



## **Request for Proposals Employee Assistance Program Services**

The Duluth Transit Authority is seeking proposals from qualified firms to provide Employee Assistance Program Services.

Proposals are due at the DTA no later than **1:00 p.m. on Tuesday, April 25, 2023.**

Proposals can be emailed in a .pdf attachment to: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), or submitted via regular mail to:

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

The DTA affirmatively assures that equal opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, gender, marital status, disability, or age, and encourages participation of small or disadvantaged business enterprises in DTA contracts. The DTA reserves the right to accept or reject any and/or all proposals in the best interest of the Authority.

## **Section 1: BACKGROUND**

The Duluth Transit Authority (DTA) provides regular route transit services and paratransit services in and around the Duluth and Superior metro area. The DTA is seeking a qualified individual or firm to provide employee assistance services for DTA employees and their dependents. The DTA intends to award a three (3) year contract, with option to renew for two additional years, to the proposer selected in accordance with the RFP and the DTA's best interests. This project is funded in part by a grant from the Federal Transit Administration, Assistance Listing #20.507.

The DTA established an EAP program in conjunction with the Substance Abuse Policy, and requires a certified Substance Abuse Professional (SAP) meeting the U.S. Department of Transportation SAP standards as part of the program offering. It is the responsibility of the respondent to determine if the SAP is qualified under the DOT regulation. On average, there is one SAP evaluation per year. After a positive test, the employee is referred for Substance Abuse assessment and evaluation, and will then comply with the SAP recommended follow up program.

The DTA also requires that the EAP assist employees and their families with access to outside counseling and referrals to community and professional resources for help in resolving other problems, including financial and credit counseling, grief support, elder services, stress reduction, etc.

The EAP is available to all full and part time DTA employees and their families. The total number of employees is approximately 150. On average, the DTA utilization rate is approximately 1 session per month for 1 hour, most are for basic counseling, substance abuse assessment and treatment, and financial counseling assistance. There are few, if any, utilizations of telephonic or website sessions. The current EAP program has fulfilled the DTA's requirements; there have not been any service-related issues with the current provider.

## **Section 2 TECHNICAL SPECIFICATIONS**

A. Respondents should provide a description of "basic" EAP service, and a summary of optional additional services and the corresponding cost per hour/event/service. In calendar year 2022, the DTA spent approximately \$700 on EAP services. Respondent should assume 20 hours annually for these services, but pricing shall not require a minimum amount.

B. Basic services shall include individual consultation to the DTA administrators and supervisors, as needed, regarding management referral to the EAP provider of employees with job performance or behavioral/medical problems, including offsite assistance as needed, with management referrals for employees involved in workplace conflicts. The qualified firm must be able to provide face to face counseling services as needed, in a safe, private and confidential office within a reasonable distance (30 miles or less from the DTA main office).

C. Licensed professional counselors shall be available in sufficient number and in appropriate locations to deliver both urgent and non-urgent services in a timely manner. Urgent requests for service shall be met within 24-hours, and non-urgent requests shall be met within five to seven business days.

D. Samples of written materials should be provided in the response, along with website URLs and the location of any other electronic media employed in the service offering.

E. Qualified organizations **must** have a Substance Abuse Professional (SAP) in compliance with 49 CFR Part 40 on staff or retained as a subcontractor. Respondents shall submit a summary of the SAP credentials and experience in the RFP response, and shall submit proof of credentials upon request by the DTA. Respondent should assume 20 hours annually for these services, but pricing shall not require a minimum amount.

F. Other services the DTA would like qualifications and optional pricing on include the following:

- Critical Incident Response or Trauma Team services/Critical Incident Counseling shall be exclusively on an as-needed basis. The DTA does not have any history of requiring these services; the Respondent should assume 6 hours annually for pricing purposes.
- Special Purpose Training; estimate 10 hours annually
- Reasonable Suspicion Training
- Consultation on Drug Free Workplace Policy and Program
- Employee and/or Organization Development Services

### **Section 3: REQUIREMENTS**

All proposals shall remain effective subject to review and approval, for a period of ninety (90) days from the deadline for submitting proposals. If only one proposal is received by the DTA, the DTA may initiate negotiations with the firm submitting the proposal or seek additional proposals on an informal or formal basis during the ninety (90) day period that proposals must remain effective.

***The DTA reserves and may exercise the following rights and options:*** (i) to reject any and all proposals and reissue the RFP at any time prior to execution of a final contract, if, in the DTA's opinion, it is in the DTA's best interest to do so; (ii) to supplement, amend, substitute, or otherwise modify this RFP at any time prior to selection of one or more proposer for negotiation and to cancel this RFP with or without issuing another RFP; (iii) to reject the proposal of any proposer who, in the DTA's sole judgment, has been delinquent or unfaithful in the performance of any contract with the DTA, is financially or technically incapable or is otherwise not a responsible responder; (iv) To reject as informal or non-responsive, any proposal which, in the DTA's sole judgment, is incomplete, is not in conformity with applicable law, is conditional in any way, or deviates from the mandated requirements of the

RFP and; (v) to waive any informality, defect, non-responsiveness and/or deviation from this RFP that is not, in the DTA's sole judgment, material to the proposal.

#### **Section 4 SUBMITTALS**

- A. Billing Rates. The DTA prefers to have a per occurrence fee for services. The most frequent service is substance abuse assessment and treatment. This service must be provided by a licensed Substance Abuse Professional that is able to respond to a request within three (3) business days from the date of the DTA request.
- B. Provide a price for an additional two-year option for all above noted services.
- C. Describe other type of pricing options considered by your business.
- D. This contract will not include an allowance for per diem or reimbursable expenses. Proposers must include all overhead costs in their proposals.
- E. Describe the provider's ability to interface with insurance benefits and managed care requirements for referrals beyond the EAP.
- F. List any treatment programs, facilities or practices in which your EAP or parent organization has a vested financial interest, and note what referral policies are in place to prevent inappropriate steering of clients to these affiliated agents and programs. Under what conditions, if any, can EAP clinicians refer to themselves for ongoing counseling beyond the EAP?
- G. Provide name and contact information for at least three (3) references.
- H. Describe other services that your firm offers, legal, financial counseling, work-life, etc.
- I. Describe how the recordkeeping and reporting maintains and guarantees confidentiality, and include a sample report.
- J. Provide other details that will assist the DTA in evaluating the response.

#### **Section 5 EVALUATION CRITERIA**

All proposals will be evaluated based on the technical and professional expertise and the experience of the Contractor, the method and the procedures for ensuring that counseling is timely, effective and appropriate for the employee, past work experience, and the cost of the proposal.

##### A. Technical Qualifications and Experience

The technical qualifications and experience of the EAP provider will be determined by the following factors:

- The overall experience of the individual or firm in EAP services.
- Past work experience comparable to the work detailed in this RFP, including: substance abuse expertise.

B. Procedures and Methods

The procedures and methods proposed to be utilized to conduct the work will be of primary importance in evaluating proposals. This includes evaluation of company website and written materials, comprehensiveness of materials, the EAP provider's recordkeeping and reporting capabilities, etc.

C. Expertise and qualifications of designated staff

The expertise and professional level of the individuals proposed to conduct the work for the DTA, as well as the systems and technology used to perform the work.

D. Cost

All costs must be taken into account and proposals will be evaluated proportionately to the values proposed.

E. Other Relevant matters

Other relevant matters may include the clarity and completeness of the proposal and the apparent general understanding of the work to be performed.

F. The overall criteria listed below are listed in relative order of importance. As proposals are considered by the DTA to be more equal in their technical merit, the evaluated cost or price becomes more important so that when technical proposals are evaluated as essentially equal, cost or price may be the deciding factor.

G. The Evaluation Committee will rate each criterion on the following basis:

Evaluation Criteria:

A. Technical Qualifications and experience	20%
B. Proposed Procedures and Methods	15%
C. Expertise and qualifications of designated staff	15%
D. Cost	45%
E. Other Relevant matters	5%

H. The DTA may elect to interview proposers or seek further information before awarding the contract.

I. Award. The DTA will make the award to the responsible Proposer whose proposal is most advantageous to the DTA. Accordingly, the Evaluation Committee may not necessarily make a recommendation to award the contract, or may not necessarily make a recommendation to award the contract to the Consultant with the highest technical ranking nor make a recommendation to award to the Consultant with the lowest price proposal, if doing so would not be in the best interest of the DTA's public transit program.

## FEDERAL TRANSIT ADMINISTRATION

### FEDERALLY REQUIRED CONTRACT CLAUSES

#### A.1) Access to Records and Reports

a. Record Retention. The Contractor will retain, and will require 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 at not less than six (6) 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, appeals, 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) Civil Rights and Equal Opportunity

The DTA is an Equal Opportunity Employer. As such, the DTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the DTA 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. § 2000e *et seq.*, and Federal transit laws at 49 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 are 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 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. § 5332, 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.3. 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).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled

to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

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.

#### **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.

**A.4 EMPLOYEE PROTECTIONS**, 49 U.S.C. § 5333(a); 40 U.S.C. §§ 3141 – 3148; 29 C.F.R. part 5; 18 U.S.C. § 874; 29 C.F.R. part 3; 40 U.S.C. §§3701-3708; 29 C.F.R. part 1926

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

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance



with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions. Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

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

**A.5. 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.6. 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.7. 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.8. Safe Operation of Motor Vehicles Seat Belt Use**

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

##### **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.9. Termination for Convenience (General Provision)**

The DTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the DTA’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 DTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the DTA, the Contractor will account for the same, and dispose of it in the manner the DTA 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 DTA 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 DTA 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 DTA, 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 DTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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

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 DTA 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 DTA, 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 DTA, 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.

If Contractor fails to remedy to the DTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 10 days after receipt by Contractor of written notice from the DTA setting forth the nature of said breach or default, DTA 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 DTA 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 DTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the DTA shall not limit the DTA's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**A. 10 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

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

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

*Covered telecommunications equipment or services means—*

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology means—*

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

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

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

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

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

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

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

(b) *Prohibition.*

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

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

THIS CONTRACT, by and between the Duluth Transit Authority, an authority of the City of Duluth, Minnesota, hereinafter referred to as “DTA”, and \_\_\_\_\_, (“Consultant”), a \_\_\_\_\_ corporation located at \_\_\_\_\_.

WHEREAS, the DTA desires to utilize Consultant’s professional services to develop and execute a plan to provide Employee Assistance Program (“EAP”) services, including Substance Abuse Program (“SAP”) services; and

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

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

**ARTICLE I CONTRACT DOCUMENTS**

The Contract Documents in priority order consist of Federal Transit Administration Clauses, this Contract, Request for Proposals (#023-002) dated April 4, 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 II THE WORK**

The Consultant 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 III PROFESSIONAL FEES AND PAYMENT**

Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs. Requests for reimbursements of expenses shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in the Proposal, as well as any documentation of actual costs incurred

and paid by Consultant, in performing the services hereunder, and such other documentation as the DTA shall reasonably request. A final invoice will be submitted by Consultant within 30 days of project completion or termination of this Contract. Upon receipt of said request and the appropriate documentation, DTA shall promptly reimburse Consultant for the approved expenses up to the amount set forth above. Funding for this project is provided by an operating grant from the Federal Transit Administration (“FTA”). The DTA will not be held liable for any damages incurred due to changes in state or federal funding, including (but not limited to) a reduction or cancellation of this Contract.

#### ARTICLE IV ASSIGNABILITY

Consultant shall not enter into any subcontract for performance of any services contemplated under this Contract, nor in any way assign or transfer any of its rights or interests under this Contract in any way whatsoever, without the express written consent of the DTA’s General Manager.

#### ARTICLE V TERM

This Contract shall be effective May 1, 2023, and shall remain in effect until April 30, 2026. DTA shall have the option, at its sole discretion, to extend this Contract for a period of two (2) years, for the period of May 1, 2026 until April 30, 2028 under the same terms, conditions and rates set forth herein. DTA shall provide written confirmation of extension on or before April 1, 2026. Failure of notification will not void the DTA’s ability to extend the term as herein provided.

#### ARTICLE VI RECORDS AND INSPECTION

##### A. Establishment and Maintenance of Records

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

##### B. Documentation of Costs



Consultant 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

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

D. Audits and Inspections

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

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 Agreement, 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 must comply with the 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 the

DTA when prepared and shall be delivered to the DTA upon completion or termination of the services of the Contractor or at such earlier time as requested by the DTA.

#### ARTICLE VII INDEPENDENT CONTRACTOR

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

#### ARTICLE VIII SUBCONTRACTORS

Consultant shall disclose all subcontractors performing work under this Contract in writing upon execution of the Contract, and thereafter promptly report any changes to the subcontractors of any tier in accordance with FTA requirements this Contract. Consultant shall insert the required Federal and State provisions into every subcontract of any tier in accordance with FTA requirements.

#### ARTICLE IX INDEMNITY AND INSURANCE

##### A. Indemnity

Consultant agrees that it shall defend, indemnify and save harmless, the DTA and ATE Management of Duluth, Inc., and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of the DTA and ATE Management of Duluth, Inc. or of Consultant, by reason of death of or injury to person or persons or the loss of or damage to property arising out of or related to Consultant's performance or its obligations under this Contract. On ten (10) days written notice from DTA, Consultant will appear and defend all lawsuits against DTA and ATE Management of Duluth, Inc. growing out of such injuries or damage. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract, and to the work to be done and things to be supplied hereunder.

B. Insurance

During the term of this Contract, Consultant shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the DTA; and shall provide for the following:

Professional Liability or Errors and Omission insurance, as appropriate to the profession, written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Contractor and "Covered Professional Services" as designated in the policy must include work performed under this Contract. The shall policy shall not be less than \$1,500,000 per claim and in the aggregate.

The Duluth Transit Authority and ATE Management of Duluth, Inc., shall be named as Additional Insured under the General Liability, Excess Umbrella Liability (An Umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the DTA as an additional insured) and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming itself and the Duluth Transit Authority and ATE Management of Duluth, Inc. Consultant shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance if so

required. Consultant to provide certificate of insurance evidencing such coverage with 30-days-notice of cancellation, non-renewal or material change provocations included. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the DTA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverage's evidenced by said certificate and shall further provide that failure to give such notice to the DTA will render any such change or changes in said policy or coverages ineffective as against the DTA and ATE Management of Duluth, Inc.

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

#### ARTICLE X            RULES AND REGULATIONS

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

#### ARTICLE XI            NOTICES

Notice to the DTA or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

Duluth Transit Authority:    Human Resources Manager  
2402 West Michigan Street  
Duluth, MN 55806

Consultant:

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**ARTICLE XII WAIVER**

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

**ARTICLE XIII APPLICABLE LAW**

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

**ARTICLE XIV 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 XV NO THIRD-PARTY RIGHTS**

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

**ARTICLE XVI ENTIRE AGREEMENT**

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

**ARTICLE XVII 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.

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

Duluth Transit Authority

By \_\_\_\_\_  
General Manager

Dated \_\_\_\_\_

On behalf of \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_