



# **Duluth Transit Authority**

## **REQUEST for PROPOSALS**

**FOR**

## **CONTRACTOR OVERSIGHT REVIEW SERVICES**

**February 19, 2024**

### **Duluth Transit Authority**

2402 W. Michigan St · Duluth, MN 55806

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

email: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com)

**Duluth Transit Authority  
Board of Directors  
Request for Proposals  
Contractor Oversight Review Services**

Notice is hereby given that the Duluth Transit Authority Board of Directors is seeking Proposals from qualified individuals or firms for Contractor Oversight Review services for the DTA transit system. Scope of work includes preparing quarterly review materials, conducting reviews of the DTA third party operating contractor for compliance with FTA requirements, preparing recommendations and reports for submittal to the DTA Board of Directors, and assisting with evaluating outcomes as requested.

Responses must be delivered to the DTA, 2402 West Michigan Street, Duluth, MN 55806, on or before **1:00 p.m. on Thursday, March 14, 2024**. Specifications and submission requirements are available from the DTA and may be obtained by writing to: Procurement Officer, Duluth Transit Authority 2402 W. Michigan St., Duluth, MN 55806; or by email: [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com).

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

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

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## **Section 1      General Conditions**

### **G-1      REQUEST FOR PROPOSALS**

- a) Proposals are requested for Contractor Oversight Review Services for the Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
- b) Proposals shall be on the proposed rates and costs for the work under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents.
- c) Proposal prices shall be good for ninety (90) days after the Proposal opening.
- d) The DTA shall not be under any obligation for payment of precontractual expenses, including expenses for preparing or submitting a Proposal in response to this request, negotiating with the DTA on any matter related to this Proposal, and/or other expenses incurred by the Proposer prior to the date of award.
- e) Proposals are due at **1:00 p.m. on Thursday, March 14, 2024.**
- f) The DTA intends to award the contract to the responsible Proposer as early as March 27, 2024.
- h) The DTA reserves the right to accept and/or reject any or all Proposals, to add or delete work without penalty, in the interest of the DTA.
- i) Throughout these specifications the words equipment, materials, and work can be interpreted as interchangeable.
- j) Work under this contract is funded in part by a grant from the Federal Transit Administration, and the Minnesota Department of Transportation, grant #1054507 in the estimated amount of \$40,000 for the first year of services.
- k) This Contract is subject to the approval of the DTA Board of Directors.

### **G-2      INQUIRIES**

All inquiries and other correspondence relating to this Request for Proposals shall be with the Director of Administration and addressed to the DTA Director of Administration via email, [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), (preferred) or regular mail, Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.

### **G-3      DEFINITION OF TERMS**

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

- a) DTA, customer, buyer, or Board shall mean the DTA Board of Directors.
- b) Project Manager shall be the DTA Board President or designee for all work performed.
- c) Director of Administration shall mean the DTA Director or designee.
- d) Manufacturer, Vendor, Proposer, Offeror, Responder, Respondent, Contractor, or Consultant shall mean that individual or firm submitting a responsive Proposal and subsequently receiving the contract award from the DTA as the Consultant as detailed in these specifications.

### **G-4      SUBSTITUTIONS AND OR EQUAL**

- a) Where proprietary names are used in these specifications, it is understood that they are followed by the words "or equal".

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- b) Consultants and /or subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from the written, documented request required by paragraph c) below. Where prior approval is called for in the specifications it means prior to Proposal opening.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Director of Administration in writing no later than **2:00 p.m., Thursday, March 7, 2024**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item under consideration. The supporting evidence for the approved equal must be submitted with the request for approval. All requests must be submitted via email (preferred) to [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com) or US Mail unless otherwise approved by DTA in writing.
- d) The replies to the request under paragraph c) above will be provided in an Addendum to the RFP on **Friday, March 8, 2024**, and posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).
- e) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made only by written addendum. Addenda will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).

#### G-5 **PREPARATION OF PROPOSAL**

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

Proposals and other documents submitted by the Proposer shall not stipulate any condition not contained in the specifications.

Each Proposal and all papers bound and attached thereto and shall be in a portable document format ("pdf") attachment to an email addressed to [lindsaybiddle@hotmail.com](mailto:lindsaybiddle@hotmail.com) with a copy to DTA Director of Administration, [nbrown@duluthtransit.com](mailto:nbrown@duluthtransit.com), with the words "Contractor Oversight Review Services Proposal" in the subject line. Alternatively, respondents may submit Proposals and all papers bound and attached thereto in a sealed envelope marked "Contractor Oversight Review Services" and delivered to: Duluth Transit Authority, 2402 West Michigan Street, Duluth MN 55806.

Proposals must be received by the Proposal deadline. Time means local time in Duluth, Minnesota. Proposals received after such time will not be considered. The

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DTA reserves the right to accept or reject any and/or all Proposals in the best interest of the DTA.

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

**G-6 WITHDRAWAL OF PROPOSALS**

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

**G-7 CONSIDERATION OF PROPOSAL**

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

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

**G-8 PROPOSAL DOCUMENTS**

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

**G-9 PROPOSAL CONTENTS CERTIFICATION**

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

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**G-10 DUE DILIGENCE**

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

**G-11 CONTRACT FORM AND CHANGES**

The chosen Proposer, within ten (10) days after the award of the Contract from the DTA, shall sign the formal Contract.

A sample Contract is included in this RFP. Any proposed change in this Contract shall be submitted to the DTA for its prior approval prior to submission of the Proposal. Only written change orders, amendments or addenda, signed by the Board President shall be binding upon the DTA.

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

**G-12 BONDING REQUIREMENTS**

No bonds are required.

**G-13 PRICE COMPLETE**

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

**G-14 DISPOSITION OF RESPONSES**

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

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

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

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

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

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

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

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

#### **PROTESTS BEFORE AWARD**

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

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



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

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

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

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

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

### PROTESTS AFTER AWARD

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

### DECISION ON PROTEST

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

Following an adverse decision by the General Manager, the protestor may file a protest with FTA. For details, see FTA Circular 4220.1F, as amended, and 2 C.F.R. Part 318, which states that FTA will only review protests regarding the alleged failure of a grantee (here, the DTA) to have written protest procedures or alleged failure to follow such procedures, a failure to review a complaint or protest, or violations of Federal law or regulation.

### **G-16 ORGANIZATIONAL CONFLICTS OF INTEREST**

1. An organizational conflict of interest means that because of other activities or relationships with other persons or entities, a Consultant is unable, or potentially unable to

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render impartial assistance or advice to the DTA, or the Consultant's objectivity in performing the Contract work is, or might be otherwise impaired, or the Consultant has an unfair competitive advantage. Organizational conflict of interest includes situations where the capacity of a Consultant (including the Consultant's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective assistance is or may be impaired or may otherwise result in a biased work product because of any past, present or planned interest, financial or otherwise, in the DTA.

2. The Consultant is responsible for maintaining and providing up to date conflict of interest information to the DTA's Director of Administration. If, after award of this Contract or task order, the Consultant discovers a conflict of interest with respect to this Contract or task order which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Consultant shall give written notice to the DTA's Director of Administration as set forth below.

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

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

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

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

## **G-17 TAXES**

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

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**G-18 SUBCONTRACTORS**

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

**G-19 MINNESOTA NONDISCRIMINATION REQUIREMENTS**

In accordance with Minnesota §181.59, "DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT"

The Contractor hereby agrees and shall cause this provision to be inserted in every subcontract the following:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) that a violation of this section is a misdemeanor; and
- (4) that this contract may be canceled or terminated by the state, county, city, or the Duluth Transit Authority, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

**G-20 SINGLE RESPONSE**

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

**G-21 NO ENDORSEMENT**

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

**G-22 SUSPENDED/DEBARRED VENDOR**

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

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**SIGNIFICANT DATES OF PROCUREMENT**

<b>Item</b>	<b>Date</b>	<b>Time</b>
Date of Release	February 19, 2024	
Request for Clarifications	March 7, 2024	2:00 pm
Response to Clarifications	March 8, 2024	10:00 a.m.
Proposal Opening	March 14, 2024	1:00 pm
Award	March 27, 2023	

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## **Section 2 FEDERAL TRANSIT ADMINISTRATION**

### **Contract Clauses**

#### **A.1 ACCESS TO RECORDS**

##### **49 U.S.C. § 5325(g)**

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

#### **A.2 BONDING REQUIREMENTS**

##### **2 CFR §200.325, 31 CFR Part 223**

Does not apply to this procurement

#### **A.3 BUS TESTING**

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

Does not apply to this procurement

#### **A.4 BUY AMERICA REQUIREMENTS**

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

Does not apply to this procurement

#### **A.5 CARGO PREFERENCE REQUIREMENTS**

##### **46 U.S.C. §55.05**

##### **46 C.F.R. Part 381**

Does not apply to this procurement

#### **A.6 CHARTER SERVICE**

##### **49 U.S.C.5323(d) and (r)**

##### **49 C.F.R. Part 604**

Does not apply to this procurement

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

##### **49 U.S.C §§7401-7671q**

##### **33 U.S.C §§1251-1387**

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

The Contractor agrees:

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

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**A.8 CIVIL RIGHTS LAWS AND REGULATIONS**  
**Civil Rights and Equal Opportunity**

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

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

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

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

It is the policy of the Duluth Transit Authority and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the Duluth Transit Authority to:

1. ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in

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addition to all other equal opportunity employment requirements of this Contract. The Duluth Transit Authority shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the Duluth Transit Authority may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror/s documented history of non-compliance with DBE requirements on previous contracts with the Duluth Transit Authority.

**Contractor Assurance**

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Duluth Transit Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

**DBE Participation**

For purposes of this Contract, the Duluth Transit Authority will only accept DBEs who are:

1. Certified at the time of the bid opening or proposal evaluation by the Unified Certification Program; or
2. An out of state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the Duluth Transit Authority.

DBE Participation Goal

There is no DBE participation goal for this Contract.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Duluth Transit Authority or in accordance with state statutes, whichever is more restrictive. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify Duluth Transit Authority, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Duluth Transit Authority.

**A.10 EMPLOYEE PROTECTIONS**

49 U.S.C. §5333(a), 40 U.S.C. §§3141-3148

29 C.F.R. Part 5, 18 U.S.C. §874

29 C.F.R. Part 3, 40 U.S.C. §§3701-3708, 29 C.F.R. Part 1926

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

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

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

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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 REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 622, Subpart C**

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

**A.12 FLY AMERICA**

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

**48 C.F.R. Part 47.4**

Does not apply to this procurement

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

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

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

Executive Order 12549, Executive Order 12689

**Clause Language**

**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

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

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

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

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

**A. 14 LOBBYING RESTRICTIONS**

**31 U.S.C. 1352, 2 CFR §200.450**

**2 C.F.R. Part 200 Appendix II (J), 49 C.F.R. Part 20**

**Lobbying Restrictions**

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



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

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

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

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

End of Section

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

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

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

2 C.F.R. part 200, Appendix II (F); 37 C.F.R. part 401

Does not apply to this procurement

**A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

49 U.S.C. 5323 (m), 49 C.F.R. Part 663

Does not apply to this procurement

**A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001, 49 C.F.R. part 31

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that

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is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

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

**A.20 RECYCLED PRODUCTS**

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

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

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

**Seat Belt Use**

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

**Distracted Driving**

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

**A.22 SCHOOL BUS OPERATIONS**

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

**A.23 SEISMIC SAFETY**

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

**A.24 SUBSTANCE ABUSE REQUIREMENTS**

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

**A.25 TERMINATION**

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

**Termination for Convenience (General Provision)**

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

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

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

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

**Opportunity to Cure (General Provision)**

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

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

**Waiver of Remedies for any Breach**

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

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

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Duluth Transit Authority may terminate this contract for default. The Duluth Transit Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

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

**Rights and Remedies of the Duluth Transit Authority**

The Duluth Transit Authority shall have the following rights in the event that the Duluth Transit Authority deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

**Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Duluth Transit Authority, the Contractor expressly agrees that no

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default, act or omission of the Duluth Transit Authority shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority directs Contractor to do so) or to suspend or abandon performance.

**Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Duluth Transit Authority will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Duluth Transit Authority takes action contemplated herein, the Duluth Transit Authority will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

**Disputes**

• **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Duluth Transit Authority's Procurement Manager. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Duluth Transit Authority General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

• **Example 2:** The Duluth Transit Authority and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Duluth Transit Authority and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Duluth Transit Authority acted in an arbitrary, capricious or grossly erroneous manner.

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

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

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

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

*Covered telecommunications equipment or services* means—

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

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*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,

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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 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

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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.

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**DULUTH TRANSIT AUTHORITY  
BOARD OF DIRECTORS**

**CONTRACT EXAMPLE FOR**

**Contractor Oversight Review Services**

**February 19, 2024**



**Duluth Transit Authority  
Board of Directors  
Contractor Oversight Review Services**

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

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

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

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

WHEREAS, the DTA desires to utilize Consultant's professional services for Contractor Oversight Review Services; and

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

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

Article I. Contract Documents

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract, Request for Proposal 052-21-1 dated February 19, 2024, General, Special and Technical Specifications, all addenda issued prior to and all modifications issued after execution of this Contract, Consultant's Proposal dated \_\_\_\_\_, 2024 (the "Proposal"), including executed Required Certificates, all as fully a part of the Contract and as if attached to this Contract or repeated herein.

Article II. \_\_\_\_\_ Term

This Contract shall be effective upon "Notice to Proceed" from the DTA, and shall remain in effect until December 31, 2027, unless otherwise terminated as provided herein.

a. On or before August 1, 2027, the Consultant shall provide written notice to the DTA indicating that the initial term will expire on December 31, 2027. Upon written notice from the DTA General Manager and/or the President of the DTA Board of Directors dated on or before September 30, 2027, the DTA may, at its sole discretion, extend the term of this Contract for a period of two years, from January 1, 2028, through December 31, 2030. The DTA is not required to renew the Contract and may, at its

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sole option and discretion, allow the Contract to expire at the end of the initial term and thereafter, directly operate the Transit System or contract with some other entity to operate it.

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

**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 for in the Consultant's Proposal incorporated herein by reference. Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs completed.

Requests for reimbursements for management and consulting services shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in Consultant's 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.

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

A final invoice will be submitted by the Consultant within thirty (30) days of project completion or termination of this Contract. Upon receipt of said request and the appropriate documentation, the DTA shall promptly reimburse Consultant for the approved expenses in the amounts set forth in Exhibit A. The DTA will not be held liable for any damages incurred due to changes in state or federal funding, including, but not limited to, a reduction or cancellation of the Contract.

**Article IV. Amendment, Modification, Waiver**

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

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

Article V. Indemnification

To the fullest extent permitted by law, the Consultant shall defend, indemnify and save the DTA and ATE Management of Duluth SBC, Inc. and their employees, officers and agents harmless from all costs or expenses, claims and liabilities, charges, damages and loss of any kind, including but not limited to, reasonable attorney's fees and expenses, whether asserted by Consultant or any third party, that may grow out of the matter covered by this Contract. Said obligation shall include, but not be limited to the obligation to defend, indemnify and save harmless the DTA and ATE Management of Duluth SBC, Inc. in all matters where claims of liability against the DTA and ATE Management of Duluth SBC, Inc. are alleged to be or could be found to arise out of the negligent or otherwise wrongful act or omission of Consultant or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Consultant, including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Consultant and other of such source of liability. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against DTA and ATE Management of Duluth SBC, Inc. This Section shall survive the termination of this Agreement for any reason. Consultant shall not have the obligation to indemnify the DTA or ATE Management of Duluth SBC, Inc. for its intentional, willful or wanton acts.

Article VI. Insurance

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

- a. Workers' Compensation in accordance with the laws of the state of Minnesota.
- b. A standard policy of Commercial General Liability and Automobile Liability insurance with limits of not less than \$2,000,000 single limit or \$1,000,000 Single Limit and \$1,000,000 umbrella with a following form provision insuring Consultant, with DTA and ATE Management of Duluth SBC, Inc. as an additional insured.

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- c. Professional Liability Insurance in an amount of not less than \$2,000,000 naming DTA and ATE Management of Duluth SBC, Inc. as also insured.
- d. Each policy shall be:
  - i. written by the insurer reasonably acceptable to the DTA,
  - ii. be endorsed to name the Consultant, DTA and ATE Management of Duluth SBC, Inc. as additional insured;
  - iii. providing that the coverage afforded thereby is primary as to Consultant and DTA and ATE Management of Duluth SBC, Inc. not excess; and
  - iv. such that it cannot be canceled or materially altered without thirty days prior written notice to the DTA.
  - v. Certificates showing that Consultant is carrying the above-described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract, and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.

Article VII. Independent Consultant

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

Article VIII. Assignment

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

Article IX. 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 X. Reports and Inspection

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**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, 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.

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Article XI. Subcontractors

A. Disclosure. Consultant shall disclose all known 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 Board President. 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 undisputed services provided by the party requesting payment.

Article XII. Default

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

Article XIII. Rights and Remedies

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

Article XIV. No Third-Party Rights

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

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hereof, which, as between the DTA Board and Consultant, may be waived at any time by mutual agreement. No officer, director or employee of the DTA Board or the DTA or ATE Management of Duluth SBC, Inc. or Consultant shall be personally liable for the fulfillment of the conditions of this Contract.

Article XV. 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 XVII. 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 Board of Directors  
2402 West Michigan Street  
Duluth, MN 55806

Consultant:

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

Article XVIII. 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 XIX. 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.

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Article XX. 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 XXI. Counterparts.

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

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

**Duluth Transit Authority Board of Director**

By \_\_\_\_\_

Title: President

Dated \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Dated \_\_\_\_\_



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**PROPOSAL SHEETS**

**Contractor Oversight Review Services**

February 19, 2024

Duluth Transit Authority  
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**Section 4 FORMAL PROPOSAL SHEET**

**PROPOSAL GUARANTEE REQUIREMENTS: Not Required.**

Proposals must include the following:

**Proposals must include the following:**

- a. **Proposed services, qualifications and experience of proposed staff**
- b. **Hourly cost for proposed staff**
- c. **A detailed summary of other expenses that may be applicable to the services**
- d. **Required certificates herein.**
- e. **Three references.**
- f. **Any other information the Proposer can supply to assist the DTA with evaluating the Proposal.**

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

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

\_\_\_\_\_  
CITY STATE ZIP CODE

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

\_\_\_\_\_  
Signature

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

Addendum Acknowledgment  
Number Date

\_\_\_\_\_

\_\_\_\_\_

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

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**1. Proof of Responsibility Statement**

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

Statement of Bidder Qualifications and Responsibility

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

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

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

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

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

Warranty:

The Contractor,

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

Signed:

\_\_\_\_\_

Title \_\_\_\_\_

Duluth Transit Authority  
Board of Directors  
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**2. Small or Disadvantaged Business Enterprise, Veteran-owned Business (including Service Disabled Veteran Business Enterprises)**

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

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

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

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

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

\_\_\_\_\_

Title \_\_\_\_\_

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**3. Subcontractors and Suppliers Listing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Section 5****REQUIRED CERTIFICATES****A. DEBARRED BIDDERS**

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

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

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

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

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

---

 Print Name and Title

---

 Signature

Duluth Transit Authority  
Board of Directors  
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**Certificate B Lobbying Restrictions**

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

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

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

SIGNED \_\_\_\_\_

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



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Board of Directors  
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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.

SIGNED \_\_\_\_\_

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

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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.

SIGNED \_\_\_\_\_

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

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**Certificate E. COMPLIANCE WITH SPECIFICATIONS**

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

SIGNED \_\_\_\_\_

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

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**Certificate F      Code of Ethics**

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

SIGNED \_\_\_\_\_

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

# **TECHNICAL SPECIFICATIONS**

FOR

# **Contractor Oversight Review Services**

**February 19, 2024**

## **Section 6 TECHNICAL SPECIFICATIONS**

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

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

While more completely described elsewhere in this RFP, in general terms, the Board wishes to engage a firm to provide consulting for Contractor Oversight under the policy direction of the Board. The services to be provided upon request from the DTA Board include, but are not limited to, those relating to advising the DTA Board on the DTA’s third party contractor, ATE Management of Duluth SPC, Inc’s. (“ATED”) compliance with applicable regulations in accordance with the oversight requirements of Federal Transit Administration (“FTA”) Circular 5010.1E, “Award Management Requirements” (“Circular”) and the Board’s Contractor Oversight Policy.

### **B. CURRENT CONDITIONS**

The Board is responsible for developing overall policy and providing overall goals for the Transit System. The DTA is a public transportation system that operates fixed route and paratransit services seven days a week, 364 days a year for the City of Duluth, MN, the City of Superior, WI, and the City of Proctor, MN. The DTA was formed in 1969 under MN Stat. 458A.21 as an authority of the City of Duluth under the oversight of nine Board of Directors nominated by the mayor of Duluth. Because the founding legislation prohibits employees of the authority to be civil service employees of the City of Duluth, the Board approved a management contract with First Transit, Inc. as permitted in the legislation. Because of that restriction, First Transit created ATED as a wholly owned subsidiary that employs the entire ATED staff and has continuously operated the Transit System under a contract between DTA and ATED. When First Transit underwent a change in ownership in 2022 and declared that they would not renew the management contract, the DTA Board of Directors voted to acquire the ATED stock to ensure that the Central States Pension Fund payments would continue in compliance with the Multi-Employer Pension Plan Act Amendment of 1980, and prevent a multi-million dollar pension withdrawal liability. ATED continues to operate the Transit System under a contract between DTA and ATED dated November 1, 2022 and revised November 23, 2023.

Because ATED is a third-party contractor, during the 2019 Triennial Review, the FTA determined that additional oversight was necessary in order to comply with the requirements of FTA Circular 5010.1E. ATED staff developed a system of oversight that was initially accepted by the FTA, but in the 2023 Triennial Review, FTA required additional measures to ensure proper oversight. The RFP for Contractor Oversight Review services is a result of these measures.

In the years since the original Triennial Review, the ATED staff worked with both City of Duluth and City of Superior staff under a now expired Interagency Agreement to provide oversight for ATED; an example of an Oversight Checklist is available on the DTA website. However, when it came time to renew the Interagency Agreement, the City of Duluth determined that they did not have enough staff to perform the services; FTA gave the Board

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permission to contract with a third party vendor to perform the services, provided the vendor creates the checklist and provides the summary report directly to the Board of Directors.

The selected Consultant will primarily be working under the direction of the DTA Board President or his/her designee(s) as requested by the Board.

### **C. BOARD OVERSIGHT POLICY**

1. The Board consists of nine volunteer members nominated by the City of Duluth mayor. They serve three-year terms which may be renewed by the mayor for one additional term. The Board is responsible for developing overall policy and setting overall goals for the Transit System. The Board meets monthly and reviews performance reports provided by ATED staff, including on time performance, financial activity, procurements, grant status, and all other factors affecting Transit System Performance.
2. As a result of the FTA 2019 Triennial Review, the Board passed a Contractor Oversight Policy to comply with the requirements in conjunction with ATED staff, developed an oversight process using internal auditor principles to increase transparency of ATED activities, and provided additional oversight reports to the Board. While there had not been any material findings from the oversight process or during the 2023 Triennial Review, FTA determined that the oversight reviews needed more separation of duties and requested that the Board work with a third party to perform the oversight activities on behalf of the Board.

### **D. ATE MANAGEMENT OF DULUTH SBC, INC.**

1. ATED is the employer of all employees necessary for the operation of the Transit System and assumes all contractual obligations incidental to the operation of the Transit System to the extent that ATED has agreed to be so obligated.
2. Currently, approximately 175 people are employed by ATED, including all bus operators, maintenance technicians, the General Manager, and administrators. ATED drivers and technicians are members of Teamsters Local 346 under a collective bargaining agreement.
3. The approximately 34 ATED administrative staff members are split between highly tenured staff and some newly hired staff after legacy department heads retired. The General Manager was appointed by the Board in 2021 and has more than three decades of experience at the DTA, serving in multiple roles throughout his tenure.
4. The Transit System offers regular route and paratransit services and serves approximately 3,000,000 riders per year. The DTA owns all of the buildings and equipment to operate the system, and performs their own maintenance, driver training, planning, and procurements.
5. ATED staff views this process as an opportunity for continuous improvement in its policies and procedures and has made adjustments to procedures in the past as a result of the review process.
6. The DTA ATED Management contract defines the Board's expectations for ATED's operation of the Transit System. ATED's scope of services includes the following:
  - a. Be responsible for daily operations, maintenance, and employment purposes in order to operate the transit system as applicable.
  - b. Operate the transit system in compliance with all applicable federal, state, and local

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regulations and the DTA Board of Directors' requirements, including the Duluth Transit Authority Management Contractor Oversight Procedures incorporated herein by reference.

- c. Select, employ and properly train all employees needed to operate the transit system, including labor relations and labor contract negotiations.
- d. Ensure safety of personnel, prevent losses, and arrange all appropriate insurance coverages.
- e. Ensure compliance with any existing labor agreement(s) and negotiate future labor agreements.
- f. Maintain positive employee relations.
- g. Ensure compliance with applicable environmental and occupational safety and health laws and regulations.
- h. Seek state, federal, and local operating and capital grants to benefit the DTA and properly complete all necessary documents for such grants.
- i. Perform all budgeting, accounting, and financial functions.
- j. Prepare and administer all federal, state, and local grants.
- k. Establish and maintain the accounting controls necessary to ensure protection of all funds and assets and compliance with DTA audit requirements.
- l. Develop and execute marketing analysis and plans to increase ridership.
- m. Monitor and evaluate all current operations and institute internal procedures to improve operations and create economies to reduce costs.
- n. Develop and implement management techniques and operational improvements to ensure an environmentally sound transit system.
- o. Prepare and execute a strategic plan for the transit system and work with the DTA Board of Directors to help implement specific goals identified in the DTA comprehensive plan and vision.
- p. Perform all marketing and promotional functions for all operations including advertising.
- q. Prepare and administer the budget for the DTA and secure all required approvals for the budget, including the approval of the Duluth City Council as required in MN Statute §458A.24 as may be amended from time to time.
- r. Participate on local and or state transportation committees as needed.
- s. Provide management personnel development and training and recruitments as necessary.
- t. Provide overall management and policy recommendations.
- u. Maintain all facilities, equipment, and rolling stock, and make recommendations for future purchases of each category as may be required by the transit system.

## **E. ONGOING SERVICES, CONTRACTOR OVERSIGHT REVIEWS**

### **1. BOARD POLICY**

The purpose of the DTA Management Contractor Oversight Policy for the Board to:

- Ensure that all technical specifications and contract requirements are met by ATED
- Monitor DTA compliance with FTA requirements for FTA-funded vehicles or facilities that are maintained under contract with the Management Contractor
- Identify performance issues and address them in a timely manner



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- Track information regarding performance quality for the purposes of evaluating the Management Contractor for future services

## 2. AREA OF REVIEW

Specific areas of review include, but are not limited to, those areas of review in the FTA Contractor's Triennial Review manual:

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

## 3. INDEFINITE DELIVERY, INDEFINITE QUANTITY

- a. This is an Indefinite Delivery, Indefinite Quantity Contract. The quantities of services in the Contract are not guaranteed and are subject to the discretion of the DTA Board President. Delivery of services under this Contract shall be performed in accordance with the applicable terms and conditions of this Contract, including any and all attachments incorporated by reference herein and
- b. There is no minimum or maximum limit to the amount of services provided under this Contract except by order of the DTA Board President.
- c. On occasion, the Board may issue a Task Order for specific work germane to the Contract to be done at the Board President's request. Task Order work may be provided in accordance with the applicable terms and conditions of this Contract, including any and all attachments incorporated by reference herein and modifications hereto. The DTA shall not be required to issue a Task Order for routine work that is the subject of this Contract.
- d. The Board specifically reserves the right to directly perform the work or any portion of the work covered under this Contract at the discretion of the Board President. No compensation will be paid to the Consultant for work not performed by the Consultant or its subcontractors.

## F. TASK ORDERS

1. At least quarterly, or at a frequency set by the Board President or designee, the Board will issue a Task Order request to the selected Consultant for Contractor Oversight Reviews. Consultant shall provide a proposed cost and timeline for the requested task and submit it to the Board President who may negotiate scope, hours, or costs. Upon acceptance, the Board President will approval the task order and provide a notice to proceed. Tasks will be completed in a timeline as agreed upon in the task order proposal. The Board reserves the right to change or withdraw Task Order requests, to perform the work itself, or to seek third parties to perform the work, in the best interest of the DTA.
2. Contractor Oversight Reviews may be conducted in-person or remotely, at the Board President's discretion. Consultant shall include all travel costs and per diem expenses in their task order quotes for in-person reviews. In general, remote reviews will be preferred,

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unless there is cause to require an in-person review (which could be conducted using a local subcontractor.) Travel costs and per diem expenses must be in compliance with the DTA Travel Policy, and must be approved by the Board President prior to incurring the costs.

3. The selected Consultant will conduct the Contractor Oversight Review in accordance with the Board's Contractor Oversight Policy and will collaborate with ATED staff to gather necessary data, documents, or information to conduct the analysis of compliance to procedures. ATED will designate a primary contact to work with the Consultant to identify applicable procedures and ATED activities in order to comply with DTA, FTA, and applicable requirements.

4. The Board Task Order may include a request to evaluate ATED based on the FTA's Contractor's Triennial Review Handbook, to determine standards and compliance metrics. The selected Consultant may generate a checklist of oversight items based on the Triennial Review Handbook or develop some other form of identifying what items are being reviewed. Consultant will submit the oversight checklist or form to the Board President prior to soliciting ATED staff for information to be reviewed.

5. A copy of the DTA's founding legislation, the DTA Board of Director's Contractor Oversight Policy, the DTA ATE Management of Duluth contract, and a summary of the 2019 and 2023 Triennial Findings are posted on the DTA website under "Doing Business, Procurements."

## **G. CONSULTANT CONDUCT**

1. It is the responsibility of the Consultant to train and ensure that all staff performing services on behalf of the Board has a thorough working knowledge of the services to be performed and ancillary requirements under this Contract.

2. If services are performed on DTA property, security information including, but not limited to, the layout of the site, methods of security, keys, cards, and badges are **NOT TO BE SHARED WITH ANY PERSONS OTHER THAN THOSE WHO PERFORM SERVICES ON DTA PROPERTY**. Breach of this requirement may be grounds for immediate termination of this Contract.

3. The only Consultant employees that are to be allowed in a secure area of the DTA property are those that have been authorized under the terms of this Contract and only while they are **DIRECTLY INVOLVED** in providing services or supervising staff. Unauthorized personnel in a secure area of the DTA property when not providing Contract work, except to the extent such personnel are authorized to be in the public areas of the facility as members of the public, may be grounds for immediate termination of this Contract.

4. All Consultant staff providing services under this Contract will be required to sign for each key or FOB issued to the Consultant by the DTA. If a Consultant's employee or subcontractor loses a key or FOB, the replacement cost will be paid to the DTA by the Consultant. If a breach of security results from such a loss and locks must be changed or other changes must be made thus, the Consultant will be responsible for all associated costs and the charges will be deducted from the amount due the Consultant.

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5. Consultant shall ensure that all staff will keep private any proprietary information that may be discovered during the performance of services and not disclose such information to any third party without the prior written consent of the Board.
6. The Consultant's staff shall practice good personal hygiene and be well groomed while on site.
7. Interaction with DTA employees and customers is to be kept on a professional level always. Personal business, including the use of cell phones, is not to be conducted during Consultant working hours on DTA property.
8. The Consultant shall make all reasonable efforts to ensure that the Consultant's employees, officials, and subcontractors do not engage in violence while performing services under this Contract. Violence means works and actions that hurt or attempt to threaten or hurt people, any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear, or injury.
9. Consultant shall ensure that its employees, representatives, subcontractors, and others providing services under this Contract will act in a courteous manner, not use profanity or lewd gestures, nor post inappropriate materials or comments on DTA property, including DTA websites or social media, and not smoke or consume alcohol or illegal drugs while on DTA property. In the event that the DTA reasonably objects to any employee(s), representative(s), subcontractor(s), or other persons providing services under this Contract, they shall be removed from the assignment by the Contractor and not permitted to return to provide services under this Contract without the written consent of the Board President.

#### **H. OVERSIGHT REPORTS**

1. Upon completion of the Task, the Consultant shall prepare a draft report and submit it to the Board President, with a copy to ATED General Manager for review and comment.
2. Within 30 days of the report submission, the ATED General Manager may submit a written response to the Board on findings and recommended actions promulgated by the Consultant. If the General Manager includes data and supporting documentation, the materials shall be made available to the Board and, at the Board's request, to the Consultant.
3. Upon the General Manager's Response, the Board President shall have 30 days to review the General Manager's response and issue a decision on implementing recommended actions. The Board President may consult with the rest of the Board, the General Manager, legal counsel, the FTA, the selected Consultant, and/or third parties during the review.
4. Upon the decision of the Board President, the report will be provided to the Board in a public meeting for review and comment. The Board President may request the Consultant to present the report at the Board meeting, which may be virtual.

#### **I. DELIVERABLES**

1. Upon receiving a Task Order Request, the Consultant shall develop a checklist or oversight summary plan with a proposed cost and timeline for completion to be returned to the Board President for review and acceptance.

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2. Upon completion of the review, the Consultant shall provide a summary report to the Board President and the General Manager simultaneously for review and comment.
4. The Board President may request the Consultant to participate in discussions about recommendations. These discussions may, at the Board President's discretion, include ATED staff, other Board members, legal counsel, representatives from FTA, MN DOT, or other organizations, or other individuals or firms deemed necessary by the Board President.
5. Upon acceptance from the Board President, Consultant will prepare a presentation for the entire Board at the next regularly scheduled Board meeting. Upon request from the Board President, the Consultant may present the report to the Board during the meeting, which may be virtual.

**J. COST PROPOSAL**

1. For Proposal purposes, the DTA is requesting hourly rates for the Proposed staff that will be conducting the oversight reviews, along with any other expenses that may be applicable to the services, examples might include copying expenses or costs to access nonpublic records. Most oversight review work can be conducted remotely; travel expenses are not being requested at this time.
2. The DTA is not requesting pricing for specific tasks in the Proposal response. Because some tasks may require a subcontractor with specialized knowledge, the pricing may vary depending on the expertise of the subcontractor. Costs for subcontractors are not requested at this time.
3. The extent of review the DTA Board may request also may affect the cost, as could new requirements in future legislation that are unknown at this time. During the evaluation of the Cost Proposal, the Evaluation Committee may ask respondents to provide a cost estimate for an example task order in order to evaluate the reasonableness of the costs of each respondent against the expected cost established by the Committee.

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

1. Purpose: This request for proposal (RFP) is to solicit qualified, experienced Consultants to conduct Contractor Oversight Review Services for the DTA Board of Directors.
2. Issuing Office: The Duluth Transit Authority issues this RFP.
3. Scope: This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; general evaluation criteria; and other requirements to be met by each Proposal.
4. Type of Contract: Negotiations may be undertaken with Respondents whose Proposals (as to price and other factors) show them to be qualified, responsible, and capable of performing the work.
5. Rejection of Proposals: This RFP does not obligate the Board to award a Contract or complete the project, and the Board reserves the right to cancel the solicitation if it is considered to be in the Board's best interest.
6. Incurring Costs: The DTA and the Board are not liable for any cost incurred by Responders prior to final execution of a Contract.
7. Addendum to RFP: Changes to the specifications will only be made by written addendum. Addenda will be posted on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com). It is the Respondent's responsibility to obtain all documents available for this procurement.
8. Economy of Preparation: Proposals should be prepared simply and economically, providing a straightforward, concise, and unambiguous description of the Responder's ability to meet the requirements of RFP. Proposals are limited to twenty-five pages plus proposal sheet and required certificates.
9. Oral Presentation: Responders who submit Proposals may be required to make an oral presentation on their Proposal to the DTA. Such presentations provide an opportunity for the Responder to clarify the Proposal in order to ensure a thorough mutual understanding. The Issuing Office will schedule any required presentations.
10. Prime Consultant Responsibilities: The successful Consultant will be required to assume responsibility for all services offered in the Proposal whether or not they are produced directly by the Consultant or through subcontractors. Further, the Board will consider the successful Consultant to be the sole point of contact with regard to contractual matters and retains the right to approve/disapprove all proposed subcontractors.

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**SECTION 8. EVALUATION CRITERIA.**

1. The Evaluation Committee is made up of three members, including one representative from the DTA Board of Directors. Respondents may be asked to participate in a virtual interview with the Evaluation Committee to allow the Committee to ask about their submittal.
2. It is anticipated that the Evaluation Committee will conduct virtual interviews within one week of Proposal responses. The Committee intends to make a recommendation to the DTA Board of Directors at the March 27, 2024, meeting. This award may also be subject to the approval of the Minnesota Department of Transportation.
3. Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this RFP, as amended. Major criteria to be considered in evaluation include the following:
  - a. The experience of the Offeror in providing similar service elsewhere, including performing transit agency reviews under state or federal guidelines, conducting internal or external audits of policy and procedures, as well as the level of experience in working with government entities and the quality of services performed, together with the Offeror's demonstrated operational competency and established history in similar services. [ 35% ]
  - b. The ability of the Offeror to review FTA Circulars and identify evaluation factors, translate them into review materials, perform reviews in a professional and timely manner, create reports, conduct interviews of technical and support staff, and prepare and deliver reports to oversight agencies and Board. [ 35% ]
  - c. Reasonableness/competitiveness of proposed fee and/or benefits to the Duluth Transit Authority, although the Duluth Transit Authority is not bound to select the Offeror who proposes the lowest fees or most benefits for services. The Duluth Transit Authority reserves the right to negotiate fees with the selected Offeror(s). [ 25% ]
  - d. The Offeror's responsiveness and compliance with the RFP requirements and conditions. [ 5% ]

**SECTION 9 EVALUATION OF THE COST PROPOSAL**

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

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

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

**SECTION 10 PROPOSAL RESPONSES MUST INCLUDE:**

1. The Responder's full company name and address, main contact people with titles and phone numbers and email contact information, Federal I.D. number, System for Award Management Unique ID number (as applicable), and Minnesota tax I.D. number (as applicable), along with the names of the individual(s) to be directly responsible for providing services under the contract.

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2. A summary of previous work conducted by the Consultant and the individuals directly responsible for providing services similar in scope to that requested here, along with references.
3. The names of subcontractors (firms and individuals) who will assist in performing the required work and a resume of each, or a history of the firm and a list of examples of similar projects performed by the proposed staff for this project.
4. A signed proposal form and required certificates.
5. A Cost Proposal in a separate pdf attachment.