



**Duluth Transit Authority
REQUEST FOR BIDS
UPS Replacements**

FROM: Duluth Transit Authority
2402 West Michigan Street
Duluth, MN 55806

DATE: July 8, 2025

PROJECT: UPS Replacements

You are invited to submit Bids for four UPS (Uninterruptible Power Supply) units for our Servers located at the Duluth Transit Authority Operations Center, 2402 W. Michigan Street, Duluth, MN 55806.

Bids will be received until Thursday, **July 10th, 2025, at 12:00 pm** local time in Duluth, Minnesota. Late Bids will not be considered. Fax Bids will not be considered. The DTA reserves the right to accept or reject any and/or all Bids in the best interest of the Authority.

SECTION 1. GENERAL BIDDING INFORMATION

1. Bids shall be an all-inclusive price to supply and deliver the lifts to the DTA.
2. The attached Bid form must be signed by an authorized employee of the organization/company.
3. In submitting a Bid, Bidders agrees that acceptance of any or all Bids within a thirty (30) day period constitutes a contract.
4. The FTA is or will be providing federal assistance for this project; the Assistance Listing #20.507.
5. When accepted by and signed on behalf of Organization/Company, this pricing form and all relevant portions of the selected Vendor Bid, including any amendments thereto; the Bidder's representations and certifications submitted as part of its Bid; and any other relevant materials submitted by the Bidder as part of, or subsequent to submittal of its Bid shall form a binding contract between Duluth Transit Authority and the Bidder for Mobile Column Lifts as specified therein.
6. Questions regarding this Request for Bids may be directed to hborn@duluthtransit.com or 218-623-4329.
7. The DTA is committed to ensuring that no person is excluded from participation in or denied the benefits of its programs and services on the basis of race, creed, color, national origin, sex, age, disability, or veteran's status, and encourages the participation of small and disadvantaged business enterprises in the performance of this contract.
8. The DTA reserves the right to accept or reject any and/or all Bids in the interest of the Authority.

9. Contractor shall review the DTA's Vendor Code of Ethics, Organizational Conflict of Interest, and protest procedures on the DTA website at www.duluthtransit.com.
10. All expenses for responding to this RFB shall be borne by the Bidder.
11. Bids are to be submitted to hborn@duluthtransit.com on or before the due date and time herein. Time means local time in Duluth, Minnesota. Bids received after the due date and time will not be considered.
12. Taxes. The DTA is exempt from payment of Federal excise tax, transportation tax, Minnesota state sales tax and City of Duluth sales tax for services. Supplier shall include all applicable sales or use taxes in the bid price as required under MN Department of Revenue guidelines and MN Statute 297A.61, subd. 58.
13. This is a fixed price contract. Terms of payment shall be thirty days from the conclusion of the month for which payment is due. Invoices shall be addressed via email to the DTA Finance Director finance@duluthtransit.com.
14. Supplier may not subcontract or assign this Contract or any portion thereof without the prior written approval of the DTA General Manager.
15. By submitting a Bid for these products, the Supplier agrees to the terms and conditions herein including the FTA Required Clauses and Certifications. Where there is a conflict between these terms and the FTA Required Clauses, the FTA Required Clauses shall take precedence.

SECTION 2. TECHNICAL SPECIFICATIONS UPS

- A. The Duluth Transit Authority is seeking four USP (Uninterruptible Power Supply) for our Servers.

Specifications:

1. Manufacturer part number SMART3000RM2UL or equivalent
2. Warranty to be included with bid
3. Manufacturer's specification cut sheet to be included with bid

SECTION 3.**BID SHEET****COST***UPS, Lithium Battery Backup - 120V**3kVA Line Interactive, 2U, Sine Wave, LCD* Per Unit \$ _____

Total Contract Amount (quantity 4) Total \$ _____

Quoted Lead Time in weeks ARO _____

Warranty Period _____

*The DTA reserves the right to accept or reject any or all bids.****FREIGHT: Included.*** Freight Term will be DAP: Named Place, Named Place: DTA, Duluth, MN.*TAX: Federal Excise Tax Exemption Account No. 41740056K; The DTA is State and City Tax Exempted.*

NOTE: All Bids must be written, signed and transmitted via email in a .pdf attachment to
hborn@duluthtransit.com.

Signed: _____ Title: _____

Company Name: _____ Phone: _____

Address: _____

Email (required): _____ Date: _____

SECTION 4.

CERTIFICATIONS

Certificate A: 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 _____

Certificate B. CODE OF ETHICS AND ORGANIZATIONAL CONFLICT OF INTEREST

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

SIGNED _____

FIRM NAME _____

SECTION 5. FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

A.1 ACCESS TO RECORDS

49 U.S.C. § 5325(g)

Clause

- 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

Does not apply to this procurement

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 Executive Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for 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)

49CFR Part 26 Clause

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

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

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Duluth Transit Authority shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the Duluth Transit Authority may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror/s documented history of non-compliance with DBE requirements on previous contracts with the Duluth Transit Authority.

Contractor Assurance

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a

material 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

Prevailing Wage and Anti-Kickback

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

Contract Work Hours and Safety Standards

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

required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

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

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

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

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

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
Does not apply to this procurement

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

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Federal Government Obligation to Third Parties.

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

A.16 PATENT RIGHTS AND RIGHTS IN DATA

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

37 C.F.R. part 401

Does not apply to this procurement

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

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

Does not apply to this procurement

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

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

3812 18 U.S.C. § 1001, 49 C.F.R. part 31

Program Fraud and False or Fraudulent Statements or Related Acts

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

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

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) ("13(c)", 29 C.F.R. part 215

Does not apply to this procurement

A.20 RECYCLED PRODUCTS

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

Recovered Materials

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

A.21 SAFE OPERATION OF MOTOR VEHICLES

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

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

Does not apply to this procurement

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.

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 or 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.

Termination for Default (Construction)

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

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

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

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

A.26 VIOLATION AND BREACH OF CONTRACT 2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A)

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 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 authorized representative of 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.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Duluth Transit Authority's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by the Duluth Transit Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Duluth Transit Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Duluth Transit Authority is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Duluth Transit Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

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

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

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

Covered telecommunications equipment or services means—

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

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

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

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical 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. 115232) prohibits the DTA on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause

applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

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

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

(d) *Reporting requirement.*

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

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

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

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

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

A. 29 Notice of Legal Agreement or Litigation

Does not apply to this procurement

A.30 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.

A.31 TRAFFICKING IN PERSONS

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

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

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

Prohibition:

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

(A) Engage in severe forms of trafficking in persons during the period of time that the Contractor's underlying agreement is in effect;

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.