



Duluth Transit Authority

REQUEST for PROPOSALS

FOR EMPLOYMENT BACKGROUND SCREENING SERVICES

February 23, 2023

Duluth Transit Authority

2402 W. Michigan St · Duluth, MN 55806

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

email: nbrown@duluthtransit.com

Duluth Transit Authority Request for Proposals Employment Background Screening Services

The Duluth Transit Authority hereby requests proposals from qualified firms to provide pre-employment screening services for the Duluth Transit Authority. The DTA is also seeking qualified firms for MVR monitoring services.

Proposals must be received no later than **1:00 p.m. on Thursday, March 9, 2023**. Specifications may be emailed or mailed to prospective proposers, or picked up at 2402 West Michigan Street, Duluth, MN 55806. Contact (218) 623-4329 or nbrown@duluthtransit.com for more information.

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

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

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Section 1.

General Conditions**G-1 REQUEST FOR PROPOSALS**

- a) Proposals are requested from qualified firms to provide pre-employment background screening services and Motor Vehicle Record (“MVR”) monitoring services in accordance with applicable Federal Motor Vehicle Safety Standards for transit fleet operators. Respondents may Propose on some or all of the services herein.
- 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.
- h) 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, 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. Mike Ahlin, Director of Safety and Security.
- 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, March 1, 2023**. 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 on **Thursday, March 2, 2023**.
- 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) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made **only** by **written** addendum. Addendum will be posted on the DTA website at www.duluthtransit.com.

G-5 PREPARATION OF PROPOSAL

Proposals must be submitted on the forms attached. 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, OR placed and securely sealed in an envelope marked "**Employment Background Screening Services**" 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, March 9, 2023**. 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 or securely sealed envelope marked as indicated on the Proposal Form.

G-6 WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its Proposal at any time before the time set for the opening of the Proposals only 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.

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G-7 CONSIDERATION OF PROPOSAL

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

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

G-8 PROPOSAL DOCUMENTS, ADDENDA

It is the Proposer's responsibility to assure the receipt of all procurement documents, including addenda, pertaining to this Request for Proposals. All documents will be posted online at www.duluthtransit.com/doingbusinesswithus. In addition, Proposers may inspect 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.

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 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 five (5) 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.

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.

G-11 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.

G-12 STATE, FEDERAL, REQUIREMENTS

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All work performed under this Contract shall conform to all latest local, state, and federal 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.

G-13 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-14 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.

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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.

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, and applicable provisions of 2 C.F.R. Part 200.

G-15 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

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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 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-16 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.

SIGNIFICANT DATES OF PROCUREMENT

Item	Date	Time
Date of Release	February 23, 2023	
Request for Clarifications	March 1, 2023	2:00 pm
Response to Clarifications	March 2, 2023	10:00 a.m.
Proposal Opening	March 9, 2023	1:00 pm
Award	March 17, 2023	

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

Does not apply to this contract

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

Does not apply to this contract

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

Does not apply to this contract

A.6 CHARTER SERVICE 49 U.S.C.5323(d) and (r); 49 C.F.R. Part 604

Does not apply to this contract

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 contract

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.

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment", September 24, 1965, 42 U.S.C. §2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. The Contractor agrees to take affirmative action to ensure that applicants re employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age 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 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

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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 if 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

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

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

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

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

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

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

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

A. 14 LOBBYING RESTRICTIONS
31 U.S.C. 1352, 2 CFR §200.450
2 C.F.R. Part 200 Appendix II (J), 49 C.F.R. Part 20
Does not apply to this contract

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Federal Government Obligation to Third Parties.

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

A.16 PATENT RIGHTS AND RIGHTS IN DATA
2 C.F.R. part 200, Appendix II (F); 37 C.F.R. part 401
Does not apply to this procurement

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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 contract

A.20 RECYCLED PRODUCTS

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

Does not apply to this contract

A.21 SAFE OPERATION OF MOTOR VEHICLES

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

Executive Order No. 13513, U.S. DOT Order No. 3902.10

Seat Belt Use

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

Distracted Driving

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

A.22 SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f), 49 C.F.R. part 605

Does not apply to this procurement

A.23 SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41

Executive Order (E.O.) 12699

Does not apply to this procurement

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A.24 SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331, 49 C.F.R. part 655

49 C.F.R. part 40

Does not apply to this contract

A.25 TERMINATION

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

Termination for Convenience or Default

The Duluth Transit Authority may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of the Duluth Transit Authority or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Duluth Transit Authority, or property supplied to the Contractor by the Duluth Transit Authority. If the termination is for default, the Duluth Transit Authority may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Duluth Transit Authority and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Duluth Transit Authority, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Duluth Transit Authority determines that the Contractor has an excusable reason for not performing, the Duluth Transit Authority, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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 contract

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

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

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

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

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

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(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.

(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

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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.

A. 29) Notice of Legal Agreement or Litigation

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

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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

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Section 3. Contract (example for Proposal)

This Contract, made this ____ day of ____, 202., 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 # 023-001) dated February 23, 2023, General, Special and Technical Specifications, 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 TERM

The term of this Contract will be for a period of five years, beginning on “Notice to Proceed” from the DTA, through March 31, 2028.

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.

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

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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 and ATE Management of Duluth, 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 and ATE Management of Duluth, Inc., for claims of liability arising out of the sole negligent or intentional acts or omissions of DTA and ATE Management of Duluth, Inc., but shall include, but not be limited to, the obligation to defend, indemnify and save harmless the DTA and ATE Management of Duluth, Inc. in all cases where claims of liability against the DTA and ATE Management of Duluth, Inc. arise out of acts or omissions of DTA and ATE Management of Duluth, 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 and ATE Management of Duluth, 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 \$1,500,000 Single Limit, shall be in a 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: Blanket Contractual Liability and Independent Contractors Liability.
 - (7) DTA and ATE Management of Duluth, 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 and ATE Management of Duluth, 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

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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 and ATE Management of Duluth, 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 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 and ATE Management of Duluth, 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 and ATE Management of Duluth, 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

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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 and ATE Management of Duluth, Inc.

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

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delivered to the DTA upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA.

ARTICLE 12 INDEPENDENT CONTRACTOR

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

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

Mike Ahlin, Director of Safety and Security

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

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

ARTICLE 19 SEVERABILITY

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

ARTICLE 20 COUNTERPARTS

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

On behalf of the Duluth Transit Authority:

General Manager

On behalf of

Title: _____

Proposal Sheets

DULUTH TRANSIT AUTHORITY

Employment Background Screening Services

February 23, 2023

**Duluth Transit Authority
Employment Background Screening Services**

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Section 4. FORMAL PROPOSAL SHEET Employment Background Screening Services

PRICE PER APPLICANT	Year 1	Year 2	Year 3	Year 4	Year 5
Social Security Number Trace					
Federal Criminal Background Search					
State Criminal Background Search					
Prior State Residence Criminal Background Search (as applicable)					
Sex Offender Search (upon request)					
I-9 Verification (Upon Request)					
Department of Transportation License Check					
Follow up License Check					

Respondents may Propose on some or all of these services.

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, System for Award Management Unique ID number (if applicable).
2. A list of services offered.
3. The Technical capabilities of the Proposer, including provisions to maintain confidential PII information.
4. A signed Proposal form and required certificates.

Firm Name: _____

Mailing Address:

CITY STATE ZIP CODE

Addendum Acknowledgment
Number Date Rec'd

By: _____
(PRINT NAME) TITLE

PHONE NO.

Signature: _____

Email: _____

System for Award Management Unique Identifier: _____

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: _____
SAM Unique Identifier _____
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

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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.

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

Warranty:

The Contractor,

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

Signed:

Title _____

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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 _____

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. **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 B. 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 _____

TECHNICAL AND SPECIAL SPECIFICATIONS

FOR

Employment Background Screening Services

February 23, 2023

SECTION 6. TECHNICAL/SPECIAL SPECIFICATIONS
A. GENERAL

1. The DTA is seeking Proposals from qualified individuals or firms to provide pre-employment background screening services to identify current and past motor vehicle violations, accidents or serious violations, expired licenses, as well as past criminal activity. The DTA is also seeking qualified Vendors to provide ongoing monitoring of motor vehicle violations for existing employees in accordance with all U.S. Department of Transportation requirements, Minnesota State law and DTA policy.
2. Respondents may respond to some or all of the requested services. The DTA is not restricting the award to one vendor; the Evaluation Committee may recommend awards to multiple Vendors to best meet the DTA's needs.
3. The DTA has over 100 commercial vehicle operators that requires ongoing monitoring, and 20 maintenance technicians and administrators. The DTA spent approximately \$1,600 on background check services and over \$2,600 on MVR services in 2022.
4. The selected Vendor(s) will provide a user-friendly system for DTA staff to access initial and ongoing status updates of driving violations, suspensions or revocations, medical certificate downgrades, driving while under the influence citations, etc. and violations included in the Commercial Driver's License Information System in compliance with the Federal Motor Carrier Safety Administration requirements.
5. The DTA is seeking qualified Vendor(s) to provide the DTA the following:
 - a. Social Security Number Trace
 - b. Federal Criminal Background Search
 - c. Statewide Criminal Background Search
 - d. Out of state Criminal Background Search
 - e. License Verification
 - f. Prior Employment Verification (upon request)
 - g. National Sex Offender Registry (upon request)
 - h. MVR monitoring
6. The DTA may elect to include other background related verifications at the discretion of the General Manager.
7. The selected Vendor(s) will demonstrate robust data confidentiality protections for Personally Identifiable Information (PII) in accordance with all federal, state and local laws, including the Minnesota Data Practices Act, MN Stat Chapter 13.
8. Proposers shall submit sample reports for Evaluation Committee review.
9. Proposers shall submit examples of employee release forms, and any other forms employees are required to complete prior to receiving background checks.
10. The term of the Contract(s) will be for a period of five years, beginning April 1, 2023 through March 31, 2028.

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, System for Award Management Unique ID number, and Minnesota tax I.D. number (if applicable).
2. A list of services offered.
3. The Technical capabilities of the Proposer, including provisions to maintain confidential PII information.
4. A signed Proposal form and required certificates.

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, and to award to multiple Proposers, in the best interest of the Authority.

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

- Ability and experience providing pre-employment background checks and/or MVR reporting, including turn-around time 30%
- Vendor Dashboard ease of use 20%
- Data security 20%
- Cost 20%
- References, sample forms 10%

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.

Ability and experience providing pre-employment background checks

The Committee will evaluate the Vendor’s approach to performing pre-employment background checks for the required and optional checks, including turn-around time for reports. The Committee will evaluate the Proposed MVR reporting system separately from the background check system.

Ease of use to access MVR reporting

The Evaluation Committee will evaluate the Proposed dashboard and communication capabilities to DTA staff for requested reports.

DATA Security

The Committee will evaluate the Proposed system data security measures to protect employee and potential employee PII.

Cost

The Committee will evaluate the Proposed Cost of the services based on an average estimate of DTA usage.

References, Forms

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