



**DULUTH TRANSIT AUTHORITY
REQUEST FOR QUALIFICATIONS**

**Hoist Refurbishment Design and Construction Observation
Services**

January 23, 2024

**Duluth Transit Authority
Request for Qualifications**
Hoist Refurbishment Design and Observation Services 010-24-0010.1

**Duluth Transit Authority
Request for Qualifications
Hoist Refurbishment Design and Observation Services**

The Duluth Transit Authority is seeking Statement of Qualifications from individuals or firms to provide Hoist Refurbishment Design and Observation Services in anticipation of a hoist replacement project at the DTA Operations Center. Responses are due, on or before **2:00 p.m. on Thursday, February 8, 2024.** Specifications and submission requirements are available from the Duluth Transit Authority and may be obtained by writing to: Procurement Office, Duluth Transit Authority 2402 W. Michigan St., Duluth, MN 55806; or by email: nbrown@duluthtransit.com.

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

The Duluth Transit Authority reserves the right to accept or reject any or all responses, or waive any informalities in the best interest of the DTA.

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1.0 INTRODUCTION, GENERAL INFORMATION

- 1.1 The Duluth Transit Authority (“DTA”) is seeking Statement of Qualifications from individuals and firms to provide Hoist Refurbishment Design and Observation Services for the DTA in anticipation of a 3-year hoist refurbishment project for up to six hoists. The DTA is seeking a qualified firm who can evaluate the applicable regulations, review technical drawings for compliance and adherence to DTA requirements, develop technical specifications for long-term refurbishments, observe removal and decommissioning of existing heavy-duty hoists, observe installation of new hoist equipment. Firms that meet the requirements as stated in this Request for Qualifications (“RFQ”) are encouraged to submit a Statement of Qualifications. Statements that include subcontractors for specific tasks are acceptable. Respondents shall **not** include cost per hour rates or cost proposals of any kind in their response.
- 1.2 This is a Qualifications-Based Selection process. All responses received by the deadline will be evaluated; an interview may be part of the evaluation process. The initial evaluation will be to identify the most qualified firm for the anticipated services. The DTA may select one firm, one firm with multiple subcontractors, or multiple firms for selected services or groups of services as most qualified to perform the Task Orders on behalf of the DTA.
- 1.3 Statement of Qualifications will only be considered from firms that are regularly engaged and licensed in the business of providing goods and/or services described in this RFQ for a reasonable period of time, and have sufficient financial support, equipment and organization to ensure they can satisfactorily execute the services if awarded a Contract under the terms and conditions herein.
- 1.4 The RFQ does not obligate the Duluth Transit Authority (“DTA”) to award a contract or contracts, or to proceed to specific projects.
- 1.5 The terms “Consultant”, “Responder”, “Respondent” or “Offeror” will be used interchangeably in this RFQ.
- 1.6 The DTA makes no representations as to the quantity of services to be performed, the timing for the services to be performed (within the Contract Term), past and projected usage, and any other representations of potential work under this Contract.
- 1.7 The terms “equipment” and “organization” as used herein shall be construed to mean a fully-equipped and well established individual or company in line with the best business practices in the industry as determined by the DTA. In making the award, the DTA may consider any evidence available to it of the financial, technical, and other qualifications and abilities of the Respondent, including past performance with the DTA and other similar customers. A record of nonperformance or poor performance may disqualify a Respondent from award.
- 1.8 This procurement is subject to a financial assistance contract between the DTA and the Federal Transit Administration (“FTA”) of the United States Department of Transportation (“DOT”).

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- 1.9 Questions regarding this RFQ must be directed to the DTA at 218-623-4329 or nbrown@duluthtransit.com. Email is the preferred means of communication. Oral explanations or instructions will not be binding upon the DTA.
- 1.10 Responsible Respondents must, at a minimum:
- a. Have adequate financial resources or have the ability to obtain such resources as required during the performance of the Contract;
 - b. Have a satisfactory record of past performance;
 - c. Have the necessary management and technical capacity to perform services described herein;
 - d. Be qualified as an established firm regularly engaged in the type of business for a period of not less than one year in the type of business to perform the duties under this Contract.
- A Respondent may be requested to submit written evidence verifying that it meets the minimum criteria necessary to determine a responsible Respondent. Refusal to provide requested information shall result in the Respondent being declared nonresponsive and the Statement of Qualifications will be rejected.
- 1.11 The DTA reserves the right to reject any or all Statements of Qualifications, to waive any defect, irregularity or informality in any Statement of Qualifications or RFQ procedures, extend the RFQ due date, cancel this RFQ, reissue a new RFQ, and/or procure any item or services by other means.
- 1.12 Initial selection shall be based on the evaluation criteria herein. After the DTA makes its initial selection, the DTA may elect to proceed to negotiate a Contract at a fair and reasonable price based on hourly rates, overhead, profit and other expense related to performance of these services. The DTA reserves the right to suspend negotiations with the Respondent should it not progress in a manner satisfactory to the DTA and commence negotiations with the next best rated Respondent.
- 1.13 Protests. In the event a Respondent desires to protest any procedure, the Respondent should present such protest in writing in accordance with the DTA's Protest Procedures, found on the DTA website, www.duluthtransit.com.
- 1.14 Pre-response Meeting. The DTA will host a virtual Pre-Response meeting at **2:00 p.m. on Thursday, February 1, 2024**, at the DTA offices, 2402 West Michigan Street, Duluth, MN 55806. Attendance is not mandatory, however, prospective respondents are strongly encouraged to attend. Interested parties unable to attend should contact nbrown@duluthtransit.com or 218-623-4329 for alternate arrangements. Instructions will be provided to all interested parties who request meeting access.
- 1.15 The DTA is not liable for any cost incurred by Respondents prior to final execution of the Contract. Costs incurred to prepare a response are the responsibility of the Respondent.

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- 1.16 If it becomes necessary to revise any part of this RFQ, addenda will be posted on the DTA website at www.duluthtransit.com. It is the Respondents' sole responsibility to obtain all documents applicable to this RFQ.
- 1.17 Economy of Preparation: Responses should be prepared simply and economically, providing a straightforward, concise, unambiguous description of the Respondent's ability to meet the requirements of RFQ. Responses may be submitted electronically in a pdf attachment prior to the due date and time to nbrown@duluthtransit.com, (preferred) or in a sealed envelope clearly marked "Hoist Refurbishment Design and Observation Services" and mailed or delivered to Procurement Department, Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
- 1.18 Oral Presentation: Respondents may be required to make an oral presentation on their submittal to the DTA. Such presentations provide an opportunity for the Respondent to clarify the submittal to ensure thorough mutual understanding. The DTA Procurement Office will schedule any required presentations.
- 1.19 Disposition of Responses: All materials submitted in response to this RFQ will become property of the DTA and will become public record subject to 49 U.S.C 5325(b)(2)(D) and the Minnesota Data Practices Act.
- 1.20 Conflicts of Interest: The Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFQ. The list should indicate the name of the entity, the relationship, and a discussion of the conflict. The responder shall also review and concur with the DTA Vendor Code of Ethics as well as the Organizational Conflict of Interest on the DTA website.
- 1.21 News releases pertaining to this Contract shall not be made without prior written approval from the DTA General Manager.
- 1.22 Project Management: The DTA will provide a project manager who will provide ongoing project monitoring and will serve as the Consultant's liaison with the DTA.
- 1.23 All work performed under this Contract shall conform to all latest local, state, and federal safety requirements and shall, in all cases, meet OSHA requirements. It shall be the Consultant's responsibility to ensure complete compliance with these requirements by staff and subcontractors to this Contract.
- 1.24 A sample Contract is included in this RFQ. Respondents shall request any changes to the terms and conditions at the time of Response. The DTA reserves the right to disallow any or all requested changes.
- 1.25 Respondent shall complete the Questionnaire for Engineering Services found in Appendix A and attached herein. Failure to complete this form shall result in disqualification.

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2.0 Term, Timing

- 2.1 The term of this Contract is March 1, 2024, through December 31, 2026, unless terminated sooner.
- 2.2 The selected Consultant shall evaluate current conditions of the bus hoists, work with the DTA Project Manager in evaluating options to refurbish the existing hoists, prepare technical drawings and specifications in preparation for a competitive bid process, assist with technical questions during the procurement process, assist with evaluation of the responses and other duties requested herein during the construction and close out of the Hoist Replacement project.
- 2.3 Upon award of a Contract for the Hoist Refurbishments, the selected Consultant shall, at the request of the DTA Project Manager, provide construction oversight services of the project, ensuring that all work is completed in accordance with the technical specifications.
- 2.4 No Advance Payments: Payment for services will only be for services rendered. No advance payments will be permitted.

3. STANDARD SERVICE TERMS AND CONDITIONS

- 3.1 The selected Consultant shall perform all work in a manner consistent with applicable regulations and industry standards. All work shall be performed to the reasonable satisfaction of the DTA, and any defective or substandard performance shall be promptly remedied at no cost to the DTA.
- 3.2 The selected Consultant shall provide all such tools, equipment, materials, supplies, employees, management, and any other items of service necessary to enable the Consultant to provide the services required under this Contract.
- 3.3 The selected Consultant agrees that regardless of the work requests under the scope of this Contract, it shall not be the basis for deviating from the quoted unit prices. Consultant agrees to honor quoted unit prices for the duration of this Contract, including extensions unless agreed to by the selected Consultant and the DTA Director of Administration in writing.
- 3.4 The selected Consultant shall not attach additional terms and conditions to service cost estimates requested by the DTA.
- 3.5 At all times during the term of this Contract, the Consultant shall be an independent contractor to the DTA, and shall not in any event be deemed an employee or other representative of the DTA. Any persons employed by the Consultant shall at all times hereunder be deemed to be employees of the Consultant and Consultant shall be solely liable for the payment of all wages and benefits made available to such employees in connection with their employment.

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- 3.6 Consultant shall remain solely responsible for the supervision and performance of any such employees, subcontractors or third-party providers in completing its obligations under this Contract. Consultant warrants that any such employees, subcontractors or third-party providers shall be fully covered by applicable workers compensation insurance, and has been carefully screened as to character and fitness for the performance of the requested task.

4.0 STATEMENT OF QUALIFICATIONS

- 4.1 The DTA requests Statements of Qualifications through this RFQ from qualified firms able to provide the professional services required to assist the DTA with a competitive procurement for refurbishment of up to six heavy duty in-ground hoists at the DTA Operations Center, and provide construction oversight services upon request.

5.0 CURRENT CONDITIONS

- 5.1 The DTA has six in-ground, 2-post Rotary R70 hoists that were installed when the building was built in 1980; recent inspections revealed that the hoists have reached the end of their useful life and are in need of refurbishment. The DTA has portable column lifts for use in lieu of hoists, but prefers the hoists for long-term repairs.
- 5.2 In 2021, the DTA sought a contract for replacement of the hoists, but subsurface unforeseen conditions caused the project to be cancelled due to concerns about the structural support for the replacement hoists. DTA is open to different styles of hoists, but needs heavy duty systems that allow maximum access to the undercarriage of the vehicles. The DTA will be seeking input from the selected Consultant on the pros and cons of different style hoists and their compatibility with the DTA's specific needs and the level of inconvenience during installation.
- 5.3 The DTA Operations Center is built on an engineered slab on pilings; posts for the in-ground hoists rest on pilings for support. The selected Consultant shall assist the DTA with evaluating options for replacement hoists and the potential structural impacts to the building if a different style hoist is implemented.
- 5.4 Upon determination of the best hoist solution for the DTA, the selected Consultant will prepare technical specifications and drawings in preparation of a competitive procurement for replacement hoists.
- 5.5 The selected Consultant shall participate in meetings with DTA staff during the procurement process to provide responses to inquiries, revised specifications if needed, and other tasks related to the technical requirements that must be communicated to potential vendors.
- 5.6 The Scope of Work does not include full time observation; construction observation will be requested at intervals and key benchmarks agreed upon between the DTA, the selected Consultant and the

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Contractor, or upon request by the DTA Project Manager in the event of construction issues.

6. SCOPE OF WORK

- 6.1. The selected Consultant must be able to demonstrate an understanding of the applicable regulations and processes, and provide the services in order for the DTA to complete the refurbishment of the hoists.
- 6.2 The selected Consultant must be able to perform all of the necessary services, including, but not limited to:
- a. Perform an analysis of regulations, laws and requirements applicable to the proposed project.
 - b. Conduct a technical evaluation of current conditions of the hoists, applicable Code requirements, including abandon existing hoists if so required, develop recommendations for DTA staff on options for repairs, cost estimates and probable timelines for completion, prepare technical specifications and drawings in preparation for a competitive procurement to refurbish the hoists.
 - c. Consultant shall attend the preconstruction meeting, answer any questions relative to the specifications and drawings, review and approve or disapprove all shop drawings and submittals, verify warranty provisions of proposed products. Evaluate value engineering alternates where requested.
 - d. Upon request from the DTA, perform construction observation services to monitor the construction. Responsibilities include acting as a liaison between the DTA and the Contractor, observe the work in progress, prepare reports on observations, progress and compliance with Code requirements and technical specifications, attend construction update meetings as may be required.
 - e. Review pay applications, schedule of values, verify work completed.
 - f. Review requests for additional costs or time extensions, work with the DTA to determine allowability of change requests.
 - g. Upon substantial completion, issue a punchlist of outstanding work for correction.
 - h. Observe commissioning of new system, verify compliance with warranty and training requirements.
 - i. Assist with contract close out, submit reports as may be required.
 - j. Other duties germane to this scope of work as may be requested.

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7. RESPONSE CONTENTS

- 7.1. One original of your response must be received by **2:00 p.m. on Thursday, February 8, 2024.**
Responses may be submitted electronically via a pdf attachment to nbrown@duluthtransit.com, or may be sealed in an envelope with the Responder's name and address clearly written on the outside. Responses must not include any discussion of proposed rates, costs or other pricing data. Late responses will not be accepted.
- 7.2. The anticipated date for awarding the Contract(s) is February 28, 2024.
- 7.3. Responses must include:
- a. Provide the Responder's full company name and address, indicate main contact people with titles and phone numbers and email contact information, Federal I.D. number, System for Award Management unique ID (as applicable), and Minnesota tax I.D. number (if applicable), along with the names of the individual(s) to be directly responsible for providing services under the Contract. Include a summary of prior experience and educational training that may be proposed.
 - b. A summary of previous work conducted by the Consultant and the individuals directly responsible for providing services similar in scope to that requested here, along with references. Examples should include prior experience on commercial or industrial buildings, and transit-related services.
 - c. The names of subcontractors (firms and individuals) who will assist in performing the required work and a resume of each, or a history of the firm and a list of examples of similar projects performed by the proposed staff for proposed projects.
 - d. A list of current projects under the direct management of the Respondent.

All responses must include the following:

- Signed Certificates A through E.
- Documentation of the company and statement of qualifications
- Names and qualifications of the designated staff
- Three (3) references for work similar in nature
- Completion of Appendix A, Engineering Services Questionnaire

8. EVALUATION

This is a Qualifications-Based Selection. Responses will be evaluated based on the following criteria:

- | | |
|--|-----|
| • Qualifications and experience to perform needed services | 50% |
| • Key Personnel qualifications handling similar projects | 30% |
| • Response to Appendix A, Engineering Services Questionnaire | 15% |
| • References, Other Matters | 5% |

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At the DTA's option, interviews may be required to determine the successful firm.

Qualifications and ability to perform needed services

Respondent should have specific experience with commercial hoist refurbishment projects, monitoring remediation of contaminated materials, and associated activities. The Respondent should have specific construction observation experience in large commercial projects and be able to demonstrate the ability to review technical drawings and specifications, shop drawings, and other construction observation reporting.

Key Personnel

The Respondent should provide Key Personnel for specific tasks, their qualifications and experience with similar projects.

Response to Appendix A, Engineering Services Questionnaire

Responses will be evaluated on past performance, licensing, answers to questions.

References, Other

The Respondent should provide any other information that will assist the Evaluation Committee in understanding the Respondent's ability to successfully carry out this project in the best interests of the DTA. References are required.

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9. SELECTION PROCESS

- A. Response Evaluation: This is a Qualifications-Based Selection. All responses to this RFQ will be reviewed for completeness prior to referral to the selection committee. A committee consisting of DTA representatives and/or others will then evaluate all responses for technical qualifications and project approach; the DTA designee will then conduct negotiations with the most qualified offeror. This award may be subject to approval by the DTA Board of Directors.
- B. The DTA encourages the participation of Small and Disadvantaged Business Enterprises in DTA contracts. Respondents who are certified as a Small or Disadvantaged Business Enterprise and listed on the Minnesota, Wisconsin or other DOT state Unified Certification Program, the City of Minneapolis CERT program, the Minnesota Targeted Business Program, or the Small Business Administration's small business certification, should submit proof of certification at the time of response.
- C. Responders to this RFQ may be requested to give an oral presentation of their submittal to the selection committee. This provides an opportunity for the Respondent to clarify or elaborate on their submittal. This is a fact finding and explanation session only and does not include negotiation. Oral presentations are strictly at the option of the DTA and may or may not be conducted.
- D. Negotiation: After the DTA has selected the most responsive Respondent, DTA will negotiate final rates with the most qualified Respondent to the point that the DTA deems fair and reasonable. If the most qualified Responder does not agree to said terms, then the DTA will negotiate with the next most qualified Respondent. If negotiations do not produce an agreement, the DTA will negotiate with the successive qualified Respondent(s) as it deems in its best interests. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified Respondent.
- E. Firms responding to this solicitation must comply with the Federal Acquisition Regulations Part 31 cost principles and audit of indirect cost rates for purposes of contract estimation and administration in accordance with 49 U.S.C. 5325 (b)(2)(B).
- F. Data provided for indirect cost rates shall be kept confidential in accordance with 49 U.S.C. 5325(b)(2)(D) and shall not be accessible or provided by the DTA except by written permission of the audited firm.

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10. FEDERAL TRANSIT ADMINISTRATION 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.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT, 42 U.S.C. §§ 7401 – 7671q
33 U.S.C. §§ 1251-1387, 2 C.F.R. part 200, Appendix II (G)**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$250,000.

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third-party contractors and their contracts at every tier and subrecipients and subcontracts at every tier.

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387.)

A.8 CIVIL RIGHTS 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.

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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.9 DISADVANTAGED BUSINESS ENTERPRISE

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 C.F.R. 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 the recipient 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).

A.10 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,

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

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

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

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

A. 11 ENERGY CONSERVATION

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.13 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

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

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

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

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A.15 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.18 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.20 RECYCLED PRODUCTS

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Recovered Materials

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

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A.21 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. 25 TERMINATION

A. 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 DTA to be paid the Contractor. If the Contractor has any property in its possession belonging to DTA, the Contractor will account for the same, and dispose of it in the manner 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 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 DTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from 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 DTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by DTA shall not limit DTA’s remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

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Termination for Convenience or Default (Cost-Type Contracts)

The DTA 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 DTA 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 DTA, or property supplied to the Contractor by the DTA. If the termination is for default, the DTA 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 DTA and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of DTA, 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 DTA determines that the Contractor has an excusable reason for not performing, the DTA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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

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

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

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

Covered telecommunications equipment or services means—

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

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

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

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the 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

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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—

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

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

(d) Reporting requirement.

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

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

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

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

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

A. 29) Notice of Legal Agreement or Litigation

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

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

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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.

A30) FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION

FTA MA(29) February 7, 2022 Sec (G)

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

- (A) Does not have any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (B) Was not convicted of the felony criminal violation under any federal law within the preceding 24 months.

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

A31) TRAFFICKING IN PERSONS

FTA MA(19) February 7, 2022, Sec (F)

Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA) 22 U.S.C. §7104(g) and 2 C.F.R. Part 175

The Contractor will inform the Duluth Transit Authority immediately if any information it receives from any source alleging a violation of the prohibitions listed in this section.

Prohibition:

The Contractor agrees that it, its employees, its Subrecipients, and its Subrecipients’ employees that participate in the Contractor’s award may not:

- (A) Engage in severe forms of trafficking in persons during the period of time that the Contractor’s underlying agreement is in effect;
- (B) Procure a commercial sex act during the period of time that the Contractor’s Underlying Agreement is in effect; or
- (C) Use forced labor in the performance of the Contractor’s Underlying Agreement or sub agreements.

DULUTH TRANSIT AUTHORITY

Required Certificates

Hoist Refurbishment Observation Services

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**A. 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 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 complete for and perform work under this Contract.

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

Signed this ____ day of _____, 20____:

Title _____

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B. DEBARRED BIDDERS

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

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

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

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

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

Type Name and Title

Signature

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Certificate C. Notice of Legal Agreement or Litigation

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

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

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

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

Type Name

Signature

Title

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Certificate D. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION

FTA MA(29) February 7, 2022 Sec (G)

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

- (A) Does not have any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (B) Was not convicted of the felony criminal violation under any federal law within the preceding 24 months.

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

Type Name

Signature

Title

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E. COMPLIANCE WITH SPECIFICATIONS

The respondent hereby states that it will comply with the RFQ requirements and specifications issued by the Duluth Transit Authority in all areas except those where approved equals were granted by the DTA.

SIGNED _____

FIRM NAME _____

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Certificate F

The respondent hereby states that it has read and will comply with 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 _____

DULUTH TRANSIT AUTHORITY

Example Contract

Hoist Refurbishment Observation Services

**Duluth Transit Authority
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CONTRACT FOR PROFESSIONAL SERVICES (example for RFQ)

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

WHEREAS, the DTA desires to utilize Consultant’s professional services for Hoist Refurbishment Design and Observation Services; and

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

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

Article I. Contract Documents

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract, Request for Qualifications 010-24-0010.1 dated January 23, 2024, all addenda issued prior to and all modifications issued after execution of this Contract, Consultant’s Response to Request for Qualifications dated ____, 2024, including executed Required Certificates, and negotiated cost proposal, all as fully a part of the Contract and as if attached to this Contract or repeated herein.

Article II. Scope of Professional Services

Consultant will perform the services identified in the Contract documents as set forth in Article I.

Article III. _____ Professional Fees and Payment

In consideration of the provision of the services referenced in Article I above in an acceptable manner, the DTA hereby agrees to reimburse Consultant for said services as set forth on Exhibit A attached hereto and made a part hereof. Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs. Requests for reimbursements shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in Exhibit A,

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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 the Consultant within thirty (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 in the amounts set forth in Exhibit A. 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 damage incurred due to changes in state or federal funding, including (but not limited to) a reduction or cancellation of the project.

Article IV. Assignability

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

Article V. Term

This Contract shall be effective upon written "Notice to Proceed" from the DTA, and shall remain in effect until December 31, 2026, unless terminated earlier as provided herein.

Article VI. Standard of Performance

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

Article VII. Reports and Inspection

A. Establishment and Maintenance of Records

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

B. Documentation of Costs.

Consultant will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices,

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contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Reports and Information.

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

D. Audits and Inspection.

Consultant shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Contract.

Consultant will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

E. Confidentiality of Information.

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

F. Ownership of Data

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

Article VIII. 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

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for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, DTA shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant while performing the work specified by this Contract.

Article IX. Subcontractors

- A. Disclosure. Consultant shall disclose all subcontractors it desires to perform work under this Contract at the time of execution of this Contract. Thereafter Consultant shall promptly report any desired changes to the subcontractors of any tier in accordance with FTA requirements. Such changes shall also require the prior written approval of the DTA Procurement Manager. Consultant shall insert the required Federal and State provisions into every subcontract of any tier in accordance with FTA requirements.
- B. Prompt Payment to Subcontractors. Consultant shall pay any subcontractor or material supplier within ten (10) days of receipt by the party responsible for payment of payment of undisputed services provided by the party requesting payment.

Article X. Indemnity and Insurance

- A. Indemnity. The Consultant shall defend, indemnify and save harmless, the DTA and ATE Management of Duluth SBC, Inc., from all costs, charges, damages and loss of any kind that may grow out of the matters covered by this Contract. Said obligation does not include indemnification of the DTA and ATE Management of Duluth SBC, Inc. for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA and ATE Management of Duluth SBC, Inc., but shall include, but be limited to, the obligation to defend, indemnify and save harmless the DTA and ATE Management of Duluth SBC, Inc. which are derivative of the negligence or intentional acts or omissions

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of Contractor, such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the work to be done and things to be supplied hereunder.

B. Insurance. During the term of this Contract, Consultant shall provide Commercial General Liability and Automobile Liability Insurance with limits not less than \$2,000,000 Single Limit, or \$1,000,000 Single Limit with a \$1,000,000 umbrella policy and shall be with a company approved by the DTA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, Errors and Omissions, and Contractual Liability. Consultant shall also provide Professional Liability Insurance in an amount not less than \$1,000,000 Single Limit, provided further that in the event the professional malpractice insurance is in the form of claims made insurance, thirty days notice prior to any cancellation or modification shall be required, and in such event, Consultant agrees to provide the DTA with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the DTA, ATE Management of Duluth SBC, Inc., or in the alternative, to purchase at its cost, extended coverage under the old policy for the period of the statute of repose runs; the protection to be provided by said claims made insurance shall remain in place until the running of the statute of repose for claims related to this Contract.

C. The Duluth Transit Authority and ATE Management of Duluth SBC, Inc. shall be named as an Additional Insured under the Commercial 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 and ATE Management of Duluth SBC, Inc. as an additional insured) and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming itself, the Duluth Transit Authority and ATE Management of Duluth SBC, Inc., as additional insured. 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 provisions 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.

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

Article XI. Civil Rights Assurances

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

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

Article XII. Rules and Regulations

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

Article XIII. Notices

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

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

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Consultant:

Article XIV. 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 XV. 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 XVI. 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 XVII. 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 XVIII. 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 XIX COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed

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

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

Duluth Transit Authority

By _____

Title: General Manager

Date _____

Consultant

By _____

Its _____

Date _____

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Appendix A
Hoist Refurbishment Observation Services Questionnaire

Respondents shall complete the following information and submit it along with the required information herein. A separate questionnaire should be submitted for each proposed major subcontractor anticipated to supply services of more than \$10,000.

1. General Information

Name of Firm: _____

Address _____

Phone Number: _____

Email Address: _____

Legal Form of Company (partnership, corporation, etc.): _____

Where incorporated: _____

How many years has the firm been engaged in the business under the present firm name? _____

For yes answers, please provide an explanation on a separate attachment.

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a contract? _____

Have you ever been sued for services you provided? _____

Does your organization possess all valid licenses, registrations and certifications required by federal, state, county, or city law necessary for work it seeks to perform? _____

Has your organization had any type of business, contracting or trade license, certification or registration revoked or suspended in the last three years? _____

Has your firm or organization been a debtor in a bankruptcy proceeding in the last ten years? _____

Please provide any conditions (e.g. pending litigation, planned office closures, impending mergers, etc.) that may impede the proposed firm or organization's ability to complete the work requested herein.

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1. Describe the different types of heavy duty hoists you have worked with in the past, including the type of subsurface conditions they were installed in (slab on grade, multistory building, etc.) Describe how the type of hoist was evaluated and selected for installation.

2. Indicate your capabilities in responding to requests for services, discuss turn-around times, ability to respond to last-minute requests.