

**REQUEST FOR PROPOSALS  
FOR  
ENGINEERING TRANSPORTATION PLANNING SERVICES**

The Bismarck-Mandan Metropolitan Planning Organization (MPO) request proposals from qualified consultants for the following project:

2020-2045 Metropolitan Transportation Plan

Qualifications based selection criteria will be used to analyze technical proposals and interviews from responding consultants. The MPO reserves the right to reject any or all proposals. **This project has a not to exceed budget of \$300,000.**

Interested firms should contact, Rachel Drewlow Transportation Planner, at the Bismarck-Mandan MPO, 221 N 5<sup>th</sup> Street P.O. Box 5503, Bismarck ND 58506. Contact can also be made via phone 701.355.1852 or by email: [rdrewlow@bismarcknd.gov](mailto:rdrewlow@bismarcknd.gov)

**All proposals received by 4:00 PM (CST) on January 22, 2018 will be given consideration for an interview.** The Bismarck-Mandan MPO reserves the right to limit the interviews to a maximum of five (5) firms whose proposals most clearly meet the RFP requirements. Firms will be notified in writing or by phone of shortlist results. Successful candidates will receive date, time and location information for the interviews.

It is the responsibility of the consultant to ensure all required elements of the proposal are submitted. Proposals missing required elements will be rejected and consultants will be denied interviews.

Minority, women-owned, and disadvantaged business enterprises are encouraged to participate. Respondents must submit eight (8) physical copies of the proposal and one (1) electronic copy of the proposal. The full length of the proposal body shall be no more than sixteen (16) page, and preferably printed as double sided. Appendix material may be supplied in addition to the sixteen (16) pages of the body. Submittals must be received no later than 4:00 PM (CST) January 22, 2018 and may be shipped or hand delivered to:

Rachel Drewlow  
Bismarck-Mandan MPO  
221 N 5<sup>th</sup> Street  
P.O. Box 5503  
Bismarck, ND 58506-5503

Once submitted, the proposals become the property of the MPO. Proprietary information must be clearly noted in the proposal, or it will be subject to open records laws.

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## I. PURPOSE OF THE REQUEST

The purpose of this Request for Proposals (RFP) is to provide interested consulting firms with enough information about the professional services desired by the Bismarck-Mandan Metropolitan Planning Organization (MPO) for the following project:

### 2020-2045 Metropolitan Transportation Plan

The Bismarck-Mandan Metropolitan Planning Organization (MPO) is requesting the services of a transportation engineering/planning firm to conduct the update of the Metropolitan Transportation Plan (MTP) which will consider transportation issues to the year 2045. The 2020-2045 MTP will be an update to the 2015-2040 LRTP.

The MTP will be in cooperation with the North Dakota Department of Transportation (NDDOT), the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), the Cities of Bismarck, Mandan, and Lincoln, Burleigh County and Morton County.

## II. GENERAL INSTRUCTIONS

<p><b>A. Any questions or comments regarding this proposal should be submitted to:</b></p> <p>Bismarck-Mandan MPO 221 N 5<sup>th</sup> Street P.O. Box 5503 Bismarck, ND 58506-5503</p> <p>E-Mail: <a href="mailto:rdrewlow@bismarcknd.gov">rdrewlow@bismarcknd.gov</a> (Please submit all questions in writing by January 15, 2018.)</p>
<p><b>B. Proposals shall be submitted to:</b></p> <p>Bismarck-Mandan MPO City/County Building 221 N 5<sup>th</sup> Street P.O. Box 5503 Bismarck, ND 58506-5503</p>
<p><b>C. All Proposals must be clearly identified and marked as follows:</b></p> <p>Proposal for: 2020-2045 Metropolitan Transportation Plan Firm's Name Bismarck-Mandan MPO</p>
<p><b>D.</b> The MPO will only consider proposals received prior to 4:00 PM Central Time, January 22, 2018. Eight (8) copies of the written proposal one (1) electronic copy must be received by the deadline. Electronic copies may be sent via a flash drive or emailed to <a href="mailto:rdrewlow@bismarcknd.gov">rdrewlow@bismarcknd.gov</a>. Proposals received after the 4:00 PM deadline will be considered unresponsive and will not be considered for an interview. The MPO reserves the right to reject any or all proposals.</p>
<p><b>E. Proposal Cut Down:</b> The Selection Committee intends to interview between three (3) and five (5) consultants, depending on the number and quality of proposals received. Strength of the written proposals will be the basis for awarding an interview. Consultants who are awarded an interview will be notified by phone. Consultants not selected for an interview will be notified in writing.</p>

<p><b>F. Selection Committee:</b> The Selection Committee will consist of an eight (8) person panel; seven (7) voters and one (1) moderator. Committee members represent the following entities: MPO, City of Bismarck, City of Mandan, City of Lincoln, Burleigh County, Morton County, and NDDOT. The MPO Project Manager will moderate the interviews and provide a tie breaking vote if needed.</p>
<p><b>G. Interviews:</b> Consultants will be evaluated on both written proposal and in-person interviews. Ranking is based on the criteria listed in Section V: Evaluation Criteria and Process. Interviews are planned to be held between February 14-16, 2018. Consultants will be given fifty (50) minutes for interviews. Consultants are encouraged to leave some time at the conclusion of their presentation for questions and answers. There will be ten (10) minute breaks between interviews for set up and tear down.</p>
<p><b>H. Disadvantaged Business Enterprise:</b> In the event of equally ranked consultants, additional positive consideration will be given to proposals which employ a Disadvantaged Business Enterprise (DBE) company. The DBE company must be certified with the North Dakota Department of Transportation (NDDOT). This applies equally to the Prime or Sub-Consulting company, and any such company should be identified in the proposal.</p>
<p><b>I. Selection and Approvals:</b> Selection will be based on the interview committee's recommendation. All interviewees will be notified of the selection results by phone and formal letter. Approval of top ranked consultant will be requested of the MPO's TAC and Policy Board.</p>
<p><b>J. Contract Negotiations:</b> Contract negotiations will begin immediately after Policy Board approval. <u>The MPO requires consultants to develop the study's contract.</u> Draft contracts are reviewed by MPO Staff, local and federal partners, and legal counsel. After negotiations, the MPO intends to execute the contract upon staff authority.</p> <p>Final negotiations will also require submission of:</p> <ol style="list-style-type: none"> <li>1) Prime Consultant fee schedule <b>not exceeding \$300,000</b></li> <li>2) Prime Consultant Certificate of Liability Insurance</li> <li>3) Scope of work and fee schedule for <u>ALL</u> Sub-consultants</li> <li>4) Prime Consultant Indirect Cost Form (blank form will be provided by MPO)</li> <li>5) SFN 60233: Prime Consultant Request to Sublet Form (blank form will be provided by MPO)</li> <li>6) Up-to-date SF330 Form for NDDOT (See Section III: Content of Proposals).</li> </ol>

### III. CONTENT OF PROPOSALS

#### Length of Proposals:

The proposal pages shall be numbered and limited to sixteen (16) page, preferably double sided. The reverse side of page 1 would be page 2. The cover page, table of contents, and appendix material will not count toward the sixteen (16) page limit.

#### Required Elements for Proposal:

The consultants are requested to be as brief and concise as possible. The consultant's written proposal shall address the following major sections:

1. Description of firm
2. Flow chart of project team showing general role
3. Table of key individuals' time-available for project/study
4. Understanding of Project and Proposed Work Approach
5. Brief examples of past, pertinent work projects

#### Required Elements for Appendix:

The consultant's appendix must include the following items unless noted as 'optional'. The following items will not count toward the sixteen (16) page limit, and may take as many pages as needed.

- Proposed Project Schedule: Proposed schedules may begin as soon as February 20, 2018, and should detail all activities necessary to complete the study. Activities may include but are not limited to:
  - Monthly Updates (via telephone or in person) to MPO TAC and Policy Boards
  - Data Acquisition (provided, as available, by MPO, City of Bismarck, City of Mandan, City of Lincoln, Burleigh County, Morton County, and NDDOT.)
  - Stakeholder Interviews
  - Steering Committee Meetings/ Activities
  - Public Outreach Activities (webpage, meetings, social media, news releases, etc.)
  - Public Input Meetings
  - Documents/Tech Memos for Study Milestones
  - Draft Report Development
  - Draft Report Review by Steering Committee, MPO, NDDOT, FHWA, and FTA (required before final presentation)
  - Final Presentations to NDDOT Management, Jurisdictional Planning Commissions and County/City Commissions and/or Councils, and MPO TAC and Policy Board.
- Quality Control/Quality Assurance (QC/QA) program: Detail the program that will be used on the project. This (QC/QA) program must identify the team members, their responsibilities, and stages of development at which each is to be responsible.
- Required Qualification Based Selection (QBS) Documents:
  - Signed Proposed Sub-Consultant Request Form (Appendix A)
  - Signed Consultant Self Certification of Government-Wide Debarment and Suspension (Nonprocurement) Form (Appendix B)
  - Signed and Notarized Certification and Restriction on Lobbying Form (Appendix C)
- Resumes or list of Personnel: Detail who will be assigned to work on the project (including titles, education, and/or work experience).
- Optional: Consultants are encouraged to update or complete a Federal Standard Form 330 (Architect-Engineer Qualifications). The SF 330 is an NDDOT requirement, and proves the consultant is pre-qualified to provide architectural, engineering and/or planning services for NDDOT. Consultants will not be penalized if the SF 330 is omitted in their proposal, but the consultant selected for contract negotiations must provide an active SF330 before the contract can be signed.

See [http://www.dot.nd.gov/divisions/environmental/docs/consultnt\\_prequal\\_reqirments.pdf](http://www.dot.nd.gov/divisions/environmental/docs/consultnt_prequal_reqirments.pdf) for link to the SF 330. All SF 330 forms will be kept on file by the MPO and forwarded to NDDOT.

#### **Disclosure of Proposal Ownership:**

At the conclusion of the selection process, the contents of all proposals will be subject to the City of Bismarck's Open Records Law and may be open to inspection by interested parties. Any information included in the proposal that the proposing party believes to be a trade secret or proprietary information must be clearly identified in the proposal. Any identified information documented as such and protected by law may be exempt from disclosure.

## **IV: ADDITIONAL REQUIRMENTS AND MISCELLANEOUS INFORMATION**

#### **Federal and State Contract Requirements:**

NDDOT and FHWA require that specific clauses accompany federally funded projects executed by the MPO. Consultants should be prepared to abide by the necessary clauses and include each verbatim and unaltered in a potential contract. *The clauses can be reviewed in Appendix C: Federal, State and Local Clauses.*

#### **Mandatory MPO Contract Requirements:**

The MPO desires specific clauses in all their study contracts. Consultants should be prepared to abide by the following italicized section and include the clauses verbatim and unaltered in a potential contract.

*The MPO reserves the right to hold ten percent (10%) of the total contracted invoiced amounts until the MPO believes it has received all of the following to its satisfaction:*

- *Contracted deliverables as described in the RFP and final contract;*

- Completed tasks as described in the RFP and final contract; and
- Satisfactory final product project and/or study

*If the MPO determines that the progress of the study is not acceptable as measured through the consultant supplied project schedule, which will be an attachment to the signed and approved contract, the MPO reserves the right to terminate the contract with the consultant with a 45-day written notice.*

*The MPO desires continuity of consultant staff throughout the project from the firm chosen. If the consultant replaces key staff and the MPO is dissatisfied with replacement staff, the firm chosen will have 30 days from written notice from the MPO to supply replacement key staff acceptable to the MPO. If the firm chosen fails to supply acceptable replacement staff within the 30-day period, the MPO may cancel the contract.*

**Ownership of Work Product:** All work products and copyrights of the contract, which result from the contract, are the exclusive property of NDDOT, with an unlimited license for use by the federal government and its assignees without charge.

#### **General Information:**

Bismarck-Mandan MPO reserves the right to enter into a supplementary agreement to have the selected firm perform any additional work not currently assigned.

If the contract is terminated prior to completion of the final report, all work completed, which has been compensated for, shall become the property of the NDDOT, as per the 'Ownership of Work Product' Clause. The final report will be submitted using the following formats and standards, if applicable:

- MS Word/ MS Excel
- Adobe Acrobat (Standard or Compatible)
- NDDOT Data Collection Codes and Procedures
- NDDOT and/or City, as applicable, Drafting Standards
- NDDOT Design Manual
- Chapter 19 NDDOT Survey and Photogrammetry Manual

## **V. EVALUATION CRITERIA AND PROCESS**

The selection process will be completed in accordance with Bismarck-Mandan MPO policies. Written proposals shall address the firm's ability to perform the necessary services in the allotted time with qualified personnel. Selection will be based on the following criteria:

1. Recent, current, and projected workloads
2. Project Schedule
3. Related experience on similar projects
4. Location
5. Project understanding, issues and approach
6. Ability of professional personnel

The final selection will be based on written proposals along with in-person interviews. All firms not selected will be notified in writing.

In the event of equally ranked consultants, additional positive consideration will be given to proposals which employ a Disadvantaged Business Enterprise (DBE) company. See Section II: General Instructions for more information.

A final scope of work will be developed and price will be negotiated with the successful firm. Successful firms will be expected to complete a cost estimate before approval by the TAC and Policy Board to pursue Contract negotiations. An agreement will be executed with a single firm. If unable to arrive at a mutual agreement with the top ranked firm, the MPO retains the right to move on to negotiations with the second (then third, etc.) ranked firm. Approved sub-agreements for minor portions of the work will be permitted.

## VI. REGIONAL CONTEXT AND

### EXISTING CONDITIONS

#### **Bismarck-Mandan MPO Region:**

The Bismarck-Mandan MPO consists of the cities of Mandan, Bismarck, and Lincoln, and the metropolitan portions of Burleigh and Morton County. The MPO planning area is centrally located within North Dakota and the City of Bismarck is the capital city for the State. The Cities of Bismarck and Mandan also serve as the County Seats for their respective counties.

The MPO planning area is roughly 395 square miles with a 2010 US Census Bureau identified population of approximately 100,000 or approximately 42,000 households. The MPO area is bisected from north to south by the Missouri River and is generally comprised of rolling topography throughout. One of the more noteworthy challenges facing the MPO planning area is the heightened level of growth, experienced largely to energy development in western North Dakota from 2011-2015. Historic growth trends in the MPO area have traditionally hovered within a 1% to 1.5% annual rate of population growth. Further, the currently adopted growth projection anticipates the area to grow 3.5% annually between 2010 and 2020 and then return to a 1% to 1.5% annual growth rate between 2020 and 2040. This is a significantly higher level of growth than what was projected in previous planning efforts. It is also a higher level of growth than what the MPO anticipates adopting for its next Metropolitan Transportation Plan. That new growth rate will likely be no great than 1.33 for an average annual 30-year trend.

While the population growth is generally perceived as positive, there are some noteworthy concerns, specifically: the impact of rapid growth on public service costs, the continued ability of the MPO region to grow in an efficient manner, and the ability to maintain the high quality of life enjoyed by residents of the communities. Heightened rates of growth strain many aspects of the region's transportation infrastructure. Topography, man-made barriers, and historical development patterns have contributed to challenges regarding roadway connectivity, specifically north-south movements in Bismarck and east-west movements in Mandan. The heightened level of growth has also created a greater strain on area municipal services, schools, and transportation. The MPO's local jurisdictions have worked diligently to meet these needs, and now must develop a balance to maintain expanded systems but also accommodate the relaxed growth rate.

The MPO has a planning process that supports metropolitan community development and social goals. These plans and programs are intended to lead to the development of an integrated, multi-modal metropolitan transportation system that facilitates the safe, efficient and economic movement of people and goods.

The MPO planning area is currently comprised of approximately 1,200 centerline miles of roadways including significant interstate and intrastate roadways, such as, Interstate 94, US Highway 83, ND Highway 1806, ND Highway 6, ND Highway 25, and ND Highway 1804. Based on the release of the 2010 US Census Bureau defined "Urbanized Area" the Bismarck-Mandan MPO Policy Board adopted an "Adjusted Urbanized Area". This led to an update of the MPO's functionally classified network, which was recently approved by the MPO Policy Board and NDDOT.

There are over 70 miles of paved multi-use trails within the Bismarck-Mandan area. The bulk of the trails are comprised of a ten (10) foot wide paved asphalt cross section. The City of Bismarck has implemented on-street bike facilities which include a combination of striped bike lanes and share-the-road signage. The City of Mandan has evaluated placement of bike facilities for the downtown region (throughout the ongoing Downtown Mandan Subarea Study), but there are no plans currently to implement bike lanes or signage. Like many communities throughout the United States the Bismarck-Mandan area has a variety of challenges related to bicycle and pedestrian concerns. The Bismarck-Mandan MPO has completed its first Bike-Ped Plan in December 2017. This effort acts a practical, short term guide for enhancing bicycle and pedestrian facilities and needs within the next 5 years. Tenants from this study should be incorporated into the 2020-2045 MTP.

Bis-Man Transit is the public transportation provider for the MPO planning area. Bis-Man Transit maintains a "fixed route" bus service currently providing 6 routes within Bismarck and Mandan. Additionally, Bis-Man Transit provides extensive paratransit and demand response services, for qualifying riders, within the Bismarck and Mandan City Limits and within 3/4ths mile from a fixed route roadway. A 2018 update to the transit development plan (previously "Mobility 2017") is underway, and is expected to finish by year end 2018. Tenants from this plan should be rolled into the 2020-2045 MTP. Additional West River Transit provides public transportation services between residents in rural portions of the region to the Bismarck-Mandan area.

The Bismarck Municipal Airport provides passenger and air freight access into and out of the region. The airport currently has five (5) different passenger airlines providing direct service to Minneapolis, MN; Denver, CO; Las Vegas, NV; Phoenix/Mesa, AZ; Orlando/Sanford, FL; Chicago, IL; Dallas/ Fort Worth, TX.

Freight rail service into, out of, and through the MPO planning area is provided by rail lines maintained and operated by Burlington Northern Santa Fe Railway and Dakota Missouri Valley and Western Railroad. A truck/rail trans-load facility (the Northern Plains Commerce Centre) is located in the southern portion of the City of Bismarck adjacent to the Bismarck Airport. There is currently no passenger rail service available to the Bismarck-Mandan area. The MPOs first ever Freight Study is underway, and is expected to finish by year end 2018. Tenants from this plan should be rolled into the 2020-2045 MTP.

A variety of studies have occurred since the 2015-2040 LRTP that will have influence on the 2020-2045 MTP and include: Bismarck-Burleigh Fringe Area Road Master Plan (2014); Mandan-Morton Fringe Area Road Master Plan (2014); Northeast Bismarck Subarea Study (2015); I-94 Corridor Study (2015); Orthophotography and LIDAR update (2016); Burleigh County Future Land Use Plan (2016); NE Morton County Future Land Use Plan (2016); Mandan and Bismarck Corridors Improvement Study (2016); Bismarck-Mandan School Safety Crossing Study (2017); Bismarck-Mandan Bicycle and Pedestrian Plan (2017); Downtown Mandan Subarea Study (anticipated end date 2018); 2018 Freight Plan (anticipated end date 2018); Transit Development Plan update (anticipated end date 2018); US 83 Alternatives Study (anticipated end date 2019).

The area has traditionally relied heavily on federal financial resources for the provision of transportation services and infrastructure. It is a significant concern that federal financial resources will not be able to keep pace with transportation needs associated with Bismarck-Mandan area. Strategic selection and prioritization should be used in order to accommodate the tenuous funding situation, as well as an evaluation of alternative local and regional funding sources.

In 2017, the Governor of North Dakota presented to state Legislation the ND 'Main Street Initiative', an effort to increase economic vitality and multi-modal transportation opportunities within ND downtowns. The initiative follows the premise that downtown healthfulness is indicative of healthfulness in the wider community. The MTP should be mindful of these changing political and cultural shifts and identify how these priorities should fit within the needs of network expansion and maintenance.

## **VII. OBJECTIVE**

The overall intent of this effort will be to develop a financially constrained, Metropolitan Transportation Plan document which will provide recommendations for short, medium, and long range future transportation needs in the Bismarck-Mandan MPO area. The Bismarck-Mandan MPO must update this document every five (5) years. An approved 2020-2045 MTP must be completed no later than January 2020.

The resulting documents should be compliant with MAP-21 (Moving Ahead for Progress in the 21<sup>st</sup> Century) and FAST Act (Fixing America's Surface Transportation),

Bis-Man MPO also requests assistance to amend the current 2015-2040 Long Range Transportation Plan (and by extension the active Transportation Improvement Program) according the provisions of 23 CFR Part 450. More information is provided in Section IX: Scope of Work - Special Task 3.

## **VIII: STUDY AREA**

The study area encompasses the entire 395 square miles bound by the Bis-Man MPO Boundary. This includes the corporate limits of Bismarck, Mandan and Lincoln, as well as portions of Burleigh and Morton County.



## **IX. SCOPE OF WORK AND SPECIAL TASKS**

The MTP document will be a key tool in establishing and maintaining our regional transportation system. The MTP will evaluate needs, set priorities and coordinate improvements at a regional transportation system level. It will do this while being financially constrained, and environmentally and socially sensitive. The MTP will consider short, medium, and long range transportation needs between 2020 and 2045.

The selected consultant for the 2020-2045 MTP should review the 2015-2040 LRTP (Envision 2040), as well as review and ensure consistency with other key MPO, State and jurisdictional studies and plans.

The MTP should address multiple modes of transportation: automobile, freight, bicycle, pedestrian, and transit. Additionally, the MTP should consider Intelligent Transportation System (ITS). The update of the Bismarck-Mandan MPO ITS Regional Architecture will be occurring concurrently or just after the adoption of the 2020-2045 MTP

Special attention should be given to addressing North-South transportation issues within the City of Bismarck. This could be done through the development of a special chapter within the MTP, the development of a “white paper”, or any other similar means to establish a heightened level of emphasis regarding this issue.

In addition, Lincoln, ND is a growing community southeast of Bismarck with concerns regarding limited access between Bismarck and Lincoln. Improved motorized and pedestrian/bicycle access between the communities should be addressed.

Federal and State priorities have recently evolved surrounding transportation. Among those are the ND Governor’s ‘Main Street Initiative’, the adoption of Federal Performance Measures, Transportation Systems Management and Operations (TSM&O), and goals for Livability and Sustainability. These efforts should contribute to the MTPs discussion of potential cultural shifts about transportation planning, as well as what will be required to mainlining our regional system in a responsible and equitable manner.

Given the potential demand for future transportation improvements in the Bismarck-Mandan MPO area, it is likely that traditional federal funding sources will not keep pace with identified transportation needs. Special consideration may be required to recommend local, regional, and/or statewide funding mechanisms to supplement traditional federal funding resources. Alternative funding will be addressed in an Alternative Funding Study (beginning early to mid-2018) and may provide supplemental information for the MTP. However, consultants for the MTP will be responsible for identifying fiscal elements and projections for the MTP.

The selected consultant shall develop a long range transportation plan compliant with federal, state, and local regulations with specific attention to: 23 Code of Federal Regulations Part 450 Subpart C-Metropolitan Planning and Programming; and the North Dakota Century Code Chapter 40-48 Municipal Master Plans and Planning Commissions.

Planning level unit cost estimates shall be developed and provided to the Bismarck-Mandan MPO for new construction and reconstruction of transportation facilities including but not limited to: Principal Arterial, Minor Arterial, and Collector roadways; bridge structures; multi-use trails; sidewalks; bicycle lanes; interchanges and associated auxiliary lanes; traffic signals; round a-bouts; and para transit and fixed route buses. For roadway estimates rural and urban cross sections should be provided in both rolling and flat terrain.

Consideration should be given to linking NEPA and the transportation planning processes where appropriate in the development of the MTP.

### **Special Task 1 - Project Management**

This task involves activities required to manage the project including staff, equipment, and documentation. It also includes the preparation of progress reports, documenting travel and expense receipts, and preparing and submitting invoices in a timely manner. This task includes monthly progress reports to the MPO, the Technical Advisory Committee, and to the Policy Board.

### **Special Task 2 - Steering Committee(s):**

The MPO project manager will assist the consultant in developing a Steering Committee(s) for the study. The

Committee(s) may contain but are not limited to the following members:

- Jurisdictional Engineers/ Traffic Engineers
- Jurisdictional Planners
- Staff of Bis-Man Transit
- Freight Partners
- Area Bike/Walk Advocates
- School District Representatives
- Emergency Management Personnel
- Jurisdictional Fire and Police Personnel
- Business and Local Economic Development Representatives
- Staff member(s) of the MPO
- NDDOT Local Government Division
- FHWA
- FTA

The consultant shall meet with the Steering Committee periodically, and as necessary, during the study process to review data and recommendations.

The consultant shall provide progress/technical memorandums at key points throughout the study process. Sufficient copies shall be provided for the distribution to the Steering Committee.

**Special Task 3 - Amendment of Federal Performance Measures into 2015-2040 LRTP:**

Bis-Man MPO requests assistance to amend the current 2015-2040 Long Range Transportation Plan to accommodate Federal Transportation Performance Measures according to the provisions of 23 CFR Part 450. This task encompasses the following Performance Measures areas:

- safety performance measure requirements
- pavement and bridge condition performance measure requirements
- system reliability, freight, CMAQ (Congestion Mitigation and Air Quality) measure requirements
- GHG (Green House Gas) measure requirements (The MPO is in attainment of federal air quality standards, and it is possible this measure may not apply to the MPO.)

The MPO envisions this task to include 1) assistances in explaining and defining the individual Federal Transportation Performance Measures, 2) specifying performance targets relative to the Bis-Man MPO and NDDOT planning processes, and 3) developing a suggested monitoring and reporting schedule that meets State and Federal reporting requirements. This task will be accomplished in coordination with the MPO, local jurisdictions, NDDOT and FHWA.

FHWA had laid out Federal Guidance on adoption of Federal Transportation Performance Measures, which can be viewed here: (<https://www.fhwa.dot.gov/tpm/rule/timeline.pdf>) Initial amendments pertaining to Safety Measures (PM 1 – 23 CFR Part 490 Sub-parts A and B and Part 924) must be completed before the federal deadline of May 27, 2018. Additional Amendments may be made by the May deadline or at subsequent deadlines established in the FHWA Guidance. Completion of this task is marked by adoption of LRTP changes by the MPO TAC and Policy Board.

All amendments will be rolled into the upcoming 2020-2045 MTP document, and will directly inform project evaluation, prioritization and the development of the implementation plan.

**Special Task 4 – BMMPO Community Survey:**

Consultant will develop and administer a statistically valid community survey to understand the public's travel habits, preferences, and attitudes.

**Special Task 5 – Evaluate Effects of Alternative Vehicles:**

The MPO recognizes that autonomous and/or alternative fueled vehicles will have great impact on transportation networks in the near future. Consultant should investigate how these may affect the Bismarck-Mandan MPO area. Specifically, the discussion should develop a road map on how to plan and prepare for these technologies in the Bismarck-Mandan MPO.

Topics of discussion could include but are not limited to: ideal location of charging stations, need for area-wide fiber optic cable, interconnected communication between vehicles and traffic network (i.e. stoplights, etc.), and effects of these vehicles on trip production.

#### **Special Task 6 – Development of Implementation Schedule:**

Transportation Performance Measures are designed keep MPO's and local jurisdictions accountable to efficient use of Federal funds, to help them achieve national transportation goals, to adhere to better decision making, and to increase transparency of project prioritization, selection and funding. The Bismarck-Mandan MPO foresees that performance measures will necessitate changes in the ways that the jurisdictions select and prioritize network improvement projects. Additionally, the uncertainty of future federal funding creates a need to be even more strategic in planning and preparing for federally aided projects.

For these reasons, the MPO would like to establish a highly defined short term implementation plan (1-5 or 7 years). This implementation plan may directly inform the yearly Urban Road and/or Urban Regional solicitation process. This schedule should be developed through local knowledge and expertise, be backed by an analytical performance-based evaluation process, be agreed upon by all jurisdictions, and be mindful of new state and federal transportation centered initiatives.

Mid- (~5 or 7-15 year) and long-term (~15-25 years) implementation schedules should also be developed using the above criteria, but will not be defined on a year-by-year basis.

#### **Special Task 7 – Incorporate New Federal Initiatives:**

New Federal initiatives have arisen since the adoption of the 2015-2040 LRTP. To maintain compliance with federal regulations the following items should be defined and discussed within the MTP. These definitions are to inform the selection of transportation projects in the fiscally constrained plan.

- State adopted and MPO Supported Performance Measures
- Transportation Systems Management and Operations (TSM&O)
- Livability and Sustainability

#### **Special Task 8 – Other:**

A few items have been identified as opportunities for improvement to the 2015-2040 LRTP. The following bullets explain those items, and the MPO request these elements be discussed and incorporated into the 2020-2045 MTP.

- Define, discuss and incorporate **ADA Plan** elements into the MTP. Ensure cohesion exists between the new MPO ADA Plan and the ADA Plans Developed by the jurisdictions.
- Incorporate discussion of MPO-wide **Interchange Ranking**, using NDDOT's recent prioritization.
- Evaluate **impacts of maintenance projects** (mill and overlay, concrete pavement repair, chip seal) on functionally classified roadways throughout the planning horizon as a potential funding source to maintain the existing transportation network. Specifically address optimum funding splits between maintenance and expansion projects and provide guidance for programming each type of project.
- Discuss **Safety/ Highway Safety Improvement Program** projects in the verbiage of the document. These projects may not be specifically identified in the implementation plan, but should be discussed in general. The discussion should clearly point out how these projects are funded even though they are not explicitly identified.

#### **Special Task 9 - Monthly TAC and Policy Board Meetings:**

The consultant will provide monthly updates (i.e. progress reports) to the MPO TAC and Policy Boards. Updates will be conducted verbally and with written memorandums, briefly updating board members on the status of the project. A minimum of one (1) personal appearances is also required before the TAC and Policy Board during the development or completion of the study.

#### **Special Task 10 - Public Involvement:**

See Section XI: Public Involvement Plan for detailed information.

## **X. REVIEW AND COMPLETION PROCESS**

### **A. Draft Development and Review:**

A draft report shall be produced after all recommendations have been developed and approved by the Steering Committee(s). Electronic and/ or paper copies of the draft report shall be provided for the Steering Committee(s), the MPO project manager, NDDOT, FHWA and FTA for their review and comment. All comments from the MPO, NDDOT, FHWA, and FTA shall be addressed to the respective entity's satisfaction prior to development of the final draft and final presentations.

### **B. NDDOT Management Meeting**

The consultant will present a draft of the 2020-2045 MTP to the North Dakota Department of Transportation management team to obtain comment prior to the Public Hearing and final approval process.

### **C. Final Presentations/ Completion:**

The draft report shall be advertised and made available to the public for a minimum of fifteen (15) days before the final presentations.

The consultant will be requested to make a presentation to all jurisdictional planning and oversight boards and both MPO oversight boards. Approval of the final draft by the MPO Policy Board, and subsequent distribution of study deliverables, will mark the completion of the study. (See Section XI: Public Involvement Plan, Part 3 for list of presentations.)

### **D. Deliverables:**

The final study report shall be produced after all comments on the draft report are addressed, final presentations are complete, and the report has been approved by the MPO TAC and Policy Board. A minimum of eight (8) paper copies shall be provided. A minimum of eight (8) pdf-based electronic copies shall also be provided. All products are to be delivered to the MPO project manager for dissemination to the appropriate City, County and MPO staff, TAC and Policy Board Members, and oversight entities.

### **Schedule for Contract Development and Final Study Deadline:**

RFP Submittal Deadline	January 22, 2018
Notification for Interviews	January 30 - February 1, 2018
Interviews and Notification of Ranking	February 14-16, 2018
Approval(s) and Notice to Proceed	February 20, 2018
Formal Notification of Firms	February 21-23, 2018
Negotiation of Work Fee and Scope of Work	February to March, 2018
Final Project Report & Presentations	No later than January 31, 2020

## **XI. PUBLIC INVOLVEMENT PLAN**

In order to achieve the proposed vision for the 2020-2045 MTP, it is imperative that residents, businesses and stakeholders be involved in the development of the study. Direct effort should be made to obtain broad-based support from the community. Consultants shall prepare a Public Involvement Plan that is consistent with the MPOs active Public Participation Plan and complies with Title VI of the Civil Rights Act of 1964 and the Executive Order on Environmental Justice of 1994. The following are the minimum public involvement activities the consultant should include:

- 1) A minimum of three (3) public meetings/design charrettes for the general public, including residents, businesses, and stakeholders. Meetings should present the MPO as a unified region, and not separate east and west river areas.;
- 2) A web site for the study that will be interesting, provide up-to-date information, and be easy to use by the public;
- 3) Thirteen (13) final presentation meetings, with potential for each to be a public meeting. One meeting with each entity below. Planning boards should hear presentations before their respective County/City Board.

- NDDOT Management
- Bismarck Planning Commission
- Bismarck City Commission
- Burleigh County Planning Commission
- Burleigh County Commission
- Lincoln Planning Commission
- Lincoln City Commission
- Mandan Planning Commission
- Mandan City Commission
- Morton County Planning Commission
- Morton County Commission
- MPO Technical Advisory Committee
- MPO Policy Board

### **In-Person/ Community Engagement:**

Consultants are encouraged to reach out to the community at large and interested or affected community members. Consultants are encouraged to use novel means to inform the public and gather their opinions. Suggested ideas could include but are not limited to: flyers; updates in city bulletins, radio or television PSAs; coordination with local public or commercial media outlets; presentation to community/ business groups, and public meetings.

Consultants should prepare a minimum of three (3) public meetings. Meetings should present the MPO as a unified region, and not separate east and west river areas. Meetings should inform the community of the study's purpose, extent, and progress; present existing conditions and alternatives; and engage the public to provide input and seek information on study issues. All input and attendance from the public meetings shall be recorded and all concerns and suggestions will be included and addressed in the study document.

### **Online Engagement:**

The MPO has a keen interest in using an established, online public engagement platform, with a proven record of success, to gather feedback from the public. Ideally this tool would be composed of interactive surveys and games which quickly engage the public, gather their transportation-related goals and priorities, and solicited their contact information for future updates to the study. It is preferred that the tool reduce barrier to participation, and have no log-in or sign-up requirements. The tool should be administered via four or five tabbed screens, and be made available through kiosks, iPads, or computers at public meetings or in areas of public congregation, and/or by online links. During the analysis phase, the information should be gathered and displayed in a user friendly and graphical manner, to inform consultants and staff and easily be incorporated into the MTP.

The consultant shall create a website to keep the public informed and engaged regarding the study. The website should include regular updates, including pertinent study documentations, maps, online surveys, public involvement opportunities, and the drafts and final reports. The website should also track hits/visits to the site.

Consultants are highly encouraged to dedicate one or more staff to the development and maintenance of social media posts or other online engagement tools to enhance the public involvement process and encourage the public's participation.

The MPO hosts a Facebook page which is intended to be a clearing house for all MPO related social media outreach. The MPO will not allow consultants to create additional Facebook pages for MPO studies, but the MPO can allow administrative privileges to designated consultant staff during active phases of the study. This arrangement allows consultants (or their designated staff) to provide study updates and public outreach via Facebook, while also allowing the MPO project manager and the City of Bismarck's Public Information Officer convenient access to monitor public responses.

### **Other Engagement:**

Public meetings and final presentations will be advertised in the local newspaper(s). Consultants are responsible for preparing newspaper advertisements for public meetings and final presentations. The MPO reviews the ads, provides necessary modifications to language and formatting, and coordinates and pays for printing with the local newspaper(s).

## **XII: INFORMATION AVAILABLE TO THE CONSULTANT:**

The following resources/data/information is available for the project from the Bismarck-Mandan MPO and its partners:

### **Required Resources:**

1. [MPO 2017-2020 Transportation Improvement Plan](#)
2. [Envision 2040 \(2015-2040 LRTP\)](#) – 2015
3. [ITS Architecture Update](#) – 2013
4. [MPO Title VI/Non-Discrimination Plan](#)
5. [MPO Public Participation Plan](#)
6. [Burleigh County Land Use Plan](#) (Burleigh Growth 2015) – 2016
7. [I-94 Corridor Study](#) (2015)
8. [City of Bismarck Growth Management Plan](#) (2013)
9. [City of Mandan Comprehensive Plan](#) (2013)
10. 2014 Fringe Area Master Plan – 2014
  - a. [Burleigh-Bismarck-Lincoln](#)
  - b. [Mandan/Morton](#)
11. [Bismarck-Mandan Bicycle and Pedestrian Plan](#) (2017)
12. 2018 Freight Plan (anticipated end date 2018)
13. Transit Development Plan update (anticipated end date 2018)
14. [2011 Transit Development Plan](#) (Mobility 2017)
15. Land base/Infrastructure data from member jurisdictions
16. Colored Digital Orthophotography – 5-inch resolution – 2016
17. Digital Elevation Data – 1 foot contours – 2016

### **Suggested Resources:**

18. [ND Statewide Active and Public Transportation Plan](#) (Ongoing)
19. [Bismarck-Mandan MPO Monitoring Report](#) –2016
20. [Downtown Bismarck Subarea Study](#) – 2014
21. [43rd Avenue Corridor Study](#) (2013)
22. [North Mandan Subarea Study](#) (2013)
23. [Northeast Bismarck Subarea Study](#) (2015)
24. [NE Morton County Future Land Use Plan](#) (2016)
25. [Mandan and Bismarck Corridors Improvement Study](#) (2016)
26. [Bismarck-Mandan School Safety Crossing Study](#) (2017)
27. [Downtown Mandan Subarea Study](#) (anticipated end date 2018)
28. [US 83 Alternative Study](#) (anticipated end date 2019)
29. [2017 Bismarck Livability Survey Documents](#) (2017)

## **Appendix A: Proposed Sub-Consultant Request Form**





**Appendix B: Consultant Self Certification of Government-Wide Debarment and Suspension (Nonprocurement)  
Form**

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR 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 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
  - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
    - (1) Debarred,
    - (2) Suspended,
    - (3) Proposed for debarment,
    - (4) Declared ineligible,
    - (5) Voluntarily excluded, or
    - (6) Disqualified,
  - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
    - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
    - (2) Violation of any Federal or State antitrust statute, or
    - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
  - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
  - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
  - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
- (1) Equals or exceeds \$25,000,
  - (2) Is for audit services, or
  - (3) Requires the consent of a Federal official, and
- g. It will require that each covered lower tier contractor and subcontractor:
- (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
  - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
    - a. Debarred from participation in its federally funded Project,
    - b. Suspended from participation in its federally funded Project,
    - c. Proposed for debarment from participation in its federally funded Project,
    - d. Declared ineligible to participate in its federally funded Project,
    - e. Voluntarily excluded from participation in its federally funded Project, or
    - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TEAM-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

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Certification

Contractor \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Name and Title of Contractor's Authorized Official \_\_\_\_\_

## **Appendix C: Certification and Restriction on Lobbying Form**

**CERTIFICATION AND RESTRICTIONS ON LOBBYING**

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I, \_\_\_\_\_, hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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 any agency, a Member of Congress, and 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.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.*

*The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.*

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of notary and SEAL \_\_\_\_\_

## **Appendix D: Federal, State and Local Clauses**

## **Federal Clauses**

## **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

## **Seismic Safety**

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

## **Energy Conservation**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

## **Clean Water**

Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

## **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## **Access to Records and Reports**



Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. 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 contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

## **Federal Changes**

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

## **Clean Air**

Applicability – All contracts over \$150,000.

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

## **No Government Obligation to Third Parties**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **Program Fraud and False or Fraudulent Statements or Related Acts**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Termination**

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that 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 contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient 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 recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If 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 recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall 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 contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

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

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the

time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

### **Government Wide Debarment and Suspension (Non Procurement)**

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **Civil Rights Requirements**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in

writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and

2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) 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, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals

with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

## **Breaches and Dispute Resolution**

All contracts over \$150,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, 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 his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days 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 recipient and 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 residing State.

Rights and Remedies - 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 recipient 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.

## **Patent and Rights in Data**

Contracts Involving Experimental, Developmental, or Research Work (\$3,500 or less, except for construction contracts over \$2,000).

### **Patent Rights**

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

### **Rights in Data and Copyrights**

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2)

Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:

- (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but
- (2) Do not include: (a) Financial reports,
- (b) Cost analyses, or (c) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,

2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be

required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

### **Disadvantaged Business Enterprise**

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, 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 this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. 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 recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after

incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient 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 the recipient.

### **Prompt payment**

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

### **Incorporation of Federal Transit Administration (FTA) Terms**

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

### **Other Federal Requirements**

The following requirements are not federal clauses.

### **Full and Open Competition**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

### **Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

### **Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts

shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

### **Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### **Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

### **Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087,

## **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

## **Environmental Protections**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

## **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

## **Geographic Preference**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).

## **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

## **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single

source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

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 AGENCY.

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.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

### **CFDA number for the Federal Transportation Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

## **State and Local Clauses**



## **DISADVANTAGED BUSINESS ENTERPRISE EFFORTS**

In the performance of this agreement, the contractor shall cooperate with MPO in meeting its goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to insure that such business enterprises shall have the maximum practical opportunities to compete for subcontract work under this agreement.

### **1. Policy**

It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Agreement.

### **2. DBE Obligation**

The MPO and contractor agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under or pursuant to this Agreement. In this regard, the contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The contractor shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts.

The consultant's efforts to involve DBE businesses in this project needs to be shown. If the consultant is a DBE, a statement indicating that the business is certified by the NDDOT as a DBE/MBE shall be included in the proposal. If the consultant intends to utilize a DBE to complete a portion of this work, a statement of the subcontractor's certification by the NDDOT shall be included. The percent of the total proposed cost to be completed by the DBE shall be shown. A copy of NDDOT's current certified DBE Directory can be secured at the Bismarck-Mandan MPO.

## **RISK MANAGEMENT**

CONSULTANT agrees to defend, indemnify, and hold harmless the OWNER and the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the OWNER and the State or its agents, but not against claims based on the OWNER's and the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONSULTANT to the OWNER and the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the OWNER and the State is necessary. CONSULTANT also agrees to defend, indemnify, and hold the OWNER and the State harmless for all costs, expenses and attorneys' fees incurred if the OWNER or the State prevails in an action against CONSULTANT in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

CONSULTANT shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability and automobile liability insurance – minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence.
- 2) Workforce Safety insurance meeting all statutory limits.
- 3) The OWNER and the State of North Dakota, its agencies, officers, and employees (State) shall be endorsed as an additional insured on the commercial general liability and automobile liability policies.
- 4) Said endorsements shall contain a "Waiver of Subrogation" in favor of the OWNER and the state of North Dakota.
- 5) The policies and endorsements may not be canceled or modified without thirty (30) days prior written notice to the undersigned OWNER and the State Risk Management Department.

The CONSULTANT shall furnish a certificate of insurance evidencing the requirements in 1, 3, and 4, above to the OWNER prior to commencement of this agreement.

The OWNER and the State reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time. Any attorney who represents the State under this contract must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08.

When a portion of the work under the Agreement is sublet, the CONSULTANT shall

obtain insurance protection (as outlined above) to provide liability coverage to protect the CONSULTANT, the OWNER and the State as a result of work undertaken by the Subcontractor. In addition, the CONSULTANT shall ensure that any and all parties performing work under the Agreement are covered by public liability insurance as outlined above. All Subcontractors performing work under the Agreement are required to maintain the same scope of insurance required of the CONSULTANT. The CONSULTANT shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

CONSULTANT's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the OWNER or State. Any insurance, self-insurance or self-retention maintained by the OWNER or the State shall be excess of the CONSULTANT's insurance and shall not contribute with it. The insolvency or bankruptcy of the insured CONSULTANT shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONSULTANT from meeting the retention limit under the policy. Any deductible amount or other obligations under the policy(ies) shall be the sole responsibility of the CONSULTANT. This insurance may be in a policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The OWNER and the State will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the CONSULTANT in excess of the minimum requirements set forth above.

## **TITLE VI ASSURANCES**

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation, issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, national origin, sex, age, disability, or income status in consideration for an award.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor), agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability, or income status, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability, or income status.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Bismarck-Mandan MPO, Bismarck, Burleigh County or the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Bismarck-Mandan MPO, Bismarck, Burleigh County or the North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Bismarck-Mandan MPO, Bismarck, Burleigh County and the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. cancellation, termination, or suspension of the contract, in whole or in part.

Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the Bismarck-Mandan MPO, Bismarck, Burleigh County or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the Bismarck-Mandan MPO, Bismarck, Burleigh County enter into such litigation to protect the interests of the Bismarck-Mandan MPO, Bismarck, Burleigh County; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, reasonable steps must be taken to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).