



**Duluth Transit Authority**  
**REQUEST FOR BIDS**  
Transit Bus Driver Barrier

FROM: Duluth Transit Authority  
2402 West Michigan Street  
Duluth, MN 55806

DATE: May 6, 2020

PROJECT: Transit Bus Driver Barrier

You are invited to submit Bids to supply Transit Bus Driver Barriers to the Duluth Transit Authority (DTA) for up to 78 DTA transit vehicles.

Bids will be received until **Thursday, May 21, 2020, at 2:00 pm.**

***Bidding Information:***

1. Duluth Transit Authority (DTA) is seeking a per unit price from qualified vendors to supply and deliver Transit Bus Driver Barriers (Barriers). Bid Prices will be valid for a period of 90 days after the Bid opening.
2. Bid form must be signed by an authorized employee of the organization/company.
3. In submitting a Bid, Bidders agree that acceptance of any or all Bids within a thirty (30) day period constitutes a contract. Accepting a Bid for the initial order does not obligate the DTA to purchase additional quantities.
4. The initial quantity is up to seventy eight (78) barriers for four types of buses. DTA will purchase the Barriers no later than December 31, 2020.
5. The FTA is or will be providing federal assistance for this project in an estimated expected amount of up to \$450,000; the Catalog of Federal Domestic Assistance (CFDA) number is 20.507.
6. When accepted by and signed on behalf of Organization/Company, this pricing form and all relevant portions of the selected Vendor Bid, including any amendments thereto; the Bidder's representations and certifications submitted as part of its Bid; and any other relevant materials submitted by the Bidder as part of, or subsequent to submittal of its Bid shall form a binding contract between Duluth Transit Authority and the Bidder for provision of Transit Bus Driver Barriers pricing as specified therein.
7. Questions regarding this Request for Bids may be directed to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) or 218-623-0329.
8. The DTA is committed to ensuring that no person is excluded from participation in, or denied the benefits of its programs and services on the basis of race, creed, color, national origin, sex, age, disability, or veteran's status, and encourages the participation of small and disadvantaged business enterprises in the performance of this contract.
9. The DTA reserves the right to accept or reject any and/or all Bids in the interest of the DTA.
10. Contractor shall review the DTA's Vendor Code of Ethics, Organizational Conflict of Interest, and protest procedures on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).
11. All expenses for responding to this RFB shall be borne by the Bidder.
12. If only one Bid is received in response to this RFB, a detailed cost/price analysis may be requested of the Bidder. 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 Bidder must be prepared to provide, upon request, cost summaries of estimated costs (i.e. labor, equipment, overhead, supplies, etc.) and documentation supporting all cost elements.

13. This purchase is subject to the FTA Buy America requirements for purchase of \$150,000 or more of iron, steel, manufactured goods or rolling stock in an FTA assisted project. Contractor shall complete the certification herein with its submittal.
14. This purchase is subject to the approval of the DTA Board of Directors.
15. Bids are to be submitted via a pdf attachment in an email to [nbrown@duluthtransti.com](mailto:nbrown@duluthtransti.com) or in a sealed envelope delivered to the Duluth Transit Authority Procurement Manager, 2402 West Michigan Street, Duluth, MN 55806, on or before the due date and time herein. Time means local time in Duluth, Minnesota. Bids received after the due date and time will not be considered.

## **SECTION 2. TECHNICAL/SPECIAL SPECIFICATIONS, TRANSIT BUS DRIVER BARRIER**

1. The DTA is seeking qualified vendors to supply and deliver commercial grade Transit Bus Driver Barriers (~~Barriers~~) for up to seventy-eight DTA vehicles. The fleet consists of sixty three Gillig low floor 40-foot buses, four Gillig low floor 35-foot buses, one Gillig low floor 30-foot trolley, seven Proterra 40-foot low floor battery electric bus, and two Hometown Trolley 35-foot low floor trolleys. The DTA would also like one spare unit for a Gillig Heavy Duty bus.
2. Respondents must have at least two years-experience in manufacture and distribution of Transit Bus Driver Barriers, and must be able to provide three references upon request.
3. Prototypes or items in test production and formally announced for market availability will not be accepted.
4. The purpose of the Barriers is to act as a divider between the bus operator and passengers. The Barrier will serve as a shield for operator safety and to assist with social distancing during the COVID-19 pandemic.
5. This purchase does not include installation of the Barriers. They will be installed by DTA staff or a qualified third party contractor.
6. The Barrier must include a non-motorized door with a sliding window that permits unobstructed views of the curbside mirror, the passenger door and ADA ramp.
7. The Barrier must have anti-glare glass or plexiglass and minimize reflection from outside light sources. The glass or plexiglass must have a scratch resistant coating or other mechanism to minimize scratches on it. The Bidder shall provide details on the strength of the glass or plexiglass in the Barrier.
8. The Barrier must extend to the farebox and may not impede access to the farebox payment interface or vault door, or impede movement past the farebox for movement in and out of the driver seat.
9. The Barrier should ensure driver comfort and ease of movement in the bus operator area.
10. The sliding window must be easily operated from the driver's compartment, must have a lock on the inside to prevent it from opening while bus is in use, and must be easy to service.
11. The door latch must be commercial grade, easily operated and able to be secured from the interior of the driver compartment.

12. The mounting system must be compatible with the existing stanchions in the bus. The Bidder must provide a sturdy, secure mechanism to support and affix the Barrier properly within the vehicle to ensure optimal safety and longevity performance of the Barrier. The Barrier mounting system shall be designed to prevent the barrier from coming loose and falling onto the bus operator or the passengers, and shall detail how it mounts in a standard low-floor bus.
13. All mounting hardware must be included in the cost of the Barrier.
14. Barrier hinges must be maintenance free, preferably stainless steel piano hinges or approved equal, and extend the full height of the door and able to withstand a transit bus environment.
15. When closed, the Barrier must not interfere with Federal ADA access requirements for transit buses.
16. All materials and components of the Barrier shall meet the American National Standards Institute (ANSI) standards.
17. Bidders must include pictures and technical specifications of the proposed units, including the glass.
18. Bidder must include provisions for training DTA technicians on proper installation and preventative maintenance of the Barriers.
19. Warranty. The selected Vendor will provide a 1-year written product warranty, and shall include a copy of the warranty provisions with the Bid.
20. Bidders shall include a projected timeline for delivery of the Barriers.

**Section 3 Bid Form and Certificate**

NOTE: All Bids must be written, signed and transmitted via email in a .pdf attachment to nbrown@duluthtransit.com. **Return one copy of the Bid with Descriptive Literature**

ALL fees, delivery, and installation must be included. TAX: Federal Excise Tax Exemption Account No. 41740056K; The DTA is State and City Tax Exempted.

**Price per barrier for up to 69 Transit Bus Driver Barriers for Gillig Heavy Duty Buses and trolleys in accordance with the specifications herein, including delivery:**  
\$ \_\_\_\_\_ each

**Price per set for up to 7 Transit Bus Driver Barriers for Proterra Catalyst Battery electric buses in accordance with the specifications herein, including delivery:**  
\$ \_\_\_\_\_ each

**Price per set for up to 2 Transit Bus Driver Barriers for two 35-foot Hometown Trolleys in accordance with the specifications herein, including delivery:**  
\$ \_\_\_\_\_ each

Contractor must separately submit all details of proposed barriers, including materials, warranty, information, and timeline for delivery.

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Email (required): \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate A. AFFIDAVIT OF NONCOLUSION**

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

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

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

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

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

Additionally;

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

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

Certificate B. **DEBARRED BIDDERS**

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

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

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

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

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

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

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_, 20\_\_

**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: \_\_\_\_\_

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



**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 \_\_\_\_\_

## Section 4 Federal Transit Administration Contract Clauses

### **A.1 ACCESS TO RECORDS**

**49 U.S.C. § 5325(g)**

#### **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.4 BUY AMERICA REQUIREMENTS**

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

#### **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.

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**

#### **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.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)**

### **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;+
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**

### **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~~ Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, ~~41~~ C.F.R. Chapter 60, and Executive Order No. 11246, ~~Equal~~ 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 re 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~~ Age Discrimination in Employment Act, +29 C.F.R. Part 1625, the Age Discrimination Act if 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, ~~Nondiscrimination~~ 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**

### **Clause Language**

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.

### **Contractor Assurance**

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

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

### **DBE Participation**

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

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

### **DBE Participation Goal**

There is no DBE participation goal for this Contract.

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

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

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

**Applicability to Contracts**

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

**Clause Language**

**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 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**

**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.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**

**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**

**Clause Language**  
**Lobbying Restrictions**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, %Disclosure Form to Report Lobbying,+in accordance with its instructions.
  3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

**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 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.20 RECYCLED PRODUCTS**

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

**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

**Clause Language**

**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.

**Distacted 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 Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**A.25 TERMINATION**

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

**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 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)

**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 Transit Authority's direction or decisions made thereof.

**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.