labor and Industry
Prevailing Wage Section
443 Lafayette Road N
St Paul, MN 55155
(651) 284-5091
DLI.PrevWage@state.mn.us

* Indicates that adjacent county rates were used for the labor class listed.

County: ST. LOUIS (69)

<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
LABORERS (101 - 112) (SPECIAL CRAFTS 701 - 730)				
101 LABORER, COMMON (GENERAL LABOR WORK)	2019-12-16	26.52	19.29	45.81
102 LABORER, SKILLED (ASSISTING SKILLED CRAFT JOURNEYMAN)	2019-12-16	26.52	19.29	45.81
103 LABORER, LANDSCAPING (GARDENER, SOD LAYER AND NURSERY OPERATOR)	2019-12-16	24.00	16.96	40.96
104* FLAG PERSON	2019-12-16	26.52	19.29	45.81
105* WATCH PERSON	FOR RATE CALL 651-284-5091 OR EMAIL DLI.PREVVAGE@STATE.MN.US			
106 BLASTER	2019-12-16	27.22	19.29	46.51
107 PIPELAYER (WATER, SEWER AND GAS)	2019-12-16	34.28	20.27	54.55

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
108 TUNNEL MINER	FOR RATE CALL 651-284-5091 OR EMAIL DLI.PREVVAGE@STATE.MN.US			
109 UNDERGROUND AND OPEN DITCH LABORER (EIGHT FEET BELOW STARTING GRADE LEVEL)	2019-12-16	32.48	20.27	52.75
110 SURVEY FIELD TECHNICIAN (OPERATE TOTAL STATION, GPS RECEIVER, LEVEL, ROD OR RANGE POLES, STEEL TAPE MEASUREMENT; MARK AND DRIVE STAKES; HAND OR POWER DIGGING FOR AND IDENTIFICATION OF MARKERS OR MONUMENTS; PERFORM AND CHECK CALCULATIONS; REVIEW AND UNDERSTAND CONSTRUCTION PLANS AND LAND SURVEY MATERIALS). THIS CLASSIFICATION DOES NOT APPLY TO THE WORK PERFORMED ON A PREVAILING WAGE PROJECT BY A LAND SURVEYOR WHO IS LICENSED PURSUANT TO MINNESOTA STATUTES, SECTIONS 326.02 TO 326.15.	2019-12-16	26.52	19.29	45.81
111 TRAFFIC CONTROL PERSON (TEMPORARY SIGNAGE)	FOR RATE CALL 651-284-5091 OR EMAIL DLI.PREVVAGE@STATE.MN.US			
SPECIAL EQUIPMENT (201 - 204)				
201* ARTICULATED HAULER	2019-12-16	38.13	20.30	58.43
202 BOOM TRUCK	2019-12-16	40.08	20.55	60.63
	2020-05-01	40.93	21.70	62.63
203* LANDSCAPING EQUIPMENT, INCLUDES HYDRO SEEDER OR MULCHER, SOD ROLLER, FARM TRACTOR WITH ATTACHMENT SPECIFICALLY SEEDING, SODDING, OR PLANT, AND TWO-FRAMED FORKLIFT (EXCLUDING FRONT, POSIT-TRACK, AND SKID STEER LOADERS), NO EARTHWORK OR GRADING FOR ELEVATIONS	2019-12-16	24.00	16.96	40.96
204 OFF-ROAD TRUCK	2019-12-16	32.85	19.00	51.85
	2020-05-01	33.65	19.95	53.60
205 PAVEMENT MARKING OR MARKING REMOVAL EQUIPMENT (ONE OR TWO PERSON OPERATORS); SELF-PROPELLED TRUCK OR TRAILER MOUNTED UNITS.	2019-12-16	26.91	19.87	46.78
HIGHWAY/HEAVY POWER EQUIPMENT OPERATOR				
GROUP 2 *	2019-12-16	35.54	19.70	55.24
306 GRADER OR MOTOR PATROL				
308 TUGBOAT 100 H.P. AND OVER WHEN LICENSE REQUIRED (HIGHWAY AND HEAVY ONLY)				
GROUP 3	2019-12-16	38.09	20.50	58.59
	2020-05-01	38.94	21.40	60.34
309 ASPHALT BITUMINOUS STABILIZER PLANT				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
310 CABLEWAY				
312 DERRICK (GUY OR STIFFLEG)(POWER)(SKIDS OR STATIONARY) (HIGHWAY AND HEAVY ONLY)				
314 DREDGE OR ENGINEERS, DREDGE (POWER) AND ENGINEER				
316 LOCOMOTIVE CRANE OPERATOR				
320 TANDEM SCRAPER				
322 TUGBOAT 100 H.P AND OVER (HIGHWAY AND HEAVY ONLY)				
GROUP 4	2019-12-16	37.79	20.50	58.29
	2020-05-01	38.64	21.40	60.04
323 AIR TRACK ROCK DRILL				
324 AUTOMATIC ROAD MACHINE (CMI OR SIMILAR) (HIGHWAY AND HEAVY ONLY)				
325 BACKFILLER OPERATOR				
327 BITUMINOUS ROLLERS, RUBBER TIRED OR STEEL DRUMMED (EIGHT TONS AND OVER)				
328 BITUMINOUS SPREADER AND FINISHING MACHINES (POWER), INCLUDING PAVERS, MACRO SURFACING AND MICRO SURFACING, OR SIMILAR TYPES (OPERATOR AND SCREED PERSON)				
329 BROKK OR R.T.C. REMOTE CONTROL OR SIMILAR TYPE WITH ALL ATTACHMENTS				
330 CAT CHALLENGER TRACTORS OR SIMILAR TYPES PULLING ROCK WAGONS, BULLDOZERS AND SCRAPERS				
331 CHIP HARVESTER AND TREE CUTTER				
332 CONCRETE DISTRIBUTOR AND SPREADER FINISHING MACHINE, LONGITUDINAL FLOAT, JOINT MACHINE, AND SPRAY MACHINE				
334 CONCRETE MOBIL (HIGHWAY AND HEAVY ONLY)				
335 CRUSHING PLANT (GRAVEL AND STONE) OR GRAVEL WASHING, CRUSHING AND SCREENING PLANT				
336 CURB MACHINE				
337 DIRECTIONAL BORING MACHINE				
338 DOPE MACHINE (PIPELINE)				
340 DUAL TRACTOR				
341 ELEVATING GRADER				
345 GPS REMOTE OPERATING OF EQUIPMENT				
347 HYDRAULIC TREE PLANTER				
348 LAUNCHER PERSON (TANKER PERSON OR PILOT LICENSE)				
349 LOCOMOTIVE (HIGHWAY AND HEAVY ONLY)				
350 MILLING, GRINDING, PLANNING, FINE GRADE, OR TRIMMER MACHINE				
352 PAVEMENT BREAKER OR TAMPING MACHINE (POWER DRIVEN) MIGHTY MITE OR SIMILAR TYPE				
354 PIPELINE WRAPPING, CLEANING OR BENDING MACHINE				
356 POWER ACTUATED HORIZONTAL BORING MACHINE, OVER SIX INCHES				
357 PUGMILL				
359 RUBBER-TIRED FARM TRACTOR WITH BACKHOE INCLUDING ATTACHMENTS (HIGHWAY AND HEAVY ONLY)				
360 SCRAPER				
361 SELF-PROPELLED SOIL STABILIZER				
362 SLIP FORM (POWER DRIVEN) (PAVING)				
363 TIE TAMPER AND BALLAST MACHINE				
365 TRACTOR, WHEEL TYPE, OVER 50 H.P. WITH PTO UNRELATED TO LANDSCAPING (HIGHWAY AND HEAVY ONLY)				
367 TUB GRINDER, MORBARK, OR SIMILAR TYPE				
GROUP 5 *	2019-12-16	30.50	18.90	49.40
370 BITUMINOUS ROLLER (UNDER EIGHT TONS)				
371 CONCRETE SAW (MULTIPLE BLADE) (POWER OPERATED)				
372 FORM TRENCH DIGGER (POWER)				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
375 HYDRAULIC LOG SPLITTER				
376 LOADER (BARBER GREENE OR SIMILAR TYPE)				
377 POST HOLE DRIVING MACHINE/POST HOLE AUGER				
379 POWER ACTUATED JACK				
381 SELF-PROPELLED CHIP SPREADER (FLAHERTY OR SIMILAR)				
382 SHEEP FOOT COMPACTOR WITH BLADE . 200 H.P. AND OVER				
383 SHOULDERING MACHINE (POWER) APSCO OR SIMILAR TYPE INCLUDING SELF-PROPELLED SAND AND CHIP SPREADER				
384 STUMP CHIPPER AND TREE CHIPPER				
385 TREE FARMER (MACHINE)				
GROUP 6 *	2019-12-16	33.54	20.50	54.04
	2020-05-01	34.39	21.40	55.79
387 CAT, CHALLENGER, OR SIMILAR TYPE OF TRACTORS, WHEN PULLING DISK OR ROLLER				
389 DREDGE DECK HAND				
391 GRAVEL SCREENING PLANT (PORTABLE NOT CRUSHING OR WASHING)				
393 LEVER PERSON				
395 POWER SWEEPER				
396 SHEEP FOOT ROLLER AND ROLLERS ON GRAVEL COMPACTION, INCLUDING VIBRATING ROLLERS				
397 TRACTOR, WHEEL TYPE, OVER 50 H.P., UNRELATED TO LANDSCAPING				
COMMERCIAL POWER EQUIPMENT OPERATOR				
GROUP 1	2019-12-16	43.59	20.55	64.14
	2020-05-01	44.44	21.70	66.14
501 HELICOPTER PILOT (COMMERCIAL CONSTRUCTION ONLY)				
502 TOWER CRANE 250 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
503 TRUCK CRAWLER CRANE WITH 200 FEET OF BOOM AND OVER, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				
GROUP 2 *	2019-12-16	43.25	20.55	63.80
	2020-05-01	44.10	21.70	65.80
504 CONCRETE PUMP WITH 50 METERS/164 FEET OF BOOM AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
505 PILE DRIVING WHEN THREE DRUMS IN USE (COMMERCIAL CONSTRUCTION ONLY)				
506 TOWER CRANE 200 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
507 TRUCK OR CRAWLER CRANE WITH 150 FEET OF BOOM UP TO AND NOT INCLUDING 200 FEET, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				
GROUP 3	2019-12-16	41.84	20.55	62.39
	2020-05-01	42.69	21.70	64.39
508 ALL-TERRAIN VEHICLE CRANES (COMMERCIAL CONSTRUCTION ONLY)				
509 CONCRETE PUMP 32-49 METERS/102-164 FEET (COMMERCIAL CONSTRUCTION ONLY)				
510 DERRICK (GUY & STIFFLEG) (COMMERCIAL CONSTRUCTION ONLY)				
511 STATIONARY TOWER CRANE UP TO 200 FEET				
512 SELF-ERECTING TOWER CRANE 100 FEET AND OVER MEASURED FROM BOOM FOOT PIN (COMMERCIAL CONSTRUCTION ONLY)				
513 TRAVELING TOWER CRANE (COMMERCIAL CONSTRUCTION ONLY)				
514 TRUCK OR CRAWLER CRANE UP TO AND NOT INCLUDING 150 FEET OF BOOM, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
GROUP 4	2019-12-16	41.50	20.55	62.05
	2020-05-01	42.35	21.70	64.05
515 CRAWLER BACKHOE INCLUDING ATTACHMENTS (COMMERCIAL CONSTRUCTION ONLY)				
516 FIREPERSON, CHIEF BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
517 HOIST ENGINEER (THREE DRUMS OR MORE) (COMMERCIAL CONSTRUCTION ONLY)				
518 LOCOMOTIVE (COMMERCIAL CONSTRUCTION ONLY)				
519 OVERHEAD CRANE (INSIDE BUILDING PERIMETER) (COMMERCIAL CONSTRUCTION ONLY)				
520 TRACTOR . BOOM TYPE (COMMERCIAL CONSTRUCTION ONLY)				
GROUP 5	2019-12-16	40.08	20.55	60.63
	2020-05-01	40.93	21.70	62.63
521 AIR COMPRESSOR 450 CFM OR OVER (TWO OR MORE MACHINES) (COMMERCIAL CONSTRUCTION ONLY)				
522 CONCRETE MIXER (COMMERCIAL CONSTRUCTION ONLY)				
523 CONCRETE PUMP UP TO 31 METERS/101 FEET OF BOOM				
524 DRILL RIGS, HEAVY ROTARY OR CHURN OR CABLE DRILL WHEN USED FOR CAISSON FOR ELEVATOR OR BUILDING CONSTRUCTION (COMMERCIAL CONSTRUCTION ONLY)				
525 FORKLIFT (COMMERCIAL CONSTRUCTION ONLY)				
526 FRONT END, SKID STEER 1 C YD AND OVER				
527 HOIST ENGINEER (ONE OR TWO DRUMS) (COMMERCIAL CONSTRUCTION ONLY)				
528 MECHANIC-WELDER (ON POWER EQUIPMENT) (COMMERCIAL CONSTRUCTION ONLY)				
529 POWER PLANT (100 KW AND OVER OR MULTIPLES EQUAL TO 100KW AND OVER) (COMMERCIAL CONSTRUCTION ONLY)				
530 PUMP OPERATOR AND/OR CONVEYOR (TWO OR MORE MACHINES) (COMMERCIAL CONSTRUCTION ONLY)				
531 SELF-ERECTING TOWER CRANE UNDER 100 FEET MEASURED FROM BOOM FOOT PIN (COMMERCIAL CONSTRUCTION ONLY)				
532 STRADDLE CARRIER (COMMERCIAL CONSTRUCTION ONLY)				
533 TRACTOR OVER D2 (COMMERCIAL CONSTRUCTION ONLY)				
534 WELL POINT PUMP (COMMERCIAL CONSTRUCTION ONLY)				
GROUP 6	2019-12-16	38.57	20.55	59.12
	2020-05-01	39.42	21.70	61.12
535 CONCRETE BATCH PLANT (COMMERCIAL CONSTRUCTION ONLY)				
536 FIREPERSON, FIRST CLASS BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
537 FRONT END, SKID STEER UP TO 1 C YD				
538 GUNITE MACHINE (COMMERCIAL CONSTRUCTION ONLY)				
539 TRACTOR OPERATOR D2 OR SIMILAR SIZE (COMMERCIAL CONSTRUCTION ONLY)				
540 TRENCHING MACHINE (SEWER, WATER, GAS) EXCLUDES WALK BEHIND TRENCHER				
GROUP 7	2019-12-16	37.45	20.55	58.00
	2020-05-01	38.30	21.70	60.00
541 AIR COMPRESSOR 600 CFM OR OVER (COMMERCIAL CONSTRUCTION ONLY)				
542 BRAKEPERSON (COMMERCIAL CONSTRUCTION ONLY)				
543 CONCRETE PUMP/PUMPCRETE OR COMPLACO TYPE (COMMERCIAL CONSTRUCTION ONLY)				
544 FIREPERSON, TEMPORARY HEAT SECOND CLASS BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
545 OILER (POWER SHOVEL, CRANE, TRUCK CRANE, DRAGLINE, CRUSHERS AND MILLING MACHINES, OR OTHER SIMILAR POWER EQUIPMENT) (COMMERCIAL CONSTRUCTION ONLY)				
546 PICK UP SWEEPER (ONE CUBIC YARD HOPPER CAPACITY) (COMMERCIAL CONSTRUCTION ONLY)				
547 PUMP AND/OR CONVEYOR (COMMERCIAL CONSTRUCTION ONLY)				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
GROUP 8	2019-12-16	35.44	20.55	55.99
	2020-05-01	36.29	21.70	57.99
548 ELEVATOR OPERATOR (COMMERCIAL CONSTRUCTION ONLY)				
549 GREASER (COMMERCIAL CONSTRUCTION ONLY)				
550 MECHANICAL SPACE HEATER (TEMPORARY HEAT NO BOILER LICENSE REQUIRED) (COMMERCIAL CONSTRUCTION ONLY)				
TRUCK DRIVERS				
GROUP 1 *	2019-12-16	32.85	19.00	51.85
	2020-05-01	33.65	19.95	53.60
601 MECHANIC . WELDER				
602 TRACTOR TRAILER DRIVER				
603 TRUCK DRIVER (HAULING MACHINERY INCLUDING OPERATION OF HAND AND POWER OPERATED WINCHES)				
GROUP 2	2019-12-16	29.70	16.60	46.30
604 FOUR OR MORE AXLE UNIT, STRAIGHT BODY TRUCK				
GROUP 3	2019-12-16	32.20	19.00	51.20
	2020-05-01	33.00	19.95	52.95
605 BITUMINOUS DISTRIBUTOR DRIVER				
606 BITUMINOUS DISTRIBUTOR (ONE PERSON OPERATION)				
607 THREE AXLE UNITS				
GROUP 4 *	2019-12-16	25.10	10.85	35.95
608 BITUMINOUS DISTRIBUTOR SPRAY OPERATOR (REAR AND OILER)				
609 DUMP PERSON				
610 GREASER				
611 PILOT CAR DRIVER				
612 RUBBER-TIRED, SELF-PROPELLED PACKER UNDER 8 TONS				
613 TWO AXLE UNIT				
614 SLURRY OPERATOR				
615 TANK TRUCK HELPER (GAS, OIL, ROAD OIL, AND WATER)				
616 TRACTOR OPERATOR, UNDER 50 H.P.				
SPECIAL CRAFTS				
701 HEATING AND FROST INSULATORS	2019-12-16	42.31	19.55	61.86
702 BOILERMAKERS	2019-12-16	38.33	27.43	65.76
703 BRICKLAYERS	2019-12-16	34.71	26.92	61.63
	2020-05-01	37.21	26.92	64.13
704 CARPENTERS	2019-12-16	31.10	20.58	51.68
705 CARPET LAYERS (LINOLEUM)	2019-12-16	33.63	18.56	52.19
	2020-05-01	35.68	18.56	54.24

**Duluth Transit Authority
Removal/Replacement of Diesel Fuel Storage Tanks**

041-20-0350.1

<u>LABOR CODE AND CLASS</u>		<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
706	CEMENT MASONS	2019-12-16	33.41	19.33	52.74
707	ELECTRICIANS	2019-12-16	38.44	27.12	65.56
		2020-05-31	40.04	27.84	67.88
708	ELEVATOR CONSTRUCTORS	2019-12-16	49.91	39.24	89.15
		2020-01-01	51.55	40.48	92.03
709	GLAZIERS	2019-12-16	31.69	20.65	52.34
710*	LATHERS	2019-12-16	31.44	18.43	49.87
712	IRONWORKERS	2019-12-16	33.19	29.40	62.59
		2020-05-01	35.29	29.40	64.69
714	MILLWRIGHT	2019-12-16	35.10	19.90	55.00
		2020-05-01	37.15	19.90	57.05
715	PAINTERS (INCLUDING HAND BRUSHED, HAND SPRAYED, AND THE TAPING OF PAVEMENT MARKINGS)	2019-12-16	31.39	19.99	51.38
716	PILEDRIIVER (INCLUDING VIBRATORY DRIVER OR EXTRACTOR FOR PILING AND SHEETING OPERATIONS)	2019-12-16	38.91	22.08	60.99
717	PIPEFITTERS . STEAMFITTERS	+\$200,000 2019-12-16	42.60	22.25	64.85
		-\$200,000 2019-12-16	39.90	21.25	61.15
718	PLASTERERS	2019-12-16	34.09	20.08	54.17
		2020-05-01	35.69	20.08	55.77
719	PLUMBERS	2019-12-16	41.02	22.03	63.05
720	ROOFER	2019-12-16	34.15	17.94	52.09
		2020-07-01	35.55	17.94	53.49
721	SHEET METAL WORKERS	2019-12-16	34.86	28.12	62.98
722	SPRINKLER FITTERS	2019-12-16	37.58	19.49	57.07
723	TERRAZZO WORKERS	2019-12-16	38.91	19.40	58.31
724	TILE SETTERS	2019-12-16	27.44	24.79	52.23
725	TILE FINISHERS	2019-12-16	19.70	20.38	40.08
726	DRYWALL TAPER	2019-12-16	31.99	19.99	51.98

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
727 WIRING SYSTEM TECHNICIAN	2019-12-16	40.17	17.63	57.80
	2020-07-01	41.42	17.63	59.05
728 WIRING SYSTEMS INSTALLER	2019-12-16	28.14	14.71	42.85
	2020-07-01	29.02	14.71	43.73
729 ASBESTOS ABATEMENT WORKER	2019-12-16	31.78	19.35	51.13
	2020-01-01	32.73	20.00	52.73
730 SIGN ERECTOR	2019-12-16	29.78	15.59	45.37

Duluth Transit Authority
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Attachment 2

Good Faith Efforts Form
Diesel Fuel Tank Removal/Replacement

TOTAL PRIME BID	\$
TOTAL DOLLARS COMMITTED TO NON-DBE'S (Not including Suppliers)	\$
TOTAL DOLLARS COMMITTED TO DBE SUPPLIERS (Total paid to DBE suppliers at 60%)	\$
WORK PERFORMED BY PRIME CONTRACTOR	\$
PERCENT OF WORK PERFORMED BY PRIME CONTRACTOR	%
TOTAL DBE PARTICIPATION REMAINING (Difference between DBE goal \$ and DBE commitment \$)	

PROPOSER'S NAME: _____
 Authorized Signature: _____
 Title: _____
 Date: _____

Attach MN DOT Office of Civil Rights Good Faith Efforts Consolidated Form, Parts D-G