



# **Duluth Transit Authority**

## **REQUEST for PROPOSALS**

### **FOR BUILDING CONTROLS SYSTEM**

**June 16, 2022**

## **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 Building Controls System**

The Duluth Transit Authority hereby requests proposals from qualified firms to provide an automated building controls system for DTA buildings.

Proposals must be received no later than **1:00 p.m. on Thursday, July 14, 2022**. Specifications may be emailed or mailed to prospective proposers, or picked up at 2402 West Michigan Street, Duluth, MN 55806. Contact (218) 623-4329 or [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) for more information.

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

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

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**Section 1.**

**General Conditions**

**G-1 REQUEST FOR PROPOSALS**

- a) Proposals are requested from qualified firms for an automated Building Controls System for three DTA buildings, the DTA Operations Center, 2402 West Michigan Street, Duluth, MN 55806, the Duluth Transportation Center, ("DTC") 228 W. Michigan Street, and Transit Center East, ("TCE"), 214 West Superior Street, Duluth, MN.
- b) This project is funded in part by a grant from the Federal Transit Administration, Assistance Listing #20.507.
- c) Proposals shall be on the basis of total project costs for the project under the following requirements and conditions, which shall be considered an essential part of the Contract Documents.
- d) The DTA reserves the right to accept and/or refuse any or all Proposals, to add or delete work without penalty, in the interest of the DTA.
- e) Proposers must adhere to all terms of this RFP.
- f) Proposer will bear all costs incurred in responding to this RFP.
- g) Prices shall be good for ninety (90) days after the Proposal opening.
- j) This Contract may be subject to the approval of the DTA Board of Directors.

**G-2 INQUIRIES**

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

**G-3 DEFINITION OF TERMS**

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

- a. DTA, customer, buyer, or Operator shall mean the DTA.
- b. Project Manager shall mean Mr. Mark Ness, Director of Maintenance.
- c. Manufacturer, Vendor, Proposer, or Contractor shall mean that firm subsequently receiving the Contract award from the DTA as detailed in these specifications.

**G-4 SUBSTITUTIONS AND OR EQUAL**

- a) Whenever brand, manufacturer model or product names are indicated in the specifications, they are included for the purpose of establishing identification and a general description of the item. Whenever a process is designated or a manufacturer's name, brand, model or item description is given, or whenever a process or material covered by a patent is designated or described, it will be understood that the words "or approved equal" follow such name, designation or description, whether or not they do so follow.
- b) Please note that DTA personnel are NOT allowed to discuss the RFP with anyone, including Proposers, before the Proposal submission deadline without permission, except that prime contractors and /or subcontractors may make appointments to discuss these specifications with the Procurement Manager. This, however, does not relieve them from the written, documented request required by paragraph c) below. Where prior approval is called for in the specifications it means prior to Proposals opening. Minutes of discussions and responses to questions will be provided to all Proposers in the form of an addendum to this RFP.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager in writing via email (preferred) or regular mail no later than **2:00 p.m. on Wednesday, June 29, 2022**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent

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information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item under consideration. The supporting evidence for the approved equal must be submitted with the request for approval. All requests must be submitted via email or US Mail unless otherwise approved by the DTA Procurement Manager in writing.

- d) The replies to request under paragraph c) above will be posted in the form of an addendum to this RFP on the DTA website at [www.duluthtransit.com/doingbusinesswithus](http://www.duluthtransit.com/doingbusinesswithus) on **Thursday, June 30, 2022**.
- e) It is at the sole discretion of the DTA Project Manager to accept or deny requests for "approved equals." The Contractor cannot challenge the DTA Project Manager's denial of an approved equal submittal either before Proposal opening or after award of the Contract.
- f) It should be understood that using a specified brand name component and/or equipment in the specifications does not relieve the Contractor from its responsibility to accomplish the work in accordance with the warranty and other Contract requirements herein. The Contractor is responsible for notifying the DTA Procurement Manager of any inappropriate brand name component and/or equipment that may be called for in the specifications, and for proposing a suitable substitute for consideration.
- g) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made **only** by **written** addendum. Addendum will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).

**G-5 PREPARATION OF PROPOSAL**

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

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

Each Proposal and all papers bound and attached thereto shall be emailed in a portable document format (".pdf") attachment (including a copy of the Proposal Security) and emailed to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), OR placed and securely sealed in an envelope marked: **"HVAC Controls System"** and mailed or delivered to:

DTA Procurement Manager  
2402 West Michigan Street  
Duluth MN 55806

Proposals must be received no later than **1:00 p.m. on Thursday, July 14, 2022**. Time means local time in Duluth, Minnesota. Late Proposals will not be considered. The DTA reserves the right to accept or reject any and/or all Proposals in the best interest of the Authority.

No Proposal may be modified after submission except by written modification electronically or physically received by the DTA prior to the time set for the opening of Proposals. Modifications must be signed by the person submitting the Proposal or accompanied by an explanation as to why it is not and must indicate that it modifies the original Proposal. Modifications shall be submitted in a .pdf attachment in an email to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) or securely sealed envelope marked as indicated on the Proposal Form.

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**G-6 WITHDRAWAL OF PROPOSALS**

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

**G-7 CONSIDERATION OF PROPOSAL**

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

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

**G-8 PROPOSAL DOCUMENTS, ADDENDA**

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

**G-9 PROPOSAL CONTENTS CERTIFICATION**

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

**G-10 DUE DILIGENCE**

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

**G-11 CONTRACT FORM AND CHANGES**

The chosen Proposer, within twenty (20) days after the award of the Contract from the DTA shall sign the formal Contract.

A sample Contract is included in this RFP. Any proposed changes to this Contract shall be submitted to the DTA Procurement Manager no later than ten (10) days prior to Proposal due date for DTA consideration. Approval of requested changes shall be solely at the DTA's discretion. Only written change orders, amendments or addenda, signed by the Procurement Manager and/or General Manager of the DTA shall be binding upon the DTA.

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

**G-12 BONDING REQUIREMENTS**

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

**G-13 PRICE COMPLETE**

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

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

**G-14 STATE, FEDERAL, OSHA SAFETY REQUIREMENTS**

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

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**G-15 DISPOSITION OF RESPONSES**

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

- Clearly mark all trade secret materials in its Proposal at the time of Proposal submittal
- Include a statement with the Proposal justifying the trade secret designation for each item;
- 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, ATE Management of Duluth, and First Group Management, Inc., and the Minnesota Department of Transportation, and their agents and employees, from any judgements or damages awarded against the DTA, ATE Management of Duluth, and First Group Management, Inc., and the Minnesota Department of Transportation 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-16 PROTEST PROCEDURES**

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

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

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

**PROTESTS BEFORE AWARD**

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

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



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

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

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

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

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

#### **PROTESTS AFTER AWARD**

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

#### **DECISION ON PROTEST**

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

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

#### **G-17 ORGANIZATION CONFLICTS OF INTEREST**

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

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

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

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

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

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

#### **G-18 TAXES**

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

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

Unless a Certificate of Exemption is provided, any out of state Proposer receiving a Proposal award will have eight percent (8%) retained from invoice payments on any contracts over \$50,000.

#### **G-19 PROMPT PAYMENT TO SUBCONTRACTORS.**

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

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

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**G-20 SUBCONTRACTOR REPORTING**

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

**G-21 REQUIRED INSPECTIONS**

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

**G-22 MINNESOTA NONDISCRIMINATION REQUIREMENTS**

In accordance with Minnesota §181.59, "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

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

**G-23 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-24 NO ENDORSEMENT**

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

**SIGNIFICANT DATES OF PROCUREMENT**

<b>Item</b>	<b>Date</b>	<b>Time</b>
Date of Release	June 16, 2022	
Preproposal Meeting	June 22 , 2022	10:00 a.m.
Request for Clarifications	June 29, 2022	2:00 pm
Response to Clarifications	June 30, 2022	10:00 a.m.
Proposal Opening	July 14, 2022	2:00 pm
Award	July 29, 2022	

## Section 2.

## FEDERAL TRANSIT ADMINISTRATION

### Contract Clauses

#### A.1 ACCESS TO RECORDS

##### **49 U.S.C. § 5325(g)**

#### Clause Language

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

#### A.2 BONDING REQUIREMENTS

##### **2 CFR §200.325**

##### **31 CFR Part 223**

#### Bond Requirements

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

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

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

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

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

#### Performance Guarantee

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

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Certificate of Authority as described hereunder. The Duluth Transit Authority may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in the Contract price. The Duluth Transit Authority may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

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

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

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

**Payment Bonds**

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

**Sample Bond Certifications**

**Performance Guarantee Certification**

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

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

\_\_\_\_\_ Performance Bond  
 \_\_\_\_\_ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

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

**Performance Bond** (example)

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

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

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

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

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

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

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

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

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

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_.

PRINCIPAL

\_\_\_\_\_(example)\_\_\_\_\_(seal)  
\_\_\_\_\_(title)

WITNESS

\_\_\_\_\_(example)\_\_\_\_\_  
\_\_\_\_\_(Title)

SURETY

(SEAL)

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

**Irrevocable Stand-By Letter of Credit Certificate** (example)

The undersigned states that he/she is \_\_\_\_\_(Title) of the \_\_\_\_\_(Name of Beneficiary), known as the "Beneficiary" and hereby certifies on behalf of the Beneficiary to \_\_\_\_\_(Name of Issuing Bank) known as the "Bank" with Reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ Issued by the Bank ("Letter of Credit") that:

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

IN WITNESS WHEREOF, this certificate is executed this \_\_\_\_\_ day of \_\_\_\_\_.

(NAME OF BENEFICIARY)

By: \_\_\_\_\_(example)\_\_\_\_\_

ITS: \_\_\_\_\_

**Bank Draft** (example)

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**FOR VALUE RECEIVED**

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

**NAME OF BENEFICIARY**

By \_\_\_\_\_ (example) \_\_\_\_\_  
Its \_\_\_\_\_

**A.3 BUS TESTING**

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

Does not apply to this contract

**A.4 BUY AMERICA REQUIREMENTS**

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

**Clause Language**

Applicable for projects over \$150,000.

**Buy America**

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

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

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

Certificate of Compliance with Buy America Requirements. (example)

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

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

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

**A.5 CARGO PREFERENCE REQUIREMENTS**

**46 U.S.C. §55.05; 46 C.F.R. Part 381**

Does not apply to this procurement

**A.6 CHARTER SERVICE**

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

Does not apply to this procurement

**A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

**49 U.S.C §§7401-7671q; 33 U.S.C §§1251-1387**

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

Does not apply to this procurement



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

### **Clause Language**

#### **Civil Rights and Equal Opportunity**

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

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment", September 24, 1965, 42 U.S.C. §2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. The Contractor agrees to take affirmative action to ensure that applicants be employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for the reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et. Seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et. Seq.*, and Federal transit law at 49 U.S.C. §4332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

### **Clause**

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 shall make all determinations

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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

**Clause Language**

**Prevailing Wage and Anti-Kickback**

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

**Contract Work Hours and Safety Standards**

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

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

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

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

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

**Clause Language**

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

**A.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;

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

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

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

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

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

**Clause Language**

Applicable to contracts of \$100,000 or more.

**Lobbying Restrictions**

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

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

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

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

**Clause Language**

**No Federal Government Obligation to Third Parties.**

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

**A.16 PATENT RIGHTS AND RIGHTS IN DATA**

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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

**Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

**A.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

**Recovered Materials**

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

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

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

**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.

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**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)

**Clause Language**

**Termination for Convenience (General Provision)**

The Duluth Transit Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Duluth Transit Authority's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Duluth Transit Authority to be paid the Contractor. If the Contractor has any property in its possession belonging to the Duluth Transit Authority, the Contractor will account for the same, and dispose of it in the manner the Duluth Transit Authority directs.

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

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

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

**Opportunity to Cure (General Provision)**

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

If Contractor fails to remedy to the Duluth Transit Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the Duluth Transit Authority setting forth the nature of said breach or default, the Duluth Transit Authority shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Duluth Transit Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach**

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

**Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Duluth Transit Authority may terminate this contract for default. The Duluth Transit Authority shall terminate by delivering to the Contractor a Notice of

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Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Duluth Transit Authority.

**Termination for Default (Construction)**

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

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

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

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

**A.26 VIOLATION AND BREACH OF CONTRACT**

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

Does not apply to this procurement

**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

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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 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.



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**(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 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.

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**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, 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**

# **Building Controls System**

**Duluth Transit Authority  
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**Section 3. Contract (example for Proposal)**

This Contract, made this \_\_\_\_ day of \_\_\_\_, 2022, by and between \_\_\_\_, a \_\_\_\_ (corporation) \_\_\_\_, hereafter referred to as "Contractor", and the Duluth Transit Authority, 2402 W. Michigan St., Duluth, MN, hereafter referred to as "DTA". The DTA and Contractor agree as set forth below.

**ARTICLE 1            THE CONTRACT DOCUMENTS**

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract; Request for Proposals (Procurement # 041-22-2021.6) dated June 16, 2022, General, Special and Technical Specifications and Drawings; prevailing wage schedules, all addenda issued prior to and all modifications issued after execution of the Contract; and the executed Proposal form and Required Certificates, all as fully a part of the Contract as if attached to this Contract or repeated herein.

**ARTICLE 2            THE WORK**

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

**ARTICLE 3            TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Work to be performed under this Contract shall begin upon "notice to proceed" from the DTA and completed no later than May 31, 2023, unless otherwise terminated as set forth herein.

**ARTICLE 4            CONTRACT SUM**

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

**ARTICLE 5            PAYMENTS TO CONTRACTOR**

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

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

Payment does not imply acceptance of work. The granting of any progress payment or payments by the DTA, or receipt thereof by Contractor, shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the requirement of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instructions of these Contract requirements or specifications which are not equal to the samples submitted to and approved by the DTA Project Manager will be rejected and shall be replaced by the Contractor without delay.

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**ARTICLE 6 INVOICES**

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

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

**ARTICLE 7 DELAYS**

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

**ARTICLE 8 CONTRACTOR CHANGES**

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

**ARTICLE 9 INDEMNIFICATION**

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

**ARTICLE 10 INSURANCE**

- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and DTA, ATE Management of Duluth, and First Group Management, Inc. from all liability described in the paragraph above.
  - (1) Workers' compensation in accordance with the laws of the state of Minnesota.
  - (2) Public Liability and Automobile Liability Insurance with limits not less than \$2,000,000 Single Limit and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance, shall be in a

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company with an “AM BEST” rating of A-(minus); Financial Size Category (FSC) VII or better and must be authorized in the State of Minnesota; and shall provide for the following: Premises and Operations Bodily Injury and Property Damage, Personal and Advertising Injury, Blanket Contractual Liability, Product and Completed Operations Liability, and Independent Contractors Liability.

- (3) Contractor shall provide a builder’s “All Risk” or equivalent Builder’s Risk policy insuring the interest of the DTA, Contractor and any tier of Subcontractor. Builder’s Risk limit of liability shall be equal to the amount of the Contract sum, plus the value of any subsequent Contract modifications, comprising the total value of the project on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made. Property Insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, testing and startup, temporary buildings or fixtures, debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor’s services and expenses required as a result of such insured loss. This property insurance shall cover portions of work stored offsite and portions of the work in transit.

If the Property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

- (4) Premises Liability and excess liability policies shall not have explosion, collapse or underground property damage hazard exclusions.
- (5) Professional Liability insurance of not less than \$2,000,000.
- (6) Pollution Liability insurance of not less than \$2,000,000.
- (7) DTA, ATE Management of Duluth, and First Group Management, Inc. shall be named as an **Additional Insured** under the Public Liability, Excess/Umbrella Liability\* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the DTA, ATE Management of Duluth, and First Group Management, Inc. Contractor shall also provide evidence of Statutory Minnesota Worker’s Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days’ notice of cancellation, non-renewal or material change provisions included. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor’s interests and liabilities.

*\*An umbrella policy with a “following form” provision is acceptable if written verification is provided that the underlying policy names the DTA, ATE Management of Duluth, and First Group Management, Inc. as an additional insured.*

- (8) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the DTA without fail not less than thirty (30) days prior to any cancellation, non-renewal or

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modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DTA will render any such change or changes in said policy or coverages ineffective as against the DTA, ATE Management of Duluth, and First Group, Inc.

- b. The insurance required herein shall be maintained in full force and effect during the life of this Contract and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Contract.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.
- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA, ATE Management of Duluth, and FirstGroup Management, Inc.
- e. The Contractor's policy(ies) will be primary to any other valid and collectible insurance available to the DTA with respect to any claim arising out of the performance under this Contract.
- f. The Contractor is responsible for payment of Contract-related insurance premiums and deductibles.
- g. If the Contractor is self-insured, a Certificate of Self-Insurance must be provided to the DTA, for the DTA's approval in a form and amount acceptable to the City Attorney. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA, ATE Management of Duluth, and First Group Management, Inc.
- h. The Contractor's policy(ies) must include legal defense fees in addition to its liability limits, with the exception of Professional or Technical Errors and Omissions insurance.

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**ARTICLE 11 RECORDS AND INSPECTIONS**

- a. **Establishment and Maintenance of Records**  
Records shall be maintained by Contractor in accordance with requirements prescribed by DTA and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Contract.
- b. **Documentation of Costs**  
Contractor will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.
- c. **Reports and Information**  
Contractor shall be responsible for furnishing to DTA records, data and information as DTA may require pertaining to matters covered by this Contract.
- d. **Audits and Inspections**  
Contractor shall ensure that at any time during normal business hours and as often as DTA may deem necessary, there shall be made available to DTA for examination, all of its records with respect to all matters covered by this Contract. Contractor will also permit DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.
- e. **Confidentiality of Information**  
Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release the data referred to in this clause, Contractor must immediately notify the DTA and consult with the DTA as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.
- f. **Ownership of Data**  
All survey notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of DTA when prepared and shall be delivered to the DTA upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA.

**ARTICLE 12 INDEPENDENT CONTRACTOR**

That at all times and for all purposes hereunder, Contractor shall be an independent contractor and is not an employee of the DTA for any purpose. No statement contained in this Contract shall be construed so as to find Contractor to be an employee of the DTA, and Contractor shall not be entitled to any of the rights, privileges, or benefits of employees of the DTA, including, but not limited to,



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workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

**ARTICLE 13            COMMUNICATIONS**

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

Designation for DTA

Designation for Bidder

Mark Ness, Director of Maintenance

**ARTICLE 14            EXTENT OF AGREEMENT**

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

**ARTICLE 15            GOVERNING LAW**

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

**ARTICLE 16            RIGHTS AND REMEDIES**

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

**ARTICLE 17            NO THIRD PARTY RIGHTS**

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

**ARTICLE 18            CANCELLATION**

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

**ARTICLE 19            SEVERABILITY**

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

**ARTICLE 20            COUNTERPARTS**

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This Contract may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Contract transmitted by facsimile, by electronic mail in "portable document format" ("pdf") or by any other electronic means which preserves the original graphic and pictorial appearance of the Contract shall have the same effect as physical delivery of the paper document bearing an original signature.

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

## **Proposal Sheets**

**DULUTH TRANSIT AUTHORITY**

# **Building Controls System**

**June 16, 2022**

**Duluth Transit Authority  
Building Controls System**

# 041-22-2021.6

## **Section 4. FORMAL PROPOSAL SHEET Building Controls System**

NOTE: All Proposals must be written, signed and transmitted via a .pdf attachment in an email addressed to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) (preferred), or in a sealed envelope, plainly marked with Proposal number, subject matter and opening date.

**PROPOSAL DEPOSIT REQUIREMENTS: None**

Proposer must provide the following:

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

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

Mailing Address:

\_\_\_\_\_

CITY STATE ZIP CODE

Addendum Acknowledgment  
Number Date Rec'd

\_\_\_\_\_

\_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Email: \_\_\_\_\_

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## **4.1 Proof of Responsibility Statement**

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

### Statement of Bidder Qualifications and Responsibility

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

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

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

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

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

Warranty:

The Contractor,

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

Signed:

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Title 

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

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

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

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

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

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_

Title \_\_\_\_\_

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**4.3****Subcontractors and Suppliers Listing**

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

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

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

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

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

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

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

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

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

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

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

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

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



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## **Section 5. REQUIRED CERTIFICATES**

### **Certificate A. 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.

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Print Name and Title

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Signature

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**Certificate B. COMPLIANCE WITH SPECIFICATIONS**

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

SIGNED \_\_\_\_\_

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

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**Certificate C.      BUY AMERICA CERTIFICATION**

**Applicable for proposals over \$150,000.**

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

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

***Certificate of Compliance with Buy America Requirements***

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

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OR**

*(Do not complete this certification if you have certified that the products meet the Buy America Requirements above.)*

***Certificate of Non-Compliance with Buy America Requirements***

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

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**CERTIFICATE D. ANTI-LOBBYING DISCLOSURE**

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

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**Certificate E.      Code of Ethics and Organizational Conflict of Interest**

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

SIGNED \_\_\_\_\_

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

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**Certificate F.      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.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

# **TECHNICAL AND SPECIAL SPECIFICATIONS**

FOR

## **Building Controls System**

**June 16, 2022**

## SECTION 6. TECHNICAL/SPECIAL SPECIFICATIONS

### **A. GENERAL**

A.1 The DTA is seeking qualified firms to provide all engineering, labor, materials and tools to add to and upgrade the DTA automated building controls system for three DTA buildings, the DTA Operations Center located at 2402 West Michigan Street, Duluth, MN 55806, the Duluth Transportation Center, ("DTC"), 228 W. Michigan Street, Duluth, MN, and Transit Center East ("TCE"), 214 W. Michigan Street, Duluth, MN.

A.2 The DTA presently uses the Metasys system from Johnson Controls, Inc. for the automated building control system. There is no problem with the current vendor, but the DTA is seeking new hardware and software to upgrade the system to current standards. New HVAC equipment is being added at the Operations Center for the maintenance offices that will require new connections and control modules for the additional HVAC equipment. The DTA is open to all providers of automated building control technology.

A.3 This is a "Design-Build" Contract. Scope of work includes, but is not limited to, removal of the existing system components that are worn or in need of replacement, including removal and disposal of controllers and communications equipment (as needed), decommissioning the existing software, design, installation and delivery of a replacement automated building controls system, including all controllers, communications conduits, software, and ancillary equipment for a fully operational system in accordance with these Specifications.

A.4 The DTA intends to award a Contract to one firm. Proposers must be able to demonstrate at least three years' experience in the past five years in similar work, and must supply three references with the Proposal. Proposers that are unable to demonstrate previous experience will be deemed "non-responsible" and their Proposal will be rejected. Contractors who have failed to perform similar projects satisfactorily or to complete similar projects on time may be disqualified at the sole discretion of the DTA.

A.5 The Proposer is solely responsible for determining the actual field measurement of the project prior to Proposal submission. Proposers must satisfy themselves by examination of the Contract documents, the work site and the conditions and obstacles to be encountered in the field, and by such other means as may be necessary, as to the accuracy of the schedule of quantities of the work to be done and the intent of the Contract documents. After submission of the Proposal, no complaint nor claim that there was any misunderstanding as to the quantities, conditions or nature of the work will be entertained and no extra compensation shall be allowed by reason of any matter or thing concerning which Proposer might have informed himself prior to Proposing.

A.6 There will be a preproposal meeting at **10:00 a.m. on Wednesday, June 22, 2022.** Attendance is not mandatory, but strongly encouraged. Attendees will be provided a tour of the facilities after the meeting. Those who are unable to attend may call 218-623-4329 to participate via conference call.

A.7 The DTA is relying on the Proposer to provide its professional experience and expertise with regard to industry standards for the project. If the Proposer believes the specifications are not within industry standards, the Proposer must bring its objection or concern to the DTA's attention prior to the Proposal deadline.



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

A.9 Prior to beginning work, the Contractor shall attend a mandatory preconstruction meeting with designated DTA staff to establish schedule, contact information, staging, work progression, approval process, change order procedures, etc., to ensure a timely and successful project.

A.10 Contractor shall obtain any and all applicable permits required for the work, and shall provide a copy of them to the DTA prior to commencing work, along with any MSDS sheets or other documents related to the materials used in the work, as applicable. Permit fees are the responsibility of the Contractor.

A.11 Staging areas are limited and must be approved prior to project commencement. Temporary storage on the interior of the building may be permitted upon approval of the DTA Project Manager.

A.12 Work shall comply with the latest applicable standards for this type of work, including applicable of the:

- International Building Code (IBC)
- Underwriters Laboratories Inc.
- National Electrical code (NEC)
- American National Standards Institute, (ANSI)
- American Society for Testing and Materials (ASTM)
- American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
- All other entities having jurisdiction

A.13 Invoices must be signed by an authorized officer of the Contractor and shall be itemized with a schedule of values, including change orders, as applicable. Data in the schedule of values shall include a dollar value in each line item for each portion of the work performed and for stored products. No advance payments are permitted, the DTA will only pay for materials received or services rendered.

A.14 All materials used in the project must be new and in sufficient quantity to complete the project in its entirety. No reconditioned equipment will be accepted. Any items damaged during shipment or installation must be replaced with new items at the Contractor's sole cost and expense.

A.15 Contractor shall provide all temporary protection requirements for work areas during and after installation.

A.16 Contractor shall not impede staff or vehicles entering or leaving the building without advance approval from the DTA Project Manager.

A.17 Contractor shall require all workers on the project to follow all DTA safety guidelines while performing work under this Contract, including provisions for COVID-19 protection such as wearing masks and gloves while inside the building if so required, and wearing safety vests and/or safety glasses where required.

A.18 Contractor and any subcontractors shall provide all necessary safety equipment to perform the work in accordance with OSHA standards, and shall be solely responsible for enforcing those standards. The DTA reserves the right to halt work if in its sole discretion, safety or security protocols are not adequate to safely perform the work. No additional compensation shall be afforded to the Contractor in the event the DTA suspends work due to safety, security or weather conditions. Contractor shall promptly rectify any identified shortcomings to the DTA's satisfaction prior to resuming work.

A.19 The DTA reserves the right to keep all existing equipment it desires for possible reuse or sale. If the equipment is retained by the DTA, Contractor shall remove the equipment undamaged and place them on a pallet as directed by the DTA Project Manager.

A.20 Contractor shall remove and dispose all construction debris daily. Placement of dumpsters must be approved by the DTA Project Managers prior to delivery. Dumpsters must be removed from DTA property prior to request for final payment or ten (10) days after work is complete, whichever is sooner. Removal of dumpster(s) is a condition of final payment.

A.21 Contractor shall coordinate work hours and the work progression with DTA Project Manager to ensure as little inconvenience to the building operations as possible. Contractor shall at no time block the entrance to or egress from the Maintenance area without written permission from the DTA Project Manager.

A.22 Upon completion of work, Contractor shall participate in a joint walk-through with DTA staff to review completed work and prepare a punch list for Contractor. Contractor shall immediately commence work on punch list items, and shall complete the punch list work in a timely manner.

A.23 Upon conclusion of the project, Contractor shall supply a complete summary of all work completed, warranty documents and other maintenance documents provided by the manufacturer.

## **B. CURRENT CONDITIONS, SCOPE OF WORK**

B.1 Attached are screenshots of the existing system controls. This information is for reference only. The DTA does not represent that this information is complete nor accurate for determining the needs of the new automated building control system.

B.2 The DTA is installing new HVAC equipment in the maintenance office areas, and replacing an air exchanger in the administrative offices. Attached is a drawing detailing the equipment to be supplied. The selected Contractor will coordinate with the HVAC installer to connect the HVAC Control equipment to the automated building control system and to complete the work simultaneously. The selected Contractor may not delay the HVAC installation work, and will be solely responsible for any damages incurred by the HVAC contractor or the DTA caused by delays in the automated building control system work specified herein.

B.3 The existing HVAC equipment in the maintenance officer area has pneumatic controls that must be replaced when the new system is installed and commissioned. Contractor is solely

responsible for locating the existing controls and determining what electric and communication connections are needed to transition this area to fully integrate with the new system. Contractor will include the cost of removing the existing pneumatic controls and installing new electronic controls as part of the base cost for this project.

B.4 The DTA buildings will be occupied during the construction and installation period. The selected Contractor must avoid extended periods of HVAC unavailability to ensure that the building can remain reasonably comfortable until the new system is commissioned. Timing and succession of the decommissioning and commissioning of the new system must be coordinated with the DTA Project Manager at least 10 working days in advance.

B.5 The intent of this Specification is to provide an automated building control system based on an approved, open platform and a network of freely programmable interoperable open protocol digital controllers. It also includes providing a peer-to-peer networked, stand-alone, distributed control system with the capability to integrate ANSI/ASHRAE standards and open and non-proprietary communication protocols into one open, interoperable system.

B.6 Physical connection of the devices must be via Ethernet, and meet the most current Electronic Industries Association/Telecommunications Industries Association EIA/TIA-232 standards, including RS-485 and/or RS-232 as applicable.

B.7 Open source means that the Network Area Controller and digital controllers are available from multiple contractor and vendor sources, affording the DTA the freedom of choice and competitive bidding for replacement and future system expansions, that are not limited by the Contractor, vendor or manufacturer. No territorially restricted OEM brands, single vendor or "branch only" products are acceptable. All products must be available for purchase by any qualified contractor that the owner chooses to do the installation and any further expansion or modifications.

B.8 The supplied system must incorporate the ability to access all data using standard Web browsers without requiring proprietary operator interface and configuration programs.

B.9 Copies of the technical drawings for the current HVAC systems are attached for reference herein. DTA does not warrant the accuracy or completeness of these drawings.

B.10 Scope of Work, includes, but is not limited to:

- a. Furnish, install, configure and test a new, system wide automated building control system with a user interface for DTA buildings.
- b. Provide direct digital controls on new equipment, replace controllers on existing equipment, as applicable. Please note that existing pneumatic controls on HVAC equipment in the maintenance office area must be replaced by the Contractor at the time the new system is installed and commissioned.
- c. Integrate existing communications networks to supply data to and from the Cloud.
- d. Provide supervisory monitoring and control of each building control system.
- e. Install all controllers and associated components, software and applications required to meet the sequence of operation and the design/performance intent of the system.
- f. Install all low voltage and controls-related wiring as required, including junction boxes and raceways, as required.
- g. Install any network area controllers, software, programming, graphical user interface software ("GUI"), and connections to the local or wide area network (WLAN).
- h. Develop Web browser pages, setup of schedules, logs and alarms, network management for DTA specific needs. The selected Contractor is responsible for any new open protocol controllers control devices, control panels, programming and programming software, controller input/output, and power wiring and network wiring.

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- i. All software installed as part of this Project shall be the latest versions offered by the manufacturer, and the manufacturer must demonstrate to the extent possible that these products will be supported with both parts and service for a minimum of ten years.
- j. The DTA prefers as building automated system with software that can send messages to designated email addresses via the DTA's email service and is compatible with cellular telephones to display alarm messages. The email alarm paging system must be able to segregate users, time schedules and equipment, and be capable of being programmed by designated DTA staff.
- k. The DTA prefers a system that can perform supervisory monitoring and control functions, including, but not limited to, scheduling, alarm handling, trending, overrides, report generation, and electrical demand limiting.
- l. The graphical user interface shall allow the user to navigate between systems and graphical representations of systems, access real time data, provide the ability to override points in a system, and provide access to all supervisory monitoring and control functions. Retaining existing naming conventions for ease of owner use is preferable.
- m. The system will allow for up to 20 users, and the contractor will provide the appropriate legal copies of all software used to install and configure the system. The DTA must be named the license holder for all software associated with any and all incremental work on the project.
- n. The DTA retains the rights to all data, including documentation, and all rights to execute work to repair, replace, upgrade, and expand the system without subsequent or future dependence on the Contractor. Products requiring a licensed, off site, non-embedded programming tool are not acceptable as this reduces the DTA's options for contractors for future service.
- o. All labor, materials, equipment and service necessary for a complete and operating for a building automated system that is required to meet the functional intent of this Specification, shall be included in the Cost Proposal and provided without additional cost to the DTA.
- p. Perform system test and start up. Contractor must meet all DTA requirements for graphics, alarms and integration. Log-in credentials to be provided to the DTA Project Manager upon system testing.

### **C. TERMS AND DEFINITIONS**

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

C.2 Change Notice: A notice issued to the Contractor specifying a change in the assumed conditions of the site or a proposed change to the Contract documents or work in progress. A Change Notice may be either for design change or field change. A Cost Proposal is required to be submitted by the Contractor.

C.3 Contract Directive ("CD"): A written unilateral order signed by the DTA Procurement Manager that directs the Contractor to perform as the DTA Project Manager directs either in compliance with the work scope/technical specifications or directing a change in the work scope/technical specifications, and which may or may not list the DTA's decision as to an increase (or decrease) in the Contract's cost and/or schedule. The CD is issued pursuant to the "Contract Changes" article

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Change Order-a written bilateral order signed by the Procurement Manager and the Contractor that directs the Contractor to change the work scope, and which is issued pursuant to the “Contract changes” terms and conditions.

C.4 The cost or credit to the DTA resulting from a CD in the work and/or the changes to the Contract Schedule shall be determined in one or more of the following ways:

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

C.5 Change Order (CO)/Contract Amendment (CA): A bilateral document signed by the Procurement Manager and Contractor, acknowledging agreement and consent of both parties, within the parameters of the original scope of work. A Change Order does not, by itself, authorize the Contractor to perform the work described in it unless a Contract Directive specifically authorizes the Contractor to do the work. Contractor should not perform the work until it receives specific authorization. The DTA specifically reserves the right to have the work described in the Change Order performed by another Contractor or DTA personnel, at its sole discretion.

C.6 Contract Schedule or Term of Performance: The period or term of performance allowed in the Contract for completion of the work herein. The Contract Schedule is established by the DTA in the Contract and does not change unless changed by a Contract Amendment.

C.7 Design-Build: The selected Contractor shall meet with DTA representatives to define the site layout and use, improvements, selection of materials and equipment, and value engineering options. Contractor shall provide recommendations on design and construction feasibility, time required for material and equipment acquisition, site preparation, and other elements to ensure a timely and economical project.

C.8 Final Acceptance: Final Acceptance of the work occurs when the work is fully, completely and finally accomplished in full, absolute and in compliance with the Contract. The DTA will provide written notice of the Final Acceptance date.

C.9 Meetings: Upon commencement of work, Contractor shall attend meetings with DTA representatives as may be requested by the DTA Project Manager, but not less than one time per week. Cost of these meetings shall be included in the Cost Proposal. Per diem expenses will not be paid.

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

C.11 All fees for permits, licenses, inspections and other government fees directly related to the project are the responsibility of the Contractor.

C.12 The Contractor shall give all notices relating to the project as required by law, ordinance, rule or regulation and lawful orders of public authorities. If the Contractor performs work contrary to

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

C.13 Substantial Completion: Substantial Completion occurs when all work is sufficiently complete to allow the DTA full use of the automated building control system for its intended purpose, and such terms of work that remain to be done are minor in nature and can be accomplished without significant interference to DTA operations. The DTA will supply written notification of the date of Substantial Completion.

C.14 Project Schedule: The design-build schedule will have periodic milestones for completion throughout the project, including preliminary design, final design, excavation, tank removal, testing, tank installation, systems commissioning, and other major benchmarks for planning and execution of the project. The Contractor shall periodically update the Project Schedule for DTA review and approval.

C.15 Project Commencement: The date of commencement of the work is the date on the written "Notice to Proceed" from the DTA. Contract time will be measured from the date of commencement until Final Acceptance, subject to adjustments as may be provided herein.

C.16 Progress Payments: Based on Applications for Payment submitted to the DTA Project Manager or designee, the DTA will make payments no more often than monthly, due at the end of the calendar month after the date of the submittal. The DTA will withhold five percent (5%) retainage on invoiced amounts until the project is completed and accepted by the DTA.

C.17 Prior to final payment, Contractor shall submit the following:

- a. A complete set of record ("as-built") drawings and submit them to the DTA.
- b. Certified payrolls from the prime contractors and all subcontractors and/or suppliers.
- c. Copies of all local inspection reports, as applicable
- d. A statement that all punch list items are complete and accepted by the DTA Project Manager
- e. A final invoice including retainage, as applicable.
- f. Provide in a rigid binder, three (3) sets of equipment and system operating bulletins and instructions, including parts lists, maintenance manuals, system diagrams and electrical and control schematics (as applicable.)
- g. A completed IC 134 form from the MN Department of Revenue.
- h. Maintenance Data: Contractor shall provide maintenance and inspection data, replacement part numbers and availability and service location and telephone number.
- i. Prior to DTA's acceptance of the completed work, deliver to the DTA the Contractor's guarantee and manufacturer's guarantee and warrantee certificates for equipment and materials.
- j. Clean up. Before acceptance of the work, the Contractor shall clean the work site and all grounds occupied in connection with the work of all rubbish, excess materials, temporary structures, and equipment, including removal of dumpsters, and all parts of the work shall be left in a neat and presentable condition. Full compensation for cleaning up as herein specified shall be considered as included in the prices paid for the contract items of work and no additional allowance will be made therefore.

C.18 **Final Payment:** Final payment constituting the unpaid balance of the Contract shall be made by the DTA within thirty days after the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct non-conforming work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

C.19 The Contractor is entitled to rely on the information contained in this Scope of Work, but not that such information complies with applicable laws, regulations, and codes, which are the obligation of the Contractor to determine. If the event that a specific requirement conflicts with applicable laws, regulations and codes, the Contractor, with the approval of the DTA Project Manager, will complete the work that complies with the laws, regulations and codes. A Change Order may be issued for such change in the work, unless the Contractor recognized the non-compliance prior to execution of this Contract and failed to notify the DTA.

#### **D. LICENSING, MAINTENANCE, HOSTING**

D.1 During the term of this Contract, Contractor hereby agrees to host the Application(s) listed and described and specified in the Contract via a cloud platform as stated in the Contract and shall make such Application(s) available to DTA's designated Application Users through the Internet. Contractor has acquired any and all license rights in the Application(s) necessary and appropriate for Contractor to provide the licensed services as obligated by the Contract.

D.2 Contractor hereby grants to DTA and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the automated building control system during the term of the Contract. The license fee for the rights shall be as set forth in the Pricing Schedule of the Contract, and shall apply regardless of access mode.

D.3 The license shall be held by DTA.

D.4 Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor after the Effective Date of the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of this Contract for Licensed Services, including access to the application(s), or the fact that such other agreement may be presented to DTA or its application users at the time of accessing the application(s) ("click wrap"), the terms and conditions set forth in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

D.5 The DTA reserves the right to negotiate terms of the software license prior to finalizing the Contract. Software license fees applicable to the Project shall be indefinite with no yearly fees.

D.6 The Proposer shall fully explain any software licenses required for the purchase and operation of any part of the system. Except as otherwise provided in this Contract or as provided by law:

- a). DTA will use commercially reasonable efforts to ensure that application users comply with all of the terms and conditions hereof;
- b). DTA shall not knowingly reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the application;
- c). DTA shall not knowingly directly or indirectly copy or reproduce all or any part of the application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from

Contractor; provided, however, DTA may reproduce and distribute any application output generated from DTA content, and an application user may reproduce and distribute any application output generated pursuant to the permissions set forth in the Contract;

- d). DTA shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the application or Contractor product or any component thereof, provided as part of the licensed services, except as otherwise authorized by Contractor. However, DTA may reproduce and distribute any application output (e.g., reports) generated by DTA using the application, and an application user may reproduce and distribute any reports or output generated by the application user using the application and pursuant to the permissions in the Contract;
- e). DTA shall only use the application and Contractor product in the normal course of business, in connection with, and as part of, the licensed services;
- f). DTA shall not attempt to gain unauthorized access to the application or licensed services, other user accounts, computer systems or networks connected to the licensed services;
- g). DTA shall not remove, obscure or alter Contractor's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the application or licensed services or any written or electronic report, output or result generated in connection with the licensed services;
- h). DTA shall take reasonable care not to, and shall not intentionally or knowingly, use the application to post, transmit, distribute, store or destroy any information:
  - i). in violation of any applicable law, statute, ordinance or regulation;
  - j). in a manner that shall infringe the intellectual property rights of others;
  - k). that is defamatory or trade libelous, or
  - l). that contains any computer viruses;
- m). DTA shall not use the application or licensed services for any illegal, obscene, offensive or immoral purpose.

## **E. UPGRADES, SOFTWARE SERVICE**

E.1 The DTA reserves the right to negotiate terms of any ongoing software service maintenance agreement applicable to the automated building controls system prior to finalizing the Contract. The Proposer shall fully explain all software maintenance costs, including yearly fees for a minimum of five years, upgrades, etc. at the time of Proposal.

E.2 The Proposed automated building control system should have a future upgrade path for software and hardware for a minimum of ten years. The selected Vendor shall ensure that the risk of obsolescence to the hardware is minimized through the selection of standardized parts and readily available peripheral hardware (as applicable).

E.3 The Contractor shall provide bug fixes, corrections, modifications, enhancements, upgrades and new releases to the system to ensure functionality, and meet the DTA's operational needs. The system must work with the then current version and three prior versions of Internet Explorer, Mozilla, Firefox and Google Chrome Internet browsers.

E.4 The DTA Project Manager must be notified in writing at least thirty (30) days in advance of upgrades that require updated software, hardware, higher speed connectivity, etc.

E.5 The Cost Proposal shall include all planned software and hardware upgrades for a period of two years after project commencement. There shall be no extra charges to the DTA for upgrades during the first two years of implementation.

E.6 No additional charges, fees, costs or expenses shall be charged to the DTA for changes to the hardware or software that were not disclosed to the DTA prior to award of the Project for the criteria presented herein. The selected Vendor shall comply with its own representations as to the functionality of the software provided in conformance with the Proposal and covenants herein.



## **F. WARRANTY**

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

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

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

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

F.4 With regard to repaired or replaced work:

- a. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Contract.
- b. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of the repair or replacement.

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

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

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

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

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

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

include a provision stating that it covers and guarantees the performance of the Warranty provisions.

**F.10 Uncovering and correction of work.**

- a. If a portion of the work is covered contrary to the requirements specifically expressed in the Contract documents, it must be uncovered for the DTA Project Manager or designee's examination and be replaced at the Contractor's expense without change in the Contract schedule.
- b. If a portion of the work has been covered which the DTA Project Manager or designee has not specifically requested to examine prior to it being covered, the DTA Project Manager or designee may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract documents, costs of uncovering the work and replacement shall be at DTA's expense via an appropriate Change Order. If such work is not in accordance with the Contract documents, correction shall be at the Contractor's expense, unless the condition was caused by the DTA or a separate DTA contractor, in which the DTA will be responsible for payment of such costs.

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

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

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

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

**F.15** Nothing herein shall be construed to establish a period of limitation with respect to other obligations the Contractor might have under this Contract. Establishment of the one-year period for correction of work relates only to the specific obligation of the Contractor to correct the work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's obligations other than specifically to correct the work.

**F.16** If the DTA Project Manager prefers to accept work not in conformance with the requirements herein, the DTA Project Manager may do so instead of requiring its removal and correction, in

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which case, the Contract sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

**G. TRAINING**

G.1 The Proposer will include a training program for the automated building control system for regular users, and describe any ongoing training measures that are available to users for upgrades and other system modifications.

**H. COST PROPOSAL**

H.1 Proposer shall submit a complete Cost Proposal with itemized costs for equipment, installation, licensing, hosting, maintenance and all other costs applicable to this project. Ongoing costs will be provided for the first five years of the contract.

H.2. The Cost Proposal shall be in a separate .pdf email attachment or a sealed envelope with the Proposer's name and clearly marked "Cost Proposal".

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

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

H.5 Upon request from the Evaluation Committee, Proposer shall provide a cost breakdown of the proposed equipment by cost of materials, overhead and profit, along with technical specifications of the proposed equipment. Overhead and profit information will be kept confidential in accordance with the Minnesota Data Practices Act.

## **Section 7 PROPOSAL EVALUATION**

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

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

### **PROPOSAL EVALUATION:**

All Proposals received by the deadline will be evaluated by the designated selection committee members. The DTA reserves the right to award on the basis of initial Proposal submittals without any negotiations or discussions.

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

- |  |     |
|--|-----|
| • System compliance with specifications, ease of use               | 35% |
| • Ongoing support, upgrades, service, security                     | 25% |
| • Quality and cost of proposed materials, maintenance requirements | 25% |
| • References   | 10% |
| • Other Matters  | 5%  |

It is anticipated that the evaluation and selection will be completed by July 22, 2022. The DTA may request clarifications to the Proposer's submittal, or at the DTA's option, a virtual presentation of the proposed product may be required before final evaluations are completed.

### **System compliance with Specifications**

The Committee will evaluate the Proposed automated building control system with the Specifications herein for compliance to the DTA's preferences, including open architecture, open source equipment, ease of navigation through system dashboards, reporting and communications capabilities, terms and conditions in any software or hardware maintenance agreements and/or hosting agreements, and other salient qualities of the Proposed system.

### **Ongoing Support, Upgrades, Service, Security**

The Evaluation Committee will evaluate the Proposed automated building control system ongoing support, including training, the availability of upgrades and ongoing maintenance of the system, service capabilities in the event of an outage or other issues, network security provisions and other means to protect the DTA from unavailability of the system.

### **Quality and Cost of Proposed Materials**

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The Committee will evaluate the quality of the proposed materials, the intended useful life for installed products, replacement cost and ongoing maintenance requirements, as well as availability and risk of obsolescence over the course of the contract.

**References**

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

**Other Matters**

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

**EVALUATION OF THE COST PROPOSAL**

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

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

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

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**Section 8.**

**WAGE REQUIREMENTS**

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

**POSTED WAGE SCALE**

Department of Labor General Decision Number MN 20200129 Building Prevailing Wage Decision dated 5/27/2022 is attached and incorporated herein. Wage decisions are subject to change due to lock-in rules and revisions near the bid opening.

Minnesota Department of Labor and Industry Prevailing Wages for State-funded Construction Projects, Construction Type, Commercial, County Number 69, St. Louis County, revised 12-27-2021 is attached and incorporated herein.

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"General Decision Number: MN20220129 05/27/2022

Superseded General Decision Number: MN20210129

State: Minnesota

Construction Type: Building

County: St Louis County in Minnesota.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered	. Executive Order 14026	
into on or after January 30,	generally applies to the	
2022, or the contract is	contract.	
renewed or extended (e.g., an	. The contractor must pay	
option is exercised) on or	all covered workers at	
after January 30, 2022:	least \$15.00 per hour (or	
	the applicable wage rate	
	listed on this wage	
	determination, if it is	
	higher) for all hours	
	spent performing on the	
	contract in 2022.	
If the contract was awarded on	. Executive Order 13658	
or between January 1, 2015 and	generally applies to the	
January 29, 2022, and the	contract.	
contract is not renewed or	. The contractor must pay all	
extended on or after January	covered workers at least	
30, 2022:	\$11.25 per hour (or the	
	applicable wage rate listed	
	on this wage determination,	
	if it is higher) for all	

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		hours spent performing on	
		that contract in 2022.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022
2	05/27/2022

ASBE0034-001 06/01/2021	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 40.25	35.90
-----		
BOIL0647-008 04/01/2021	Rates	Fringes
BOILERMAKER.....	\$ 40.94	28.44
-----		
BRMN0001-010 05/01/2018	Rates	Fringes
BRICKLAYER.....	\$ 34.99	24.64
-----		
BRMN0001-019 05/01/2018	Rates	Fringes
TILE FINISHER.....	\$ 25.13	5.54
TILE SETTER.....	\$ 25.89	24.34
-----		
CARP0361-008 06/01/2021	Rates	Fringes
CARPENTER (Includes Drywall Hanging, and Form Work, and Excludes Soft Floor Layer).....	\$ 32.20	23.47
SOFT FLOOR LAYER.....	\$ 36.12	21.46
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ELEC0242-002 05/31/2021	Rates	Fringes
ELECTRICIAN.....	\$ 41.37	28.81
<hr/>		
ENGI0049-019 05/01/2020	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Bulldozer.....	\$ 40.93	21.70
Crane.....	\$ 42.35	21.70
Drill.....	\$ 40.93	21.70
Forklift.....	\$ 40.93	21.70
Loader.....	\$ 40.93	21.70
Oiler.....	\$ 38.30	21.70
Roller.....	\$ 40.93	21.70
<hr/>		
IRON0512-025 05/03/2021	Rates	Fringes
IRONWORKER (Structural and Reinforcing).....	\$ 35.09	31.80
<hr/>		
LABO1091-025 05/01/2020	Rates	Fringes
LABORER		
Asbestos Abatement (Removal from Ceilings, Floors, and Walls).....	\$ 34.73	16.40
Common or General.....	\$ 30.17	16.17
Mason Tender - Brick/Cement/Concrete.....	\$ 27.99	15.32
Pipelayer.....	\$ 35.68	16.92
<hr/>		
* PAIN0106-007 05/02/2022	Rates	Fringes
GLAZIER.....	\$ 34.14	23.36
<hr/>		
PAIN0106-009 05/03/2021	Rates	Fringes
DRYWALL FINISHER/TAPER.....	\$ 33.04	22.34
<hr/>		
PAIN0386-010 05/01/2014	Rates	Fringes
PAINTER (Spray).....	\$ 25.08	13.99
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PLAS0633-008 05/01/2021	Rates	Fringes

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CEMENT MASON/CONCRETE FINISHER...	\$ 35.76	20.88
-----		
PLAS0633-011 05/01/2021	Rates	Fringes
PLASTERER.....	\$ 36.24	21.13
-----		
PLUM0011-007 11/09/2020	Rates	Fringes
PIPEFITTER (Includes HVAC Pipe Installation and Excludes HVAC Unit Installation).....	\$ 42.92	22.68
PLUMBER (Excludes HVAC Pipe and Unit Installation).....	\$ 42.92	22.68
-----		
ROOF0096-019 07/01/2020	Rates	Fringes
ROOFER.....	\$ 35.10	18.42
-----		
SHEE0010-034 04/03/2021	Rates	Fringes
SHEET METAL WORKER (Includes HVAC Duct and Unit Installation).....	\$ 36.87	29.01
-----		
* UAVG-MN-0024 01/01/2019	Rates	Fringes
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 36.89	20.30
-----		
* UAVG-MN-0025 01/01/2019	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 29.50	17.64
-----		
SUMN2015-064 06/22/2018	Rates	Fringes
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 32.03	14.80
TRUCK DRIVER: Dump Truck.....	\$ 23.43	12.33
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

#### Union Rate Identifiers

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

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effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

#### Survey Rate Identifiers

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

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

#### Union Average Rate Identifiers

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

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

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WAGE DETERMINATION APPEALS PROCESS

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- 1.) Has there been an initial decision in the matter? This can be:
- \* an existing published wage determination
  - \* a survey underlying a wage determination
  - \* a Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* a conformance (additional classification and rate) ruling

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION"

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



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

**Construction Type: Commercial**

**County Number: 69**

County Name: ST. LOUIS

Effective: 2021-12-27

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

All hours worked in excess of eight (8) hours per day or forty (40) hours per week shall be paid at a rate of one and one half (1 1/2) times the basic hourly rate. *Note: Overtime pay after eight (8) hours on the project must be paid even if the worker does not exceed forty (40) hours in the work week.*

Violations should be reported to:

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

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

**County: ST. LOUIS (69)**

	<b><u>LABOR CODE AND CLASS</u></b>	<b><u>EFFECT DATE</u></b>	<b><u>BASIC RATE</u></b>	<b><u>FRINGE RATE</u></b>	<b><u>TOTAL RATE</u></b>
<b>LABORERS (101 - 112) (SPECIAL CRAFTS 701 - 730)</b>					
101	LABORER, COMMON (GENERAL LABOR WORK)	2021-12-27	28.72	20.94	49.66

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<b><u>LABOR CODE AND CLASS</u></b>		<b><u>EFFECT DATE</u></b>	<b><u>BASIC RATE</u></b>	<b><u>FRINGE RATE</u></b>	<b><u>TOTAL RATE</u></b>
		2022-05-01	29.92	21.69	51.61
102	LABORER, SKILLED (ASSISTING SKILLED CRAFT JOURNEYMAN)	2021-12-27	28.72	20.94	49.66
		2022-05-01	29.92	21.69	51.61
103	LABORER, LANDSCAPING (GARDENER, SOD LAYER AND NURSERY OPERATOR)	2021-12-27	25.75	18.70	44.45
104	FLAG PERSON	2021-12-27	28.72	20.94	49.66
105	WATCH PERSON	2021-12-27	26.37	20.94	47.31
106	BLASTER	2021-12-27	27.22	19.29	46.51
107	PIPELAYER (WATER, SEWER AND GAS)	2021-12-27	37.63	22.02	59.65
		2022-05-01	39.03	22.67	61.70
108	TUNNEL MINER	FOR RATE CALL 651-284-5091 OR EMAIL <a href="mailto:DLI.PREVIEWWAGE@STATE.MN.US">DLI.PREVIEWWAGE@STATE.MN.US</a>			
109	UNDERGROUND AND OPEN DITCH LABORER (EIGHT FEET BELOW STARTING GRADE LEVEL)	2021-12-27	35.63	22.02	57.65
		2022-05-01	37.03	22.67	59.70
110	SURVEY FIELD TECHNICIAN (OPERATE TOTAL STATION, GPS RECEIVER, LEVEL, ROD OR	2021-12-27	28.72	20.94	49.66



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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
RANGE POLES, STEEL TAPE MEASUREMENT; MARK AND DRIVE STAKES; HAND OR POWER DIGGING FOR AND IDENTIFICATION OF MARKERS OR MONUMENTS; PERFORM AND CHECK CALCULATIONS; REVIEW AND UNDERSTAND CONSTRUCTION PLANS AND LAND SURVEY MATERIALS). THIS CLASSIFICATION DOES NOT APPLY TO THE WORK PERFORMED ON A PREVAILING WAGE PROJECT BY A LAND SURVEYOR WHO IS LICENSED PURSUANT TO MINNESOTA STATUTES, SECTIONS 326.02 TO 326.15.	2022-05-01	29.92	21.69	51.61
111* TRAFFIC CONTROL PERSON (TEMPORARY SIGNAGE)	2021-12-27	28.72	20.94	49.66
<b>SPECIAL EQUIPMENT (201 - 204)</b>				
201 ARTICULATED HAULER	2021-12-27	41.73	22.85	64.58
202 BOOM TRUCK	2021-12-27	41.73	22.85	64.58
203* LANDSCAPING EQUIPMENT, INCLUDES HYDRO SEEDER OR MULCHER, SOD ROLLER, FARM TRACTOR WITH ATTACHMENT SPECIFICALLY SEEDING, SODDING, OR PLANT, AND TWO-FRAMED FORKLIFT (EXCLUDING FRONT, POSIT-TRACK, AND SKID STEER LOADERS), NO EARTHWORK OR GRADING FOR ELEVATIONS	2021-12-27	24.00	16.96	40.96
204 OFF-ROAD TRUCK	2021-12-27	33.65	19.95	53.60

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	<b><u>LABOR CODE AND CLASS</u></b>	<b><u>EFFECT DATE</u></b>	<b><u>BASIC RATE</u></b>	<b><u>FRINGE RATE</u></b>	<b><u>TOTAL RATE</u></b>
205	PAVEMENT MARKING OR MARKING REMOVAL EQUIPMENT (ONE OR TWO PERSON OPERATORS); SELF-PROPELLED TRUCK OR TRAILER MOUNTED UNITS.	2021-12- 27	26.91	19.87	46.78

**HIGHWAY/HEAVY POWER EQUIPMENT OPERATOR**

<b>GROUP 2</b>		2021-12- 27	39.74	21.55	61.29
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306 GRADER OR MOTOR PATROL

308 TUGBOAT 100 H.P. AND OVER WHEN LICENSE REQUIRED (HIGHWAY AND HEAVY ONLY)

<b>GROUP 3</b>		2021-12- 27	40.34	22.55	62.89
		2022-05- 02	41.59	23.45	65.04

309 ASPHALT BITUMINOUS STABILIZER PLANT

310 CABLEWAY

312 DERRICK (GUY OR STIFFLEG)(POWER)(SKIDS OR STATIONARY) (HIGHWAY AND HEAVY ONLY)

314 DREDGE OR ENGINEERS, DREDGE (POWER) AND ENGINEER

316 LOCOMOTIVE CRANE OPERATOR

320 TANDEM SCRAPER

322 TUGBOAT 100 H.P AND OVER (HIGHWAY AND HEAVY ONLY)

<b>GROUP 4</b>		2021-12- 27	40.04	22.55	62.59
		2022-05- 02	41.29	23.45	64.74

323 AIR TRACK ROCK DRILL

324 AUTOMATIC ROAD MACHINE (CMI OR SIMILAR) (HIGHWAY AND HEAVY ONLY)

325 BACKFILLER OPERATOR

327 BITUMINOUS ROLLERS, RUBBER TIRED OR STEEL DRUMMED (EIGHT TONS AND OVER)

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	<b><u>LABOR CODE AND CLASS</u></b>	<b><u>EFFECT DATE</u></b>	<b><u>BASIC RATE</u></b>	<b><u>FRINGE RATE</u></b>	<b><u>TOTAL RATE</u></b>
328	BITUMINOUS SPREADER AND FINISHING MACHINES (POWER), INCLUDING PAVERS, MACRO SURFACING AND MICRO SURFACING, OR SIMILAR TYPES (OPERATOR AND SCREED PERSON)				
329	BROKK OR R.T.C. REMOTE CONTROL OR SIMILAR TYPE WITH ALL ATTACHMENTS				
330	CAT CHALLENGER TRACTORS OR SIMILAR TYPES PULLING ROCK WAGONS, BULLDOZERS AND SCRAPERS				
331	CHIP HARVESTER AND TREE CUTTER				
332	CONCRETE DISTRIBUTOR AND SPREADER FINISHING MACHINE, LONGITUDINAL FLOAT, JOINT MACHINE, AND SPRAY MACHINE				
334	CONCRETE MOBIL (HIGHWAY AND HEAVY ONLY)				
335	CRUSHING PLANT (GRAVEL AND STONE) OR GRAVEL WASHING, CRUSHING AND SCREENING PLANT				
336	CURB MACHINE				
337	DIRECTIONAL BORING MACHINE				
338	DOPE MACHINE (PIPELINE)				
340	DUAL TRACTOR				
341	ELEVATING GRADER				
345	GPS REMOTE OPERATING OF EQUIPMENT				
347	HYDRAULIC TREE PLANTER				
348	LAUNCHER PERSON (TANKER PERSON OR PILOT LICENSE)				
349	LOCOMOTIVE (HIGHWAY AND HEAVY ONLY)				
350	MILLING, GRINDING, PLANING, FINE GRADE, OR TRIMMER MACHINE				
352	PAVEMENT BREAKER OR TAMPING MACHINE (POWER DRIVEN) MIGHTY MITE OR SIMILAR TYPE				
354	PIPELINE WRAPPING, CLEANING OR BENDING MACHINE				
356	POWER ACTUATED HORIZONTAL BORING MACHINE, OVER SIX INCHES				
357	PUGMILL				
359	RUBBER-TIRED FARM TRACTOR WITH BACKHOE INCLUDING ATTACHMENTS (HIGHWAY AND HEAVY ONLY)				
360	SCRAPER				
361	SELF-PROPELLED SOIL STABILIZER				
362	SLIP FORM (POWER DRIVEN) (PAVING)				
363	TIE TAMPER AND BALLAST MACHINE				
365	TRACTOR, WHEEL TYPE, OVER 50 H.P. WITH PTO UNRELATED TO LANDSCAPING (HIGHWAY AND HEAVY ONLY)				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
367 TUB GRINDER, MORBARK, OR SIMILAR TYPE				
<b>GROUP 5</b>	2021-12-27	35.85	21.55	57.40
370 BITUMINOUS ROLLER (UNDER EIGHT TONS)				
371 CONCRETE SAW (MULTIPLE BLADE) (POWER OPERATED)				
372 FORM TRENCH DIGGER (POWER)				
375 HYDRAULIC LOG SPLITTER				
376 LOADER (BARBER GREENE OR SIMILAR TYPE)				
377 POST HOLE DRIVING MACHINE/POST HOLE AUGER				
379 POWER ACTUATED JACK				
381 SELF-PROPELLED CHIP SPREADER (FLAHERTY OR SIMILAR)				
382 SHEEP FOOT COMPACTOR WITH BLADE . 200 H.P. AND OVER				
383 SHOULDERING MACHINE (POWER) APSCO OR SIMILAR TYPE INCLUDING SELF-PROPELLED SAND AND CHIP SPREADER				
384 STUMP CHIPPER AND TREE CHIPPER				
385 TREE FARMER (MACHINE)				
<b>GROUP 6</b>	2021-12-27	35.79	22.55	58.34
387 CAT, CHALLENGER, OR SIMILAR TYPE OF TRACTORS, WHEN PULLING DISK OR ROLLER				
389 DREDGE DECK HAND				
391 GRAVEL SCREENING PLANT (PORTABLE NOT CRUSHING OR WASHING)				
393 LEVER PERSON				
395 POWER SWEEPER				
396 SHEEP FOOT ROLLER AND ROLLERS ON GRAVEL COMPACTION, INCLUDING VIBRATING ROLLERS				
397 TRACTOR, WHEEL TYPE, OVER 50 H.P., UNRELATED TO LANDSCAPING				
<b>COMMERCIAL POWER EQUIPMENT OPERATOR</b>				
<b>GROUP 1</b>	2021-12-27	45.24	22.85	68.09
501 HELICOPTER PILOT (COMMERCIAL CONSTRUCTION ONLY)				

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<u>LABOR CODE AND CLASS</u>	<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
502 TOWER CRANE 250 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
503 TRUCK CRAWLER CRANE WITH 200 FEET OF BOOM AND OVER, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 2</b>	2021-12- 27	44.90	22.85	67.75
504 CONCRETE PUMP WITH 50 METERS/164 FEET OF BOOM AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
505 PILE DRIVING WHEN THREE DRUMS IN USE (COMMERCIAL CONSTRUCTION ONLY)				
506 TOWER CRANE 200 FEET AND OVER (COMMERCIAL CONSTRUCTION ONLY)				
507 TRUCK OR CRAWLER CRANE WITH 150 FEET OF BOOM UP TO AND NOT INCLUDING 200 FEET, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 3</b>	2021-12- 27	43.49	22.85	66.34
508 ALL-TERRAIN VEHICLE CRANES (COMMERCIAL CONSTRUCTION ONLY)				
509 CONCRETE PUMP 32-49 METERS/102-164 FEET (COMMERCIAL CONSTRUCTION ONLY)				
510 DERRICK (GUY & STIFFLEG) (COMMERCIAL CONSTRUCTION ONLY)				
511 STATIONARY TOWER CRANE UP TO 200 FEET				
512 SELF-ERECTING TOWER CRANE 100 FEET AND OVER MEASURED FROM BOOM FOOT PIN (COMMERCIAL CONSTRUCTION ONLY)				
513 TRAVELING TOWER CRANE (COMMERCIAL CONSTRUCTION ONLY)				
514 TRUCK OR CRAWLER CRANE UP TO AND NOT INCLUDING 150 FEET OF BOOM, INCLUDING JIB (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 4</b>	2021-12- 27	43.15	22.85	66.00
515 CRAWLER BACKHOE INCLUDING ATTACHMENTS (COMMERCIAL CONSTRUCTION ONLY)				
516 FIREPERSON, CHIEF BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
517 HOIST ENGINEER (THREE DRUMS OR MORE) (COMMERCIAL CONSTRUCTION ONLY)				
518 LOCOMOTIVE (COMMERCIAL CONSTRUCTION ONLY)				
519 OVERHEAD CRANE ( INSIDE BUILDING PERIMETER) (COMMERCIAL CONSTRUCTION ONLY)				
520 TRACTOR . BOOM TYPE (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 5</b>	2021-12-	41.73	22.85	64.58

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<u>LABOR CODE AND CLASS</u>		<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
		27			
521	AIR COMPRESSOR 450 CFM OR OVER (TWO OR MORE MACHINES) (COMMERCIAL CONSTRUCTION ONLY)				
522	CONCRETE MIXER (COMMERCIAL CONSTRUCTION ONLY)				
523	CONCRETE PUMP UP TO 31 METERS/101 FEET OF BOOM				
524	DRILL RIGS, HEAVY ROTARY OR CHURN OR CABLE DRILL WHEN USED FOR CAISSON FOR ELEVATOR OR BUILDING CONSTRUCTION (COMMERCIAL CONSTRUCTION ONLY)				
525	FORKLIFT (COMMERCIAL CONSTRUCTION ONLY)				
526	FRONT END, SKID STEER 1 C YD AND OVER				
527	HOIST ENGINEER ( ONE OR TWO DRUMS) (COMMERCIAL CONSTRUCTION ONLY)				
528	MECHANIC-WELDER (ON POWER EQUIPMENT) (COMMERCIAL CONSTRUCTION ONLY)				
529	POWER PLANT (100 KW AND OVER OR MULTIPLES EQUAL TO 100KW AND OVER) (COMMERCIAL CONSTRUCTION ONLY)				
530	PUMP OPERATOR AND/OR CONVEYOR (TWO OR MORE MACHINES) (COMMERCIAL CONSTRUCTION ONLY)				
531	SELF-ERECTING TOWER CRANE UNDER 100 FEET MEASURED FROM BOOM FOOT PIN (COMMERCIAL CONSTRUCTION ONLY)				
532	STRADDLE CARRIER (COMMERCIAL CONSTRUCTION ONLY)				
533	TRACTOR OVER D2 (COMMERCIAL CONSTRUCTION ONLY)				
534	WELL POINT PUMP (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 6</b>		2021-12-27	40.22	22.85	63.07
535	CONCRETE BATCH PLANT (COMMERCIAL CONSTRUCTION ONLY)				
536	FIREPERSON, FIRST CLASS BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
537	FRONT END, SKID STEER UP TO 1 C YD				
538	GUNITE MACHINE (COMMERCIAL CONSTRUCTION ONLY)				
539	TRACTOR OPERATOR D2 OR SIMILAR SIZE (COMMERCIAL CONSTRUCTION ONLY)				
540	TRENCHING MACHINE (SEWER, WATER, GAS) EXCLUDES WALK BEHIND TRENCHER				
<b>GROUP 7</b>		2021-12-27	39.10	22.85	61.95
541	AIR COMPRESSOR 600 CFM OR OVER (COMMERCIAL CONSTRUCTION ONLY)				
542	BRAKEPERSON (COMMERCIAL CONSTRUCTION ONLY)				

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	<b><u>LABOR CODE AND CLASS</u></b>	<b><u>EFFECT DATE</u></b>	<b><u>BASIC RATE</u></b>	<b><u>FRINGE RATE</u></b>	<b><u>TOTAL RATE</u></b>
543	CONCRETE PUMP/PUMPCRETE OR COMPLACO TYPE (COMMERCIAL CONSTRUCTION ONLY)				
544	FIREPERSON, TEMPORARY HEAT SECOND CLASS BOILER LICENSE (COMMERCIAL CONSTRUCTION ONLY)				
545	OILER (POWER SHOVEL, CRANE, TRUCK CRANE, DRAGLINE, CRUSHERS AND MILLING MACHINES, OR OTHER SIMILAR POWER EQUIPMENT) (COMMERCIAL CONSTRUCTION ONLY)				
546	PICK UP SWEEPER (ONE CUBIC YARD HOPPER CAPACITY) (COMMERCIAL CONSTRUCTION ONLY)				
547	PUMP AND/OR CONVEYOR (COMMERCIAL CONSTRUCTION ONLY)				
<b>GROUP 8</b>		2021-12-27	37.09	22.85	59.94
548	ELEVATOR OPERATOR (COMMERCIAL CONSTRUCTION ONLY)				
549	GREASER (COMMERCIAL CONSTRUCTION ONLY)				
550	MECHANICAL SPACE HEATER (TEMPORARY HEAT NO BOILER LICENSE REQUIRED) (COMMERCIAL CONSTRUCTION ONLY)				
<b>TRUCK DRIVERS</b>					
<b>GROUP 1 *</b>		2021-12-27	33.65	19.95	53.60
601	MECHANIC . WELDER				
602	TRACTOR TRAILER DRIVER				
603	TRUCK DRIVER (HAULING MACHINERY INCLUDING OPERATION OF HAND AND POWER OPERATED WINCHES)				
<b>GROUP 2</b>		2021-12-27	29.70	16.60	46.30
604	FOUR OR MORE AXLE UNIT, STRAIGHT BODY TRUCK				
<b>GROUP 3</b>		2021-12-27	33.00	19.95	52.95
605	BITUMINOUS DISTRIBUTOR DRIVER				
606	BITUMINOUS DISTRIBUTOR (ONE PERSON OPERATION)				
607	THREE AXLE UNITS				

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<u>LABOR CODE AND CLASS</u>		<u>EFFECT DATE</u>	<u>BASIC RATE</u>	<u>FRINGE RATE</u>	<u>TOTAL RATE</u>
<b>GROUP 4 *</b>		2021-12-27	25.10	10.85	35.95
608	BITUMINOUS DISTRIBUTOR SPRAY OPERATOR (REAR AND OILER)				
609	DUMP PERSON				
610	GREASER				
611	PILOT CAR DRIVER				
612	RUBBER-TIRED, SELF-PROPELLED PACKER UNDER 8 TONS				
613	TWO AXLE UNIT				
614	SLURRY OPERATOR				
615	TANK TRUCK HELPER (GAS, OIL, ROAD OIL, AND WATER)				
616	TRACTOR OPERATOR, UNDER 50 H.P.				
<b>SPECIAL CRAFTS</b>					
701	HEATING AND FROST INSULATORS	2021-12-27	45.06	20.70	65.76
		2022-06-05	47.31	20.70	68.01
702	BOILERMAKERS	2021-12-27	40.94	29.28	70.22
		2022-01-01	42.64	29.28	71.92
703	BRICKLAYERS	2021-12-27	36.35	30.54	66.89
704	CARPENTERS	2021-12-27	32.20	23.58	55.78
		2022-05-02	34.25	23.58	57.83
705	CARPET LAYERS (LINOLEUM)	2021-12-27	36.12	21.57	57.69



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706	CEMENT MASONS	2021-12-27	35.76	20.88	56.64
		2022-05-01	37.71	20.88	58.59
707	ELECTRICIANS	2021-12-27	41.37	28.84	70.21
708	ELEVATOR CONSTRUCTORS	2021-12-27	53.28	41.79	95.07
		2022-01-01	55.10	43.00	98.10
709	GLAZIERS	2021-12-27	33.16	23.18	56.34
		2022-05-02	35.16	23.18	58.34
710*	LATHERS	2021-12-27	31.44	18.43	49.87
712	IRONWORKERS	2021-12-27	35.09	31.80	66.89
714	MILLWRIGHT	2021-12-27	36.10	23.10	59.20
		2022-01-01	36.10	24.21	60.31
		2022-05-02	38.25	24.21	62.46
715	PAINTERS (INCLUDING HAND BRUSHED, HAND SPRAYED, AND THE TAPING OF PAVEMENT MARKINGS)	2021-12-27	33.64	22.34	55.98
		2022-05-01	35.69	22.34	58.03

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716	PILEDRIIVER (INCLUDING VIBRATORY DRIVER OR EXTRACTOR FOR PILING AND SHEETING OPERATIONS)	2021-12- 27	40.00	26.04	66.04
		2022-05- 02	42.15	26.04	68.19
717	PIPEFITTERS . STEAMFITTERS	2021-12- 27	41.40	23.95	65.35
		2022-05- 01	43.55	23.95	67.50
718	PLASTERERS	2021-12- 27	36.24	21.13	57.37
719	PLUMBERS	2021-12- 27	41.40	23.95	65.35
		2022-05- 02	43.55	23.95	67.50
720	ROOFER	2021-12- 27	33.22	15.59	48.81
		2022-05- 01	35.17	15.59	50.76
721	SHEET METAL WORKERS	2021-12- 27	35.07	27.92	62.99
722*	SPRINKLER FITTERS	2021-12- 27	39.18	23.22	62.40
723	TERRAZZO WORKERS	2021-12- 27	41.96	22.50	64.46
724	TILE SETTERS	2021-12-	31.28	26.24	57.52

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		27			
725	TILE FINISHERS	2021-12-27	21.72	21.21	42.93
726	DRYWALL TAPER	2021-12-27	33.64	22.44	56.08
		2022-05-01	35.69	22.44	58.13
727	WIRING SYSTEM TECHNICIAN	2021-12-27	42.46	19.41	61.87
		2022-07-01	43.52	19.41	62.93
728	WIRING SYSTEMS INSTALLER	2021-12-27	29.75	16.08	45.83
		2022-07-01	30.49	16.08	46.57
729	ASBESTOS ABATEMENT WORKER	2021-12-27	33.98	20.75	54.73
		2022-01-01	35.13	21.55	56.68
730	SIGN ERECTOR	2021-12-27	30.67	17.65	48.32
		2022-06-01	32.17	17.65	49.82