



# **Duluth Transit Authority**

**REQUEST for PROPOSALS**

**FOR**

**Limited Site Investigation**

**March 10, 2021**

**Duluth Transit Authority**

2402 W. Michigan St - Duluth, MN 55806

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

email: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com)

## **Duluth Transit Authority Request for Proposals Limited Site Investigation**

The Duluth Transit Authority (DTA) is seeking qualified individuals or firms to perform a Limited Site Investigation for the DTA. Scope of work includes conducting field surveys, collecting and testing soil and water samples, preparing reports and all required documents in accordance with Minnesota Pollution Control Agency requirements.

Specifications are available at the DTA and may be emailed or mailed to prospective contractors. Contact 218-623-4329 or email: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com).

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. The DTA reserves the right to accept or reject any and/or all responses.

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## Section 1 General Conditions

### G-1 REQUEST FOR PROPOSALS

- a) Proposals are requested for a Limited Site Investigation at the Duluth Transit Authority Operations Center, 2402 West Michigan Street, Duluth, MN 55806.
- b) Proposals shall be on the proposed rates and costs for the project under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents.
- c) Proposal prices shall be good for ninety (90) days after the Proposal opening.
- d) The DTA shall not be under any obligation for payment of precontractual expenses, including expenses for preparing or submitting a Proposal in response to this request, negotiating with the DTA on any matter related to this Proposal, and/or other expenses incurred by the Proposer prior to the date of award.
- e) Proposals are due at **1:00 p.m. on Wednesday, March 24, 2021** to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) (preferred) or sealed in an enveloped ad mailed to Procurement Manager, Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
- f) The DTA will hold a virtual **pre-proposal conference** on **Wednesday, March 17, 2021**, at **10:00 a.m.** Attendance is not mandatory but strongly encouraged. Contact the Procurement Manager at 218-623-4329 or [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) for virtual meeting information.
- g) The DTA intends to award the contract to the responsible Proposer as early as March 25, 2021.
- h) Throughout these specifications the words equipment, materials, and work can be interpreted as interchangeable.

### G-2 INQUIRIES

All inquiries and other correspondence relating to this Request for Proposals shall be with the Procurement Manager via email, [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), or regular mail, Duluth Transit Authority, attention Procurement Manager, 2402 West Michigan Street, Duluth, MN 55806.

### G-3 DEFINITION OF TERMS

Whenever the following terms are used in these Proposal specifications, the intent and meaning of them shall be interpreted as follows:

- a) DTA, customer, buyer, or Operator shall mean the DTA.
- b) Project Manager shall mean Mark Ness for all work performed.
- c) Manufacturer, Vendor, Proposer, Offeror, Responder, Respondent, Contractor, or Consultant shall mean that firm submitting a responsive Proposal and subsequently receiving the contract award from the DTA as the Consultant as detailed in these specifications.

### G-4 SUBSTITUTIONS AND OR EQUAL

- a) Where proprietary names are used in these specifications, it is understood that they are followed by the words "or equal".
- b) Consultants and /or subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from the written,

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- documented request required by paragraph c) below. Where prior approval is called for in the specifications it means prior to Proposal opening.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager in writing no later than **2:00 p.m., Wednesday, March 17, 2021**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item under consideration. The supporting evidence for the approved equal must be submitted with the request for approval. All requests must be submitted via email (preferred) to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) or US Mail unless otherwise approved by DTA in writing.
  - d) The replies to request under paragraph c) above will be emailed, mailed or faxed out on **Thursday, March 18, 2021** to all prospective proposers.
  - e) Changes to the specifications will be made only by written addendum. Addendum will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com). It is the Proposer's responsibility to obtain all documents available for this procurement

**G-5 SELECTION CRITERIA**

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

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

**G-6 PREPARATION OF PROPOSAL**

Proposals must be submitted on the forms attached. 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 and other documents submitted by the Proposer shall not stipulate any condition not contained in the specifications.

Each Proposal and all papers bound and attached thereto and shall be submitted in a pdf attachment marked **"Limited Site Investigation"** and emailed to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), or secured in a sealed envelope delivered to: Procurement Manager, Duluth Transit Authority, 2402 West Michigan Street, Duluth MN 55806.

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

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

**G-7 WITHDRAWAL OF PROPOSALS**

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

**G-8 CONTRACT FORM AND CHANGES**

The chosen proposer, within ten (10) days after the award of the contract from the DTA shall sign the formal contract.

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

**G-9 BONDING REQUIREMENTS**

No bonds are required.

**G-10 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 or services pursuant to these specifications. It is the intention of these specifications to provide and require complete equipment and/or services of the type prescribed herein. Any items omitted from the specifications which are clearly necessary for the performance of the contract 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 in the omission of any part or detail which goes to make the equipment complete and ready for service or use, or to perform the services as herein required.

**G-11 DOCUMENTATION**

The Contractor shall provide a complete listing of all products used.

**G-12 PROTEST PROCEDURES**

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Protests will only be accepted from prospective Proposers 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 the Request for Proposal, including, without limitation, the pre-award procedure, the Instructions to 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 of the proposal. Thereafter, such issues are deemed waived by all interested parties.

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, proposers whose proposals might become eligible for award shall be requested, before expiration of the time for acceptance of their 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.

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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-13 ORGANIZATIONAL CONFLICTS OF INTEREST**

1. An organizational 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.

2. 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 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.

3. 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.

4. 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.

5. 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.

6. 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-14 TAXES

The DTA is exempt from payment of the Federal excise, transportation tax, Minnesota State sales tax and City of Duluth City sales tax for services. Contractor shall include all applicable sales or use taxes as required under MN Department of Revenue guidelines and MN Statute 297A.61, subd.58.

Unless a Certificate of Exemption is provided, any out of state bidder receiving a Bid 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-15 SUBCONTRACTORS

The Proposer shall disclose all subcontractors and their involvement in the Contract at the time of Proposal submittal. The Contractor shall insert the required Federal and State provisions in every subcontract.

#### G-16 MINNESOTA NONDISCRIMINATION REQUIREMENTS

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;

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(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.

**G-17 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 RFB. 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. The State of Minnesota

Suspended/Debarred Vendor list can be found at

<http://www.mmd.admin.state.mn.us/debarredreport.asp>.

**SIGNIFICANT DATES OF PROCUREMENT**

Date of Release	March 10, 2021	
Pre-Award Conference (virtual)	Wednesday, March 17, 2021	10:00 a.m.
Requests for Changes/Clarifications	Wednesday, March 17, 2021	2:00 p.m.
Responses to Changes/Clarifications	Thursday, March 18, 2021	
RFP Opening	Wednesday, March 24, 2021	1:00 p.m.

## Section 2 FEDERAL TRANSIT ADMINISTRATION

### Contract Clauses

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

##### **49 U.S.C. § 5325(g)**

- a. Records Retention. The Contractor will retain, and will requires its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract; including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

#### **A.2 BONDING REQUIREMENTS**

##### **2 CFR §200.325, 31 CFR Part 223**

Does not apply to this procurement

#### **A.3 BUS TESTING**

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

Does not apply to this procurement

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

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

Does not apply to this procurement

#### **A.5 CARGO PREFERENCE REQUIREMENTS**

##### **46 U.S.C. §55.05**

##### **46 C.F.R. Part 381**

Does not apply to this procurement

#### **A.6 CHARTER SERVICE**

##### **49 U.S.C.5323(d) and (r)**

##### **49 C.F.R. Part 604**

Does not apply to this procurement

#### **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)**

Does not apply to this procurement

#### **A.8 CIVIL RIGHTS LAWS AND REGULATIONS**

##### **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.

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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 Ex 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 Discrimination in Employment Act, 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for the reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et. Seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et. Seq.*, and Federal transit law at 49 U.S.C. §4332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

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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  
29 C.F.R. Part 5, 18 U.S.C. §874

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

**Contract Work Hours and Safety Standards for Awards Not Involving Construction**

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

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

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

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

**A.11 ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 *et seq.*  
49 CFR Part 622, Subpart C

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**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

Does not apply to this procurement

**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**

Does not apply to this procurement

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

The DTA 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 DTA, 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

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.

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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

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

**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)  
**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)**

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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.

**A.26 VIOLATION AND BREACH OF CONTRACT**  
2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A)  
Does not apply to this procurement

**A. 29) Notice of Legal Agreement or Litigation**  
**Does not apply to this procurement**



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**DULUTH TRANSIT AUTHORITY**

**CONTRACT EXAMPLE FOR**

**Limited Site Investigation**

**March 10, 2021**

**Duluth Transit Authority  
Limited Site Investigation**

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**CONTRACT FOR PROFESSIONAL SERVICES** (example for RFP)

THIS CONTRACT, by and between the Duluth Transit Authority, an authority of the City of Duluth, Minnesota, located at 2402 West Michigan Street, Duluth, MN 55806, hereinafter referred to as ~~DTA~~, and \_\_\_\_\_, (~~Consultant~~), a \_\_\_\_\_ (individual, corporation, etc.) located at \_\_\_\_\_.

WHEREAS, the DTA desires to utilize Consultant's professional services for Limited Site Investigations Consultant services in accordance with Minnesota Pollution Control Agency requirements; and

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

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

Article I. The Contract Documents

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses; this Contract; Request for Proposals (Procurement #052-21-1) dated March 10, 2021; including the Minnesota Pollution Control Agency Specifications and Requirements, the Minnesota Department of Commerce Specifications and Requirements; General Conditions, Technical Specifications; Drawings,; all addenda issued prior to and all modifications issued after the execution of the Contract, the executed Proposal Form, all as fully a part of the Contract as if attached to the Contract or repeated herein.

Article II. Scope of Professional Services

Consultant will perform the services identified in its proposal dated \_\_\_\_\_, 2021 (the ~~Proposal~~). In the event of any conflict between the terms of the Proposal and this Contract, the terms and conditions of this Contract shall be deemed to be controlling.

Article III. Professional Fees and Payment

In consideration of the provision of the services referenced in Article II above in an acceptable manner, the DTA hereby agrees to reimburse Consultant for said services as set for in these Contract Documents. Consultant shall invoice the DTA on the designated Invoice Form as required by the Minnesota Pollution Control Agency and/or the Minnesota Department of Commerce for services provided and/or services and equipment purchased based on actual and allowable costs. Requests for reimbursements shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated rates as Proposed, as

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well as any documentation of actual costs incurred and paid by Consultant in performing the services hereunder, and such other documentation as the DTA shall reasonably request.

Invoices shall be forwarded to: Duluth Transit Authority  
2402 West Michigan Street  
Duluth, MN 55806

Payment does not imply acceptance of work. The granting of any progress payment or payments by the DTA, or receipt thereof by the Consultant, shall not constitute in any sense acceptance of work or any portion thereof, and shall in no way lessen the requirement of the Consultant to replace unsatisfactory work or material, though the unsatisfactory character of such work or materials may not have been apparent or detected at the time such payment was made.

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

Article IV. Assignability

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

Article V. Term

This Contract shall be effective upon ~~Notice to Proceed~~ from the DTA, and shall remain in effect until December 31, 2021 unless otherwise terminated as provided herein.

Article VI. Standard of Performance

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

Article VII Contractor Changes

The DTA or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder, provided it is allowable by the Minnesota Pollution Control Agency and/or the Minnesota Department of Commerce. Such changes, including increases or decreases in the

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amount of Consultant's compensation, which are mutually agreed upon by and between the DTA and the Consultant, shall be incorporated in written amendments to this Contract.

Article VIII. Reports and Inspection

A. Establishment and Maintenance of Records

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

B. Documentation of Costs.

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

C. Reports and Information.

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

D. Audits and Inspection.

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

E. Confidentiality of Information.

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

F. Ownership of Data

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

Article IX. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Consultant as an agent, representative or employee of the DTA for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, DTA shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant while performing the work specified by this Contract.

Article X. Subcontractors

A. Disclosure. Consultant shall disclose all subcontractors it desires to perform work under this Contract at the time of execution of this Contract. Thereafter Consultant shall promptly report any desired changes to the subcontractors of any tier in accordance with FTA requirements. Such changes shall also require the prior written approval of the DTA General Manager. Consultant shall insert the required Federal and State provisions into every subcontract of any tier in accordance with FTA requirements.

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

Article XI. Indemnity and Insurance

A. Indemnity. The Consultant shall defend, indemnify and save harmless, the DTA, ATE Management of Duluth, and First Transit, Inc., from all costs, charges, damages and loss of any kind that may grow out of the matters covered by this Contract. Said obligation does not include

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indemnification of the DTA, ATE Management of Duluth and First Transit, Inc. for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA, ATE Management of Duluth and First Transit, Inc., but shall include, but be limited to, the obligation to defend, indemnify and save harmless the DTA, ATE Management of Duluth and First Transit, Inc. which are derivative of the negligence or intentional acts or omissions of 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 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.

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

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

D. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the DTA without fail not less than 30 days prior to any

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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 the 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.

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

Article XII. Civil Rights Assurances

Consultant, for itself and its officers, agents, servants and employees as part of this consideration of this Contract, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Contract.
- B. That all activities to be conducted pursuant to this Contract shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

Article XIII. Rules and Regulations

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

Article XIV. Notices

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

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

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Consultant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Article XV. Waiver

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

Article XVI. Applicable Law

This Contract, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

Article XVII. 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 XVIII. No Third Party Rights

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

Article XIX. Entire Agreement

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

Article XX Counterparts

This Contract may be executed in two or more counterparts, each of which shall be deemed to be 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 electronic mail on 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 the original signature.



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

**Duluth Transit Authority**

By \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_

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# **PROPOSAL SHEETS**

**March 10, 2021**

**Limited Site Investigation**

Duluth Transit Authority  
Limited Site Investigation

# 052-21-1

**Section 4** **FORMAL PROPOSAL SHEET**

NOTE: All Proposals must be written, signed and transmitted in a .pdf attachment to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com).

**PROPOSAL GUARANTEE REQUIREMENTS: Not Required.**

Proposals must include the following:

1. The Minnesota Department of Commerce Standardized Proposal and Invoice Form for Limited Site Investigation services
2. A summary of Consultant's qualifications and previous experience performing this type of work.
3. Three references with contact information.

Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Recd \_\_\_\_\_

CITY STATE ZIP CODE

By: \_\_\_\_\_  
(PRINT NAME) TITLE

Signature \_\_\_\_\_

Date: \_\_\_\_\_

Addendum Acknowledgment  
Number Date

\_\_\_\_\_  
\_\_\_\_\_

PHONE NO. \_\_\_\_\_

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

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

**3. Subcontractors and Suppliers Listing**

List each subcontractor and/or supplier included in the bid or proposal. 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: \_\_\_\_\_

**Section 5**

**REQUIRED CERTIFICATES**

A. Certificate A.    **COMPLIANCE WITH SPECIFICATIONS**  
Certificate

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

SIGNED \_\_\_\_\_

FIRM NAME \_\_\_\_\_



**Certificate B.**

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 \_\_\_\_\_

# **SPECIAL AND TECHNICAL SPECIFICATIONS**

FOR

## **Limited Site Investigation**

**March 10, 2021**

## Section 6 TECHNICAL SPECIFICATIONS FOR Limited Site Investigation Services

### A. INTRODUCTION, GENERAL INFORMATION

1. The Duluth Transit Authority (DTA) is seeking Proposals from qualified individuals and firms to conduct a Limited Site Investigation at the Duluth Transit Authority (DTA) Operations Center, 2402 West Michigan Street, Duluth, MN 55806.
2. The scope, process and procedures for the Limited Site Investigation shall follow the Minnesota Pollution Control Agency and the Minnesota Department of Commerce requirements. The selected Consultant shall not engage in any activity that could jeopardize the DTA's ability to qualify for reimbursement from the Minnesota Petrofund and all regulations thereto.
3. The DTA Project Manager for this work is Mr. Mark Ness, Assistant Director of Maintenance, who will conduct ongoing project monitoring and will serve as the Consultants liaison with the DTA.
4. The selected Consultant shall comply with DTA directives, including all safety and security measures applicable to this project. Consultant shall conduct all work during regular DTA business hours, from 7:00 a.m. until 5:00 p.m. Deviations from this schedule must be approved in writing by the DTA Project Manager in advance. Consultant is required to wear a high visibility vest while working on DTA property in areas where vehicles may be traveling.
5. Due to the COVID-19 coronavirus pandemic emergency, persons visiting DTA properties are required to wear a mask and observe all recommendations and guidelines from the Minnesota Department of Health in observance of the emergency.
6. The selected Consultant shall not hinder regular DTA operations in any manner, and shall coordinate with the DTA Project Manager for timing and notification of any traffic restrictions, door closures, etc., that may be required to complete the scope of work herein.
7. This RFP does not obligate the DTA to award a contract or contracts. The DTA makes no representations as to the quantity of services to be performed, the timing for the services to be performed (within the Contract Term) and any other representations of potential work under this Contract.
8. Proposals will only be considered from firms that are regularly engaged and licensed in the business of providing goods and/or services described in this RFP for a minimum of three (3) years, and have sufficient financial support, equipment and organization to ensure they can satisfactorily execute the services if awarded a Contract under the terms and conditions herein.
9. In making the award, the DTA may consider any evidence available to it of the financial, technical and other qualifications and abilities of the Respondent, including current

licensure, past performance with the DTA and other similar customers. A record of nonperformance or poor performance may disqualify a Respondent from award.

10. The Respondent will name a Project Manager at the time of Proposal submittal. The selected Consultant shall be permitted one change in Project Manager during the course of this Contract. Thereafter, permission must be sought from the DTA Procurement Manager for any additional changes in Project Managers.
11. The selected Consultant agrees that regardless of the work requests under the scope of this Contract, it shall not be the basis for deviating from the quoted unit prices. Consultant agrees to honor quoted unit prices for the duration of this Contract, including extensions, unless otherwise agreed to by the selected Consultant and the DTA Procurement Manager in writing.
12. The selected Consultant shall not attach additional terms and conditions to service cost estimates requested by the DTA.
13. All required reports and submittals for this Scope of Work, including all reports to the Minnesota Pollution Control Agency or other agencies having jurisdiction over this work, shall be submitted to the DTA Project Manager either in advance of or simultaneously with the submittal to the oversight agency.
14. The DTA will conduct a virtual pre-proposal meeting at 10:00 a.m. on Wednesday, March 17, 2021. Attendance is not mandatory but strongly encouraged. Contact 218-623-4329 or [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) for meeting instructions. Tours of the project site will be permitted by appointment only. Due to the COVID-19 coronavirus emergency, visitors to DTA properties are required to wear a mask and observe social distancing and other recommendations from the Minnesota Department of Health.

## **B. Current Conditions**

1. Three underground storage tanks were removed from the DTA Operations Center parking lot in December 2020. Soil and water samples from the first two tanks did not contain a measurable level of contaminants. Samples from the third tank revealed contaminants present in the soil beneath the tank. Attached are copies of submittals to the Minnesota Pollution Control Agency for reference.
2. Required disclosures were submitted to the appropriate authorities at the Minnesota Pollution Control Agency, copies of all related documents are attached herein.
3. The DTA installed three above ground tanks, two twenty-thousand gallon tanks for diesel fuel storage and one five-thousand gallon tank for building heating oil when the existing tanks were removed. The new tanks are immediately adjacent to the location of the suspected contaminated soils. Care must be taken to not damage the concrete platform for the above ground storage tanks and other newly installed fixtures.

**Section 7. TECHNICAL SCOPE OF WORK, TASKS, DELIVERABLES****Request for Proposal for a Limited Site Investigation****A. Standard Scope of Work**

The objective of the **Limited Site Investigation (LSI)** is to obtain a “snapshot” of the site conditions in order to quickly and cost-effectively evaluate the level of risk associated with the petroleum tank release at the DTA Operations Center.

Consultant: Base your proposed costs on the following assumptions:

- Push probe technology will be used for drilling.
- Ground water depth is 20’.
- The release is from a single source.
- Utilities and subsurface obstructions do not inhibit advancement of borings.
- Water and soil gas samples will be collected immediately upon completion of borings (no need to wait 24 hours).
- Free product is not present.
- Level D safety precautions are adequate, and all work will be completed according to MPCA and Department of Health guidance.

**Please note that if you know that the standard assumptions listed above will not be appropriate for work at this site, contact the DTA Procurement Manager with a written explanation of why a “Request for Proposal for a Limited Site Investigation/Full Remedial Investigation (*Nonstandard Scope of Work*)” form should be used to get competitive consultant proposals. The DTA will review the request in conjunction with the Minnesota Pollution Control Agency and the Minnesota Department of Commerce and respond to the request within ten days of submittal.**

Scope of Work (written proposals must be based on the following):

**I. Administrative Tasks**

- Prepare a site-specific health and safety plan and submit it to the DTA Project Manager prior to commencement of work. The DTA reserves the right to request modifications and changes to the plan to ensure that impacts to DTA operations are minimized to the greatest extent possible.
- Notify the MPCA in advance of field work. Notify the MPCA of important investigation findings, and communicate with the applicant regarding scheduling and investigative results (see MPCA Guidance Document 4-01).

**II. Field and Receptor Surveys**

Complete a risk evaluation in accordance with MPCA Guidance Document 4-02.

- Complete a water well receptor survey.
- Complete a vapor receptor survey.
- Complete a surface water receptor survey.

### III. Drilling – Direct Push Technology

Advance push probes in accordance with MPCA Guidance Documents 4-01 and 4-01a. For the purposes of this proposal, assume that:

- Four push probes will be advanced to twenty-five feet below grade.
- One additional push probe will be advanced to forty feet below grade.
- Five push probes will be advanced to ten feet below grade to collect soil gas samples.

### IV. Sampling

Collect samples in accordance with MPCA Guidance Documents 4-01, 4-01a, 4-04, and 4-05. For the purposes of this proposal, assume that:

- Soil samples will be collected continuously for geologic classification and PID screening.
- Seven soil samples will be collected from the borings and analyzed for the parameters consistent with the petroleum product(s) noted above.
- Soil samples will be obtained at the water table for grain size analysis (select three samples to be analyzed by ASTM Method D422 *including* hydrometer or alternative method required by the MPCA).
- Five groundwater samples will be collected from the probes and analyzed for VOCs and other required parameters (see MPCA Guidance Document 4-05). Required quality assurance samples include a duplicate sample from one probe (to be analyzed for the same parameters as the other groundwater samples) and a trip blank (to be analyzed for VOCs).
- Five soil gas samples will be collected and analyzed by EPA method TO-15, full scan (see MPCA Guidance Document 4-01a).

If a water supply well is on site, add one sample for every water supply well and analyze for VOCs and the other required parameters (see MPCA Guidance Document 4-05).

Determine surface elevations at the soil boring locations.

Determine depth to groundwater in each boring.

### V. Submissions to the Agency

Prepare the Investigation Report (LSI only).

- If site closure is warranted, complete an LSI report (MPCA Guidance Document 4-06, without sections 6 and 7) and submit it to the MPCA. **Note: If a full RI is warranted, do not submit an LSI report to the MPCA unless specifically requested by the MPCA.**

**Note:** The above Standard Scope of Work was defined to apply to a large portion of the petroleum release sites in Minnesota. The actual amount of work necessary to achieve the objectives of the limited site investigation will depend on actual site conditions. Only the actual amount of work necessary to complete the investigation should be completed. If additional investigative work is necessary beyond the scope of services outlined above, it will be documented on the change order form.

## **Section 8. SUBMITTAL REQUIREMENTS, EVALUATION**

### **A. TERM, TIMELINE**

1. The term of this Contract commences upon %Notice to Proceed+from the DTA through December 31, 2021.
2. No Advance Payments: Payment for services will only be for services rendered. No advance payments will be permitted.

### **B. QUALIFICATONS OF CONSULTANT**

1. The Respondent MUST be a registered environmental consultant on the Minnesota Department of Commerce certified contractor list. Respondent must provide information regarding their background in performing reviews of the applicable laws and regulations by the Minnesota Pollution Control Agency, the Minnesota Department of Commerce, the U.S. Department of Transportation, the U.S. Environmental Protection Agency, as applicable.
2. The Respondent must demonstrate a minimum of three (3) years prior experience in projects similar in scope. Experience with governmental entities is preferred.
3. The Respondent must provide a minimum of three (3) references upon Proposal submittal for projects similar in nature to this RFP.
4. The Respondent must provide a summary of all qualified personnel, including the Project Manager and support staff for services performed under this Contract.
5. The Respondent must provide an anticipated timeline for completion of the Limited .Site Investigation.

### **C. COST PROPOSAL**

1. Respondent shall use the Minnesota Department of Commerce Standardized Proposal and Invoice Form attached herein. The Leak Site # for the DTA is LS0021425: AI:11434T.

### **D. RESPONSE CONTENTS**

1. Electronic submissions are preferred. Responses must be in a portable document format (%pdf+) attachment to an email with the subject line %Limited Site Investigation+and submitted to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) on or before the due date herein.
2. Responses must include:
  - a. 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.

- b. A summary of previous work conducted by the Consultant and the individuals directly responsible for providing services similar in scope to that requested here, along with references.
- c. The names of subcontractors (firms and individuals) who will assist in performing the required work and a resume of each, or a history of the firm and a list of examples of similar projects performed by the proposed staff for proposed projects.
- d. The Limited Site Investigation Standard Scope Proposal worksheet with proposed costs and quantities completed.
- e. Executed Proposal Forms and Required Certifications A-C.

## **E. EVALUATION CRITERIA**

1. The DTA will make the award to the responsible, qualified Consultant whose Proposal is in the best interests of the DTA. The Evaluation Committee may not necessarily make a recommendation to award to the Consultant with the highest technical ranking nor make a recommendation to award to the Consultant with the lowest price proposal, if doing so would not be in the best interest of the DTA.

### **Evaluation Criteria:**

A.	Qualifications, experience, ability to perform needed services	40%
B.	Cost	30%
C.	Key Personnel, references	25%
D.	Other Relevant matters	5%

a. Qualifications and ability to perform needed services. The Respondent should have specific experience with performing limited site investigations and experience with public agency projects. Anticipated timeline will be reviewed. Respondent must be able to demonstrate sufficient capacity to perform services in a timely manner.

b. Cost. Except when it is determined not to be in the DTA's best interests, the DTA will evaluate the estimated cost, rates for services, and other cost factors for these services.

c. Key personnel, references. The expertise and professional level of the individuals proposed to conduct the work, as well as the systems and technology used, will be evaluated. References and other factors related to the project and included in the Proposal will be evaluated.

d. Other relevant matters may include completeness of Proposal, past performance for the DTA, apparent general understanding of the work to be performed, etc.

e. As Proposals are considered by the DTA to be more equal in their technical merit, the evaluated cost or price becomes more important so that when technical Proposals are evaluated as essentially equal, cost or price may be the deciding factor.

f. At the DTA's option, DTA may elect to interview Proposers or seek further information before awarding the Contract.

g. Award of this Contract is subject to the review and approval of the Minnesota Department of Commerce and/or the Minnesota Pollution Control Agency.



**List of Attachments:**

1. Limited Site Investigation Standardized Proposal and Invoice Form
2. Drawing of underground tank location.
3. General Excavation Report
4. MPCA Guidance Documents 4-01, 4-01a, 4-02, 4-04, 4-05
5. MPCA Guidance Documents 4-06