



# **Duluth Transit Authority**

**REQUEST for PROPOSALS**

**FOR**

**TRANSIT MANAGEMENT CONSULTING  
SERVICES**

**December 1, 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 Transit Management Consulting Services

Notice is hereby given that the Duluth Transit Authority is seeking Proposals from qualified individuals or firms for Transit Management Consulting Services for the DTA transit system.

Responses must be delivered to the DTA, 2402 West Michigan Street, Duluth, MN 55806, on or before **1:00 p.m. on Tuesday, December 28, 2021**. Specifications and submission requirements are available from the DTA and may be obtained by writing to: Procurement Manager, Duluth Transit Authority 2402 W. Michigan St., Duluth, MN 55806; or by email: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com).

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

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

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## Section 1 General Conditions

### G-1 REQUEST FOR PROPOSALS

- a) Proposals are requested for Transit Management Consulting Services for the Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
- b) Proposals shall be on the proposed rates and costs for the work under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents.
- c) Proposal prices shall be good for ninety (90) days after the Proposal opening.
- d) The DTA shall not be under any obligation for payment of precontractual expenses, including expenses for preparing or submitting a Proposal in response to this request, negotiating with the DTA on any matter related to this Proposal, and/or other expenses incurred by the Proposer prior to the date of award.
- e) Proposals are due at **1:00 p.m. on Tuesday, December 28, 2021.**
- f) The DTA will hold a virtual **pre-proposal conference** on **Wednesday, December 8, 2021 at 10:00 a.m.** Contact the Procurement Manager at 218-623-4329 for instructions to access the conference. Interested parties may tour the facility prior to submitting a Proposal by making an appointment with the DTA Procurement Manager.
- g) The DTA intends to award the contract to the responsible Proposer as early as January 26, 2022.
- h) The DTA reserves the right to accept and/or reject any or all Proposals, to add or delete work without penalty, in the interest of the DTA.
- i) Throughout these specifications the words equipment, materials, and work can be interpreted as interchangeable.
- j) Consulting work under this contract is funded in part by a grant from the Federal Transit Administration and the Minnesota Department of Transportation.
- k. Any costs for ATED stock acquisition will be funded with non-transit related parking revenue.
- k) This Contract is subject to the approval of the DTA Board of Directors.

### G-2 INQUIRIES

All inquiries and other correspondence relating to this Request for Proposals shall be with the Procurement Manager and addressed to the DTA Procurement Manager via email, [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), (preferred) 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 the DTA designee and the DTA Board President for all work performed.
- c) Manufacturer, Vendor, Proposer, Offeror, Responder, Respondent, Contractor, or Consultant shall mean that individual or 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, 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., Thursday, December 16, 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 provided in an Addendum to the RFP on **Friday, December 17, 2021** and posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).
- e) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made only by written addendum. Addenda will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).

**G-5 PREPARATION OF PROPOSAL**

Proposals must be submitted on the forms required herein. All blanks in the Proposal form must be completed with ink or word processor. 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 in a portable document format ("pdf") attachment to an email addressed to the DTA procurement manager, [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), with the words "Transit Management Consulting Services Proposal" in the subject line. Alternatively, respondents may submit Proposals and all papers bound and attached thereto in a sealed envelope marked "**Transit Management Consulting Services**" and 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 received by the DTA Procurement Manager 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 .pdf attachment to an email addressed to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) or securely sealed envelope marked as indicated on the Proposal Form.

**G-6 WITHDRAWAL OF PROPOSALS**

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

**G-7 CONSIDERATION OF PROPOSAL**

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

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

**G-8 PROPOSAL DOCUMENTS**

It is the Proposer's sole responsibility to assure the receipt of all procurement documents, including addenda, pertaining to this Request for Proposals. Documents will be posted online at [www.duluthtransit.com](http://www.duluthtransit.com). In addition, Proposers may inspect and/or obtain copies of the documents at the DTA offices, 2402 Wes Michigan Street, Duluth, MN 55806, during business hours.

**G-9 PROPOSAL CONTENTS CERTIFICATION**

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

**G-10 DUE DILIGENCE**

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

**G-11 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.

Acceptance of proposed changes to the Contract shall be at the sole discretion of the DTA, and may be subject to the review and approval of the DTA Board of Directors, and/or legal counsel.

**G-12 BONDING REQUIREMENTS**

No bonds are required.

**G-13 PRICE COMPLETE**

The price quoted in any Proposal submitted shall include all items of services, labor, material, alterations, tools, equipment and other costs necessary to fully complete the production and delivery of the equipment 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-14 DISPOSITION OF RESPONSES**

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

- Clearly mark all trade secret materials in its Proposal at the time of Proposal submittal
- Include a statement with the Proposal justifying the trade secret designation for each item;
- Respondent may not declare the entire Proposal confidential; and

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

Notwithstanding the above, the above DTA may determine those items marked as trade secret materials to be public under MN Government Data Practices Act Minnesota Statutes, Chapter 13.

#### **G-15 PROTEST PROCEDURES**

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.

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-16 ORGANIZATIONAL CONFLICTS OF INTEREST**

1. An organizational conflict of interest means that because of other activities or relationships with other persons or entities, a Consultant is unable, or potentially unable to render impartial assistance or advice to the DTA, or the Consultant's objectivity in performing the Contract work is, or might be otherwise impaired, or the Consultant has an unfair competitive advantage. Organizational conflict of interest includes situations where the

capacity of a Consultant (including the Consultant'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 Consultant 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 Consultant 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 Consultant shall give written notice to the DTA's Director of Finance as set forth below.

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

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

#### **G-17 TAXES**

All local sales and use taxes which are due in the provision of this Contract are to be paid by the Contractor and should be included in the Proposal Price. The DTA is exempt from payment of the Federal excise, transportation tax, Minnesota State sales tax and City of Duluth City sales tax. The Proposer shall include sales tax for materials included in its Proposal and shall retain records of the amount of sales tax paid for materials for DTA review.

#### **G-18 SUBCONTRACTORS**

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

#### **G-19 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;
- (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-20 SINGLE RESPONSE**

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

**G-21 NO ENDORSEMENT**

The Consultant must not claim that the DTA, the Federal Transit Administration or the Minnesota Department of Transportation endorses the Consultant's products or services.

**G-22 SUSPENDED/DEBARRED VENDOR**

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

**SIGNIFICANT DATES OF PROCUREMENT**

<b>Item</b>	<b>Date</b>	<b>Time</b>
Date of Release	December 1, 2021	
Preproposal Meeting	December 8, 2021	10:00 a.m.
Request for Clarifications	December 16, 2021	2:00 pm
Response to Clarifications	December 17, 2021	10:00 a.m.
Proposal Opening	December 29, 2021	1:00 pm
Award	January 26, 2022	

## 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)**

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  
Civil Rights and Equal Opportunity**

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

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment", September 24, 1965, 42 U.S.C. §2000e note, as amended by any later 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 if 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 ("DBE's"), 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 DBE's 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

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# 052-21-3

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

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.

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

**A.11 ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.

49 CFR Part 622, Subpart C

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

**A.12 FLY AMERICA**

49 U.S.C. §40118, 41 C.F.R. Part 301-10

48 C.F.R. Part 47.4

Does not apply to this procurement

**A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

2 C.F.R. Part 180, 2 C.F.R. Part 1200, 2 C.F.R. §200.213

2 C.F.R. Part 200, Appendix II (I)

Executive Order 12549, Executive Order 12689

**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

**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

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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.

End of Section

**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.

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.



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**A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

49 U.S.C. § 5333(b) (“13(c)”), 29 C.F.R. part 215  
Does not apply to this procurement

**A.20 RECYCLED PRODUCTS**

42 U.S.C. § 6962 , 40 C.F.R. part 247  
2 C.F.R. part § 200.322  
Does not apply to this procurement

**A.21 SAFE OPERATION OF MOTOR VEHICLES**

23 U.S.C. part 402, Executive Order No. 13043  
Executive Order No. 13513, U.S. DOT Order No. 3902.10

**Seat Belt Use**

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

**Distracted Driving**

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

**A.22 SCHOOL BUS OPERATIONS**

49 U.S.C. 5323(f), 49 C.F.R. part 605  
Does not apply to this procurement

**A.23 SEISMIC SAFETY**

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41  
Executive Order (E.O.) 12699  
Does not apply to this procurement

**A.24 SUBSTANCE ABUSE REQUIREMENTS**

49 U.S.C. § 5331, 49 C.F.R. part 655  
49 C.F.R. part 40  
Does not apply to this contract

**A.25 TERMINATION**

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

**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.

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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)

**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.

**Rights and Remedies of Contractor**

Inasmuch 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

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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 Duluth Transit Authority's Procurement Manager. This decision shall be final and conclusive unless within 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.

**A. 27 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

(a) *Definitions.* As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the

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Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means— (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the DTA on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any

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system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

### **A. 29) Notice of Legal Agreement or Litigation**

During the performance of this contract, the contractor agrees as follows:

Contractor shall promptly notify the Duluth Transit Authority of any current or prospective legal matter that may affect the Duluth Transit Authority or the Federal Government. Legal matters that require notification include,

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but are not limited to, a major dispute, breach, default, litigation, or naming the Duluth Transit Authority or the Federal Government as a party to litigation or any legal agreement in any forum for any reason.

This notification provision applies to instances of false claims under the False Claims Act, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Contractor is subject to this Agreement between the Contractor and the Duluth Transit Authority or the Federal Transit Administration, or an agreement involving a principal, officer, employee, agent or subcontractor of the Contractor. Knowledge, as it is used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer to information without delay and without change.

The Contractor agrees to include the above clause 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.

**DULUTH TRANSIT AUTHORITY**

**CONTRACT EXAMPLE FOR**

**Transit Management Consulting Services**

**December 1, 2021**

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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 \_\_\_\_\_ corporation located at \_\_\_\_\_.

WHEREAS, Under the Duluth Transit Authority Act of 1969, Chapter 720, DTA is legally able and presently engaged in the business of providing public transportation of passengers for hire within the areas contiguous to the City of Duluth, Minnesota, the City of Superior, Wisconsin, and the City of Proctor, Minnesota ("Transit System"); and

WHEREAS, the DTA serves the public interest of the citizens of the City of Duluth, State of Minnesota to promote and provide for a government program of a bus transit system authorized under 49 U.S.C. Chapter 53 as amended and MN Stat §§ 458A.21-458A.37; and intends to continue to maintain the operations of the public transportation systems in areas where it deems practicable; and

WHEREAS, the DTA owns a portion of a building in fee simple and has a perpetual lease for the remainder of the building located at 228 West Michigan Street in Duluth, MN ("Building") that is used to provide a government program of a bus transportation system and DTA does not intend to sell the building; and

WHEREAS, the DTA may not sell the Building without meeting all of the requirements of its General Obligation Bond Proceeds Grant Agreement-Construction Grant #03806 dated July 22, 2013 and amended November 21, 2014, including the requirements of MN Stat §16A.695 (General Obligation Bond Compliance Law) and the Fourth Order Amending Order of Commissioner of Finance dated July 30, 2012 as well as approvals from other public funding agencies; and

WHEREAS, the DTA desires to utilize Consultant's professional services for Transit Management Consulting Services; and

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

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

**Article I. Contract Documents**

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract, Request for Proposal 052-21-3 dated December 1, 2021, General, Special and Technical Specifications, all addenda issued prior to and all modifications issued after execution of this Contract, Consultant's Proposal dated \_\_\_\_\_, 2021 (the "Proposal"), including executed Required Certificates, all as fully a part of the Contract and as if attached to this Contract or repeated herein.



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Article II. Professional Fees and Payment

In consideration of the provision of the services referenced in Article I above in an acceptable manner, the DTA hereby agrees to reimburse Consultant for said services as set for on Exhibit A attached hereto and made a part hereof. Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs completed.

Requests for reimbursements for management and consulting services shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in Exhibit A, as well as any documentation of actual costs incurred and paid by Consultant in performing the services hereunder, and such other documentation as the DTA shall reasonably request.

All invoices shall include supporting documentation of the quantities and details to the DTA's Director of Finance's satisfaction to support the pay request. Invoices should be forwarded to the Duluth Transit Authority Director of Finance, 2402 West Michigan Street, Duluth, Mn 55806. Terms of payment shall be thirty days net from the conclusion of the month for which payment is due.

A final invoice will be submitted by the Consultant within thirty (30) days of project completion or termination of this Contract. Upon receipt of said request and the appropriate documentation, the DTA shall promptly reimburse Consultant for the approved expenses in the amounts set forth in Exhibit A. 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 Contract.

Article III. Acquisition of ATE Management of Duluth, Inc.

Consultant shall, upon written request by the President of the DTA Board of Directors, acquire the stock of ATE Management of Duluth, Inc., ("ATED") from First Group Management, Inc., its successors or assignors, in accordance with ERIS and Minnesota law, which by assignment, Consultant shall assume and perform all services, obligations and accept all rights which have been incurred or extended to Consultant under the terms and conditions of this Contract. The invoice to the DTA for the costs related to ATED stock acquisition must be on a separate invoice with no other services or expenses included.

As owner of ATED stock, Consultant will continue all obligations incidental to the operation of the Transit System, including becoming the contributing employer to the Central States, Southeast and

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Southwest Area Pension Plan and assuming ATED's contribution history and contribution obligations to the Central States Southeast and Southwest Area Pension Plan.

The successful respondent will be required to sign a standard investment letter in which it acknowledges that it has reviewed all materials relating to this Contract and that it understands the risks of investment and that the stock is not registered under State or Federal law. Further transfer of the stock will be restricted without approval of the President of the DTA Board of Directors and an opinion of counsel.

Article IV. ATED Indemnification

Any contractual obligations or liability, including, but not limited to unfunded or under-funded pension benefit obligations, including without limitation, liability for vested but unfunded or under-funded benefits, labor contracts and other contractual obligations entered into or assumed by Consultant in connection with acquiring ATED stock shall be binding upon the Consultant only for the term of this Contract. In the event this Contract is terminated for reasons other than default by the Consultant, or expires, then the DTA agrees to assume all obligations and liabilities under this Contract on behalf of itself or any successor to the Consultant as permitted by applicable law. Provided the Consultant abides by the terms and conditions of this Contract, the DTA hereby indemnifies Consultant and holds it harmless from all liability or costs arising out of acquiring ATED stock and its associated liabilities.

Article V. Operation of the Transit System

All real estate, buildings, equipment, buses, motor vehicles and all material supplies reasonably necessary for operation of the Transit System shall be furnished by the DTA and shall remain the property of the DTA. All property of any type, either real, personal or mixed hereinafter acquired as reasonably necessary for the performance of the Transit System shall be acquired at the DTA's expense and shall become the property of the DTA.

Article VI. Operational Expenses

The DTA shall be solely responsible for all expenses and liability incurred by the DTA on account of the operation of the public Transit System and shall include, but not be limited to the following:

- a. working capital requirements, including all wages, salaries, benefits, social security, unemployment, or other payroll taxes now or hereafter imposed or levied on an employer.
- b. All other employee costs, including the cost of Worker's Compensation insurance for the employees of ATED and any cost required to be paid by ATED under the Collective

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Bargaining Agreement with the employees, which shall include payments for any pensions for either union or nonunion employees or retirees.

- c. All other expenses necessary and incidental to the efficient operation and maintenance of the Transit System, the property both real and tangible, owned by the DTA, all independent audits performed by third parties, advertising and business promotion expenses, all other general and administrative expenses, including ongoing maintenance and acquisition of equipment necessary to continue operation of the Transit System.
- d. Any contractual obligations or liability, including, but not limited to, wages, benefits, pension or profit sharing plans including, but not limited to unfunded and under-funded pension benefit obligations, including without limitation, liability for vested but unfunded or under-funded benefits, labor contract, and other contractual obligations entered into or assumed by Consultant only for the term of this Contract and in the event this Contract is terminated or expires, then the DTA agrees to assume all obligations and liabilities under said contracts either on behalf of itself or any successor to Consultant. The DTA does hereby indemnify Consultant and hold them harmless from all liability or costs arising out of the operation of the Transit System with the exception of any consulting services as may be requested herein.

#### Article VII, Insurance

The DTA shall furnish and maintain, at its sole cost and expense, subject to market requirements and availability, at all times during the term of this Contract and any renewal or extension thereof,

- a. A standard policy of automobile liability insurance having a combined single limit of not less than \$5,000,000 per occurrence with a retention not to exceed \$100,000 per occurrence insuring Consultant and ATED, their agents, servants and employees for the ownership, maintenance, use or operation of the buses and other vehicles in connection with the management and operation of the Transit System.
- b. A standard policy of general liability insurance having a combined single limit of not less than \$5,000,000 per occurrence with a retention of not to exceed \$100,000 per occurrence insuring Consultant and ATED, their agents, servants and employees for their wrongful acts and omissions in connection with the operation of the Transit System.
- c. Each policy shall be:
  - i. written by the insurer reasonably acceptable to the Consultant, be endorsed to name the Consultant and ATED as additional insured;
  - ii. endorsed to name Consultant and ATED as additional insureds;
  - iii. providing that the coverage afforded thereby is primary as to Consultant and ATED not excess; and

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- iv. such that it cannot be canceled or materially altered without thirty days prior written notice to the Consultant.

b. Consultant shall provide the following minimum amounts of insurance from insurance companies authorized to business with the state of Minnesota:

1. Workers Compensation covering Consultants own employees in accordance with the laws of the state of Minnesota;
2. Commercial General Liability Insurance with limits of not less than \$1,500,000 Single Limit.

**Article VIII. General Indemnification.**

The DTA shall indemnify, defend and hold Consultant and ATED, their agents, servants, and employees harmless from and against any and all loss, liability, claims, damage and expense, including, but not limited to attorney's fees, resulting from or arising out of DTA's failure to furnish and maintain the insurance policies required by Article V above in accordance with the terms thereof. In the event of any failure, Consultant may, at its option, furnish such policy or policies, without prejudice to any other remedy Consultant may have, and the cost and expense of furnishing and maintaining such policy or policies shall be deemed an operating expense of the Consultant and payable by the DTA. The forgoing shall not, however, apply to criminal penalties or awards and judgments arising out of willful or intentional tort or fraud committed by the Consultant or its employees or agents.

The DTA shall indemnify, defend and hold Consultant and ATED, their agents, servants, and employees harmless from any and all liability to, or claims made by third persons, regardless of whether such liability is assessed and regardless of whether such claims are made, during the term of this Contract or subsequent to its expiration or termination, arising out of the performance of this Contract by Consultant and/or ATED, their agents, servants and employees, whether or not caused in whole or in part by the negligence of Consultant or ATED or their agents, servants or employees, provided such performance was within the scope of the duties of such agents, servants or employees required by the provisions of this Contract. This indemnification shall not apply to the criminal penalties or awards arising from negligent, willful or intentional tort of fraud committed by Consultant or its employees or agents.

**Article IX. Divestment of ATE Management of Duluth, Inc.**

Upon written request of the President of the DTA Board of Directors, Consultant agrees to sell or transfer 100% of the ownership interests in ATED to an entity of the DTA's choosing, including the DTA itself (collectively or individually) pursuant to customary transfer documentation reasonably

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acceptable to the Consultant. Upon such sale or transfer, the DTA and the Consultant agree that they will amend and restate this Contract to reflect the change in ownership of ATED. The DTA and the Consultant agree that upon any sale or transfer of ATED to any Transferor, DTA or other Transferee will become the contributing employer to the Central States, Southeast and Southwest Area Pension Plan and assume ATED's Contribution history and contribution obligations to the Central States, southeast and Southwest Area Pension Plan.

Article X. Assignment

This Contract shall not be assigned, transferred, hypothecated or pledged in any way whatsoever by Consultant without the prior written consent of the President of the DTA Board of Directors. However, this Contract shall be binding upon the successors or assigns of the respective parties.

Article XI. Term

This Contract shall be effective upon "Notice to Proceed" from the DTA, and shall remain in effect until December 31, 2031 unless otherwise terminated as provided herein.

a. On or before August 1, 2031, the Consultant shall provide written notice to the DTA indicating that the initial term will expire on December 31, 2031. Upon written notice from the DTA General Manager and/or the President of the DTA Board of Directors dated on or before September 30, 2031, the DTA may, at its sole discretion, extend the term of this Contract for a period of five years, from January 1, 2032 through December 31, 2036. The DTA is not required to renew the Contract and may, at its sole option and discretion, allow the Contract to expire at the end of the initial term and thereafter, directly operate the Transit System or contract with some other entity to operate it.

If the DTA extends the term of this Contract in accordance with the foregoing, all of the terms and conditions of this Contract shall continue, unmodified, in full force and effect, except for payment to the Consultant shall be increased as set forth in Exhibit A.

b. On or before August 1, 2036, the Consultant shall provide written notice to the DTA indicating that the initial term will expire on December 31, 2036. Upon written notice from the DTA General Manager and/or the President of the DTA Board of Directors dated on or before September 30, 2036, the DTA may, at its sole discretion, extend the term of this Contract for a period of five years, from January 1, 2037 through December 31, 2041. The DTA is not required to renew the Contract and may, at its sole option and discretion, allow the Contract to expire at the end of the first renewal term and thereafter, directly operate the Transit System or contract with some other entity to operate it.

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If the DTA extends the term of this Contract in accordance with the foregoing, all of the terms and conditions of this Contract shall continue, unmodified, in full force and effect, except for payment to the Consultant shall be increased as set forth in Exhibit A.

Article XII. 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 XIII. Employment Conditions

In connection with this Contract, neither the Consultant, ATED or DTA shall discriminate against any employee or applicant for employment because of race, religion, color, age, gender, disability, national origin, veteran's status or any other protected class under federal, state or local law or ordinance. Consultant and ATED will take affirmative actions to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, age, gender, disability, national origin, veteran's status or any other protected class under federal, state or local law or ordinance. Such actions shall include, but are not limited to, the following: employment and promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

The DTA agrees that, in the event the Consultant or ATED, their agents, servants or employees are charged with or sued for any alleged discriminatory or sexual harassment practices, insofar as the alleged practices occurred at the direction of the DTA or were done according to the policies of the DTA, the DTA will indemnify Consultant and ATED against liability or expenses involved in the defense of such claims or lawsuits. Claims arising from actions, omissions, or events outside the scope of operating a Transit System pursuant to this Contract are not subject to indemnification.

Article XIV. 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.

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

**C. Reports and Information.**

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

**D. Audits and Inspection.**

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

**E. Confidentiality of Information.**

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

**F. Ownership of Data**

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

**Article XV. Subcontractors**

**A. Disclosure.** Consultant shall disclose all subcontractors it desires to perform work under this Contract at the time of execution of this Agreement. Thereafter Consultant shall promptly report any desired changes to the subcontractors of any tier in accordance with FTA requirements. Such changes shall also require the prior written approval of the DTA General Manager. Consultant shall

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

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

#### Article XVI. Default

In case of any default hereunder claimed to exist by either Party, such Party shall give the other Party prompt written notice of such default, setting forth the facts and reasonable detail, and in the event the allegedly defaulting Party has not remedied such default within thirty days (or in case of defaults which require a longer period of remedy has failed to commence upon such remedy within said period and thereafter to diligently proceed with the same to completion), the non-defaulting Party shall have the right to terminate this Contract for cause. This Contract shall also be terminable for cause at the option of the other Party if any Party is adjudicated as bankrupt, is subjected to the appointment of a receiver and fails to have such receiver removed within sixty days, has any of its property attached and fails to remove such attachment within sixty days, becomes insolvent for a period of sixty days, is unable to pay its debts as the same become due upon sixty days' written notice. This Contract shall also be terminable should the DTA lose the right to provide public transportation services or should funding from the State of Minnesota or the Federal Government be discontinued.

#### Article XVII. Employee Restrictions

No member, officer, or employee of DTA or ATED during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

No officer, director or employee of the DTA or Consultant shall be personally liable for the fulfillment of the conditions of this Contract.

#### Article XVIII. 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 XIX. 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



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sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

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

Consultant:

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

Article XX. Amendment, Modification, Waiver

No amendment, modification, or waiver of any condition, provision or term of this Contract shall be valid or of any effect unless made in writing, signed by the party or parties to be bound by its duly authorized representative, and approved in writing by the Commissioner of Minnesota Management and Budget as applicable, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by either party of any provision of this Contract shall not imply a subsequent waiver of that or any other provision. Any waiver by any part of any default of another party shall not affect or impair any right arising from any subsequent default.

Article XXI. 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 XXII. 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 XXIII. 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.

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Article XXIV. 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 XXV. Counterparts.

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

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 \_\_\_\_\_

## **PROPOSAL SHEETS**

# **Transit Management Consulting Services**

December 1, 2021

**Section 4 FORMAL PROPOSAL SHEET**

**PROPOSAL GUARANTEE REQUIREMENTS: Not Required.**

Proposals must include the following:

**Proposals must include the following:**

- a. **Proposed services, qualifications and experience of proposed staff**
- b. **A detailed cost proposal with fixed costs and ongoing consulting cost rates included**
- c. **Hourly cost for proposed staff**
- d. **Required certificates herein.**
- e. **Three references.**
- f. **Any other information the Proposer can supply to assist the DTA with evaluating the Proposal.**

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

Mailing Address:  
Rec'd \_\_\_\_\_

CITY STATE ZIP CODE

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

Signature \_\_\_\_\_

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

Addendum Acknowledgment  
Number Date

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

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

**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. DEBARRED BIDDERS**

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

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

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

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

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

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

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

\_\_\_\_\_  
Signature

**Certificate B    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.

SIGNED \_\_\_\_\_

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

**Certificate C. COMPLIANCE WITH SPECIFICATIONS**

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 D**

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 \_\_\_\_\_

**Certificate E: Notice of Legal Agreement or Litigation**

During the performance of this contract, the contractor agrees as follows:

Contractor shall promptly notify the Duluth Transit Authority of any current or prospective legal matter that may affect the Duluth Transit Authority or the Federal Government. Legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Duluth Transit Authority or the Federal Government as a party to litigation or any legal agreement in any forum for any reason.

This notification provision applies to instances of false claims under the False Claims Act, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Contractor is subject to this Agreement between the Contractor and the Duluth Transit Authority or the Federal Transit Administration, or an agreement involving a principal, officer, employee, agent or subcontractor of the Contractor. Knowledge, as it is used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer to information without delay and without change.

The Contractor agrees to include the above clause 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.

SIGNED \_\_\_\_\_

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

# **TECHNICAL SPECIFICATIONS**

FOR

# **Transit Management Consulting Services**

**December 1, 2021**

## **Section 6 TECHNICAL SPECIFICATIONS**

### **SECTION A. PURPOSE AND BACKGROUND.**

1. On behalf of the Duluth Transit Authority (“DTA”), the DTA Board of Directors (“Board”) is seeking proposals from qualified firms to provide Transit Management Consulting Services for the transit system serving the City of Duluth, Minnesota and the surrounding area, and Superior, Wisconsin (“Transit System”).

While more completely described elsewhere in this RFP, in general terms, the DTA wishes to engage a firm to provide consulting to the DTA General Manager and/or designee for operation of the Transit System under the policy direction of the Board. The consulting services to be provided upon request from the DTA Board and/or DTA staff, include, but are not limited to, those relating to advising the DTA staff on management of the daily operations, service standards, budgeting, accounting, purchasing, safety, insurance, claims, employee selection/training, labor relations, equipment and facilities utilization, maintenance, marketing, advertising, security, public relations, use of central office support/supplemental services and such other management consulting functions as are needed in the operation of an urban transit system. The DTA Board is responsible for developing overall policy and provide overall goals for the Transit System.

### **B. CURRENT CONDITIONS**

The DTA is a public transportation system that operates fixed route and paratransit services seven days a week, 365 days a year for the City of Duluth, MN, the City of Superior, WI, and the City of Proctor, MN. The DTA was formed in 1969 under MN Stat. 458A.21 as an authority of the City of Duluth under the oversight of nine Board of Directors nominated by the mayor of Duluth. The DTA Transit System is currently managed via a third-party contract with FirstGroup Management, Inc., (“FGMI”) successor to First Transit, Inc. FGMI has changed their business format in the U.S. and will no longer be providing services under this type of contract when it expires in 2022. The Board has hired a long-term DTA employee to serve as General Manager, but would like to retain an outside firm to continue to provide consulting services as needed.

### **C. ATE MANAGEMENT OF DULUTH, INC.**

1. Upon formation of the DTA, First Transit, Inc., subject to the laws of the State of Minnesota, formed a separate corporation, ATE Management of Duluth, Inc. (“ATED”) which is the employer of all employees necessary to for the operation of the Transit System and assumes all contractual obligations incidental to the operation of the Transit System to the extent that ATED has agreed to be so obligated. Under this arrangement, employees of ATED are private sector employees, not “public employees” under Minnesota law, and do not participate in the Public Employees Retirement Association (“PERA”).

2. Currently, approximately 175 people are employed by ATED, including all bus operators, maintenance technicians, the General Manager and administrators. The selected Consultant will primarily be working under the direction of the DTA General Manager or his designee(s) as requested by the Board.

3. ATED drivers and technicians are members of the Teamsters Local 346 under a collective bargaining agreement (“CBA”); ATED makes pension and benefit payments to the Teamsters Central States Pension Fund. The DTA has evaluated the pension withdrawal liability of the DTA’s contributions under the ERISA Act, Section 4001 (b) and determined that a successor

vendor to replace FGMI must acquire ATED stock to ensure that the pension withdrawal liability is not triggered, causing a substantial financial burden to the DTA.

4. Accordingly, Respondents to this RFP MUST agree to acquire the stock of ATED in accordance with ERISA and Minnesota law to prevent a withdrawal liability or propose a successor entity that will accomplish the same objective. Under this Contract, DTA will reimburse the selected Consultant for the cost of acquiring ATED stock from the current stockholder using non-transit related parking revenue and indemnify the selected Consultant from all withdrawal liability risk, provided the selected Consultant complies with the terms and conditions herein.

5. Administrative staff of ATED are also private sector employees and are not under the CBA; they have a separate pension plan. ATED makes contributions to the administrative staff pension plan, but there is no withdrawal liability associated with transferring these employees to another firm or with becoming public employees.

6. Acquisition ownership of ATED stock shall be for a minimum price of not less than one thousand dollars. DTA will reimburse the selected Consultant for the cost of acquiring the stock using non-transit related parking revenue. ATED stock may not be assigned, transferred, sold or in any way changed without the advance written approval of the President of the DTA Board of Directors. Upon written request from the President of the DTA Board of Directors, Consultant agrees to sell or transfer 100% of the ownership interests in ATED to an entity of the DTA's choosing, including the DTA itself (collectively or individually) pursuant to customary transfer documentation reasonably acceptable to Consultant. Upon request for the sale of the ATED stock, the sale price shall be agreed upon by the Consultant and the Buyer, but shall not exceed the initial purchase price of the stock plus 5% per year (compounded) for each year the stock is held in compliance with this Contract. Upon any such sale or transfer, the DTA and the Consultant agree that they will amend and restate this Contract to reflect the change in ownership of ATED. The DTA and the Consultant agree that upon any sale or transfer of ATED to any Transferor, DTA will or will require Transferor to become the contributing employer to the Central States, Southeast and Southwest Area Pension Plan and assume ATED's contribution history and contribution obligations to the Central States, Southeast and Southwest Area Pension Plan.

#### **D. REIMBURSEMENT AND COMPENSATION, ACQUISITION OF ATED STOCK**

The DTA will reimburse the selected Consultant for acquisition of ATED stock using non-transit related parking revenue upon completion of the acquisition. All expenses related to the acquisition of the stock must be separately identified on a separate invoice to the DTA with no other expenses included.

#### **B. ONGOING SERVICES, CONSULTING**

##### **1. DTA INITIATIVES**

a. With an annual operating budget of approximately \$18 million, the Duluth Transit Authority provided approximately 3 million passenger trips per year on the fixed route transit service and approximately 30 thousand passenger trips on the complementary paratransit service prior to the COVID-19 pandemic in 2020. Ridership declined to less than half of those levels but is now slowly returning. Restoring ridership to pre-pandemic levels is a primary objective of the DTA.



- b. The DTA owns all of the facilities, equipment, and rolling stock needed to carry out its transit operations. The rolling stock consists of 77 transit coaches, 3 rubber wheeled trollies, and 12 paratransit vehicles as well as a fleet of miscellaneous non-revenue service and support vehicles.
- c. The DTA is currently finalizing a Comprehensive Operational Analysis to redesign the entire network for a more efficient Transit System while meeting passenger needs and in compliance with the DTA Title VI program. In 2022, the DTA plans to launch the redesigned network and is planning a detailed marketing campaign to help riders prepare for the new service.
- d. Staff is currently evaluating the opportunity for two bus rapid transit (“BRT”) routes and has applied for grants to perform outreach and engineering to advance the project.
- e. DTA installed new fareboxes in 2021 and implemented a mobile app called the My DTA App, as well as partnered with the Transit App to provide current and new riders with real time bus information, trip planning and electronic ticketing.
- f. Planning is underway to adopt a fare capping program to incentivize riders to use electronic ticketing and to increase equity among low-income populations in the DTA service area.
- g. Staff is evaluating the opportunity for a joint development in the central business district adjacent to the Duluth Transportation Center.
- h. Major renovations to the DTA Operations Center offices and parking lots are scheduled for mid- 2022 for completion.
- i. DTA will provide copies of financial statements, inventories, grant schedules and other public information to interested parties upon request to the DTA procurement manager.

## 2. OVERALL WORK PLAN

- a. Besides holding ATED stock, the selected individual or firm shall provide consulting services upon request to assist the DTA Board and/or the DTA General Manager to meet goals and objectives established by the Board. Activities may include, but are not limited to:
  - i. With oversight from the DTA Board of Directors, establish or assume control of a subsidiary corporation ATED to ensure continuation of the pension and benefit contributions under the CBA.
  - ii. Provide consulting and assistance for the Transit System in compliance with the DTA Board of Directors requirements.
  - iii. Ensure safety of personnel, prevent losses and recommend appropriate insurance coverages.
  - iv. Assist the General Manager to maintain positive employee relations. Upon request, assist with union contract negotiations.
  - v. Assist with review and compliance with applicable environmental and occupational safety and health laws and regulations.
  - vi. Provide management personnel development, training continuity and recruitments as necessary or requested.
  - vii. Provide policy recommendations.
  - vii. Upon request by the Board, provide reports and presentations on topics requested by the Board.

b. Upon request by the Board or the General Manager of the DTA, provide on-call consulting services on topics or actions directly related to the operation of the Transit System.

Consulting may including, but is not limited to:

- i. FTA reporting compliance
- ii. Management of DTA assets
- iii. DTA Financial Procedures
- iv. Staffing, training, EEO Compliance
- v. Evaluating the system for operational efficiencies
- vi. Evaluating impacts of new government mandates
- vii. Other topics germane to the general intent of this Contract.

### 3. INDIFINITE DELIVERY, INDEFINITE QUANTITY

a. This is an Indefinite Delivery, Indefinite Quantity Contract. The quantities of services in the Contract are not guaranteed and are subject to the discretion of the DTA Board and/or General Manager. Delivery of services under this Contract shall be performed in accordance with the applicable terms and conditions of this Contract, including any and all attachments incorporated by reference herein and

b. There is no minimum or maximum limit to the amount of services provided under this Contract except by order of the DTA Board and/or General Manager.

c. On occasion, the DTA may issue a Task Order for specific work germane to the Contract to be done at the DTA Board and/or General Manager. Task Order work may be provided in accordance with the applicable terms and conditions of this Contract, including any and all attachments incorporated by reference herein and modifications hereto. The DTA shall not be required to issue a Task Order for routine work that is the subject of this Contract.

d. The DTA specifically reserves the right to directly perform the work or any portion of the work covered under this Contract at the discretion of the DTA Board and/or General Manager. No compensation will be paid to the Consultant for work not performed by the Consultant or its subcontractors.

e. Personnel supplied by the selected Consultant will not be entitled to any compensation or rights or benefits of any hospital care, sick leave, and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from the DTA, ATED, FGMI, or their successors.

### 4. REMIBURSEMENT AND COMPENSATION FOR ONGOING SERVICES

a. Ongoing expenses for the Proposed Contract shall be of the fixed fee type for ownership of ATED stock and associated costs for continued compliance with federal, state and local laws and regulations associated with ownership of ATED stock. In the event that ongoing costs for ownership of the stock are impacted by applicable federal, state and local regulations, DTA and the selected Consultant will adjust the Contract in accordance with the applicable regulations.

b. In addition, DTA will compensate the selected Consultant for consulting services rendered based on a fee schedule as agreed herein. Cost of consulting and technical support will be paid on an hourly basis or project basis as agreed herein. No travel expenses will be paid by the DTA for consulting services unless approved in advance by the Board or the DTA

General Manager. DTA will pay the cost for the fidelity bond protecting the ATED from dishonest or fraudulent acts by ATED personnel.

c. The DTA will furnish to the selected Consultant necessary office space for onsite consulting services if needed. DTA will request consulting services during normal business hours only, excluding holidays.

#### 5. CONTRACT ADJUSTMENTS

In the event laws or government regulations require any change in the cost of owning and reporting ownership of ATED stock that results in clearly documented increased or decreased costs, the rates listed in Consultant's Proposal may be negotiated and adjusted with agreement of both Parties. Such increases or decreases must be clearly documented to the DTA Director Finance's satisfaction.

The Consultant warrants that any prices charged to DTA do not exceed the prices charged by the Consultant to any other customer purchasing the same product or services in like or similar quantities and under similar terms and conditions.

#### 6. TASK ORDERS

Non-routine consulting tasks for this Contract, in the form of task orders, will be assigned by the DTA Procurement Manager or designee. A proposed cost and timeline for the requested task will be submitted and negotiated prior to approval and notice to proceed. Tasks will be completed in a timeline as agreed upon in the task order proposal. DTA reserves the right to change or withdraw Task Order requests, to perform the work itself, or to seek third parties to perform the work, in the best interest of the DTA.

#### 7. PREPARING THE FEE/RATE PROPOSAL.

In preparing the separate fee/rate proposal, use the Scope of Services described in this Request for Proposals as a guide to determine what costs are associated with the ongoing costs for continued ownership of ATED stock, including Stockholder meetings, as may be required. This should be a fixed monthly cost that may be adjusted as noted herein.

Rates for consulting services shall be separate from the fixed fee, and shall be itemized by type and skill set. For example, an hourly rate for consulting on employee relations, contract negotiations, etc., providing policy reviews and recommendations, etc., shall be itemized by area of specialty. For all work to be completed by subcontractors, please identify the proposed subcontractor and the rate for such consulting specialty.

## **SECTION 7. GENERAL INFORMATION FOR RESPONDERS**

1. Purpose: This request for proposal (RFP) is to solicit qualified, experienced Consultants to prepare and submit proposals for consideration by the Duluth Transit Authority to satisfy the need for professional services pertaining to the development and implementation of a transit plan for the DTA's Service Area.
2. Issuing Office: The Duluth Transit Authority issues this RFP.
3. Scope: This RFP contains instructions governing the proposals to be submitted and

the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; general evaluation criteria; and other requirements to be met by each Proposal. Refer to summary of materials attachment.

4. Type of Contract: Negotiations may be undertaken with Respondents whose Proposals (as to price and other factors) show them to be qualified, responsible and capable of performing the work.
5. Funds for this project are provided by a grant from the Federal Transit Administration, and the Minnesota Department of Transportation (“MN DOT”).
6. Rejection of Proposals: This RFP does not obligate the DTA to award a Contract or complete the project, and the DTA reserves the right to cancel the solicitation if it is considered to be in its best interest.
7. Incurring Costs: The DTA is not liable for any cost incurred by Responders prior to final execution of a Contract.
8. Addendum to RFP: Changes to the specifications will only be made by written addendum. Addenda will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com). It is the Respondent’s responsibility to obtain all documents available for this procurement.
9. Economy of Preparation: Proposals should be prepared simply and economically, providing a straightforward, concise, unambiguous description of the Responder’s ability to meet the requirements of RFP. Proposals are limited to twenty-five pages plus proposal sheet and required certificates.
10. Oral Presentation: Responders who submit Proposals may be required to make an oral presentation on their Proposal to the DTA. Such presentations provide an opportunity for the Responder to clarify the Proposal to ensure thorough mutual understanding. The Issuing Office will schedule any required presentations.
11. Prime Consultant Responsibilities: The successful Consultant will be required to assume responsibility for all services offered in the Proposal whether or not they are produced directly by the Consultant or through subcontractors. Further, the DTA will consider the successful Consultant to be the sole point of contact with regard to contractual matters and retains the right to approve/disapprove all proposed subcontractors.

## **SECTION 8. EVALUATION CRITERIA.**

Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this RFP, as amended. Major criteria to be considered in evaluation include the following:

1. The experience of the Offeror in providing similar service elsewhere, including the level of experience in working with government entities and the quality of

- services performed, together with the Offeror's demonstrated operational competency and established history to provide the services requested by the DTA through this RFP. Knowledge of Duluth is a plus. [ 35% ]
2. The ability of the Offeror to acquire ATED stock and ensure continuity of the corporation as required by law and the specifications herein. [ 35% ]
  3. Reasonableness/competitiveness of proposed fee and/or benefits to the Duluth Transit Authority, although the Duluth Transit Authority is not bound to select the Offeror who proposes the lowest fees or most benefits for services. The Duluth Transit Authority reserves the right to negotiate fees with the selected Offeror(s). [ 25% ]
  4. The Offeror's responsiveness and compliance with the RFP requirements and conditions. [ 5% ]

### **SECTION 8 EVALUATION OF THE COST PROPOSAL**

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

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

All costs related to the Proposal will be evaluated. The Evaluation Committee may not necessarily make a recommendation to award to the Proposer with the highest technical ranking nor make a recommendation to award to the Proposer with the lowest Cost Proposal if doing so would not be in the best interests of the DTA.

### **PROPOSAL RESPONSES MUST INCLUDE:**

1. Provide the Responder's full company name and address, indicate main contact people with titles and phone numbers and email contact information, Federal I.D. number, DUNS number, and Minnesota tax I.D. number (if applicable), along with the names of the individual(s) to be directly responsible for providing services under the contract. Include a summary of prior experience and educational training.
2. A summary of previous work conducted by the Consultant and the individuals directly responsible for providing services similar in scope to that requested here, along with references.
3. The names of subcontractors (firms and individuals) who will assist in performing the required 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 this project.
4. A signed proposal form and required certificates.
5. A Cost Proposal in a separate pdf attachment.