

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

The Bismarck-Mandan Metropolitan Planning Organization (MPO), in partnership with the City of Bismarck, the City of Mandan, and each municipality's Public School Districts, and the City of Lincoln, requests proposals from qualified consultants for the following project:

School Safety Crossing Study for Bismarck and Mandan Public Schools in Bismarck and Mandan, ND

Qualifications based selection criteria will be used to analyze technical submittals and interviews from responding consultants. Upon completion for technical ranking, the MPO will enter into contract negotiations with the top ranked firm. A sealed cost proposal will also be required with each consultant proposal. The cost proposal of the top ranked firm will be opened after committee selection and prior to contract negotiations. Cost will have no weight in the committee's ranking process, and unopened cost proposals will be returned to the consultant. The MPO reserves the right to reject any or all submittals. This project has a not to exceed budget of \$284,000.

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 58501. Contact can also be done via phone 701.355.1852 or by email: [rdrewlow@bismarcknd.gov](mailto:rdrewlow@bismarcknd.gov).

**All proposals received by 4:00 PM (CST) on Wednesday, March 9, 2016 will automatically be scheduled for an interview.** Proposing firms are expected to prepare travel arrangements to Bis-Man Transit (3750 E Rosser Ave, Bismarck, ND) for interviews on Friday, March 11. Time-slots will be randomly assigned between 9:00 AM and 4:00 PM, and the MPO reserves the right to shorten this window if necessary. Projects managers will be notified of interview time-slots on Thursday, March 10.

**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. Notification of denial will occur on Thursday, March 10, 2016. Incurred costs will not be reimbursed to firms who have been granted or denied an interview.**

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 shall be no more than twenty (20) pages, preferably printed double sided. Appendix material is not counted toward the twenty (20) page limit. A sealed cost proposal must also be provided with the proposals. Submittals must be received no later than 4:00 PM (CST) March 9, 2016 and may be shipped or hand delivered to:

Rachel Drewlow  
Transportation Planner  
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 and NDDOT. Proprietary information must be clearly noted in the proposal, or it will be subject to open records laws.

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Appendix A: Proposed Sub-Consultant Request Form

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

Appendix C: Certification and Restriction on Lobbying Form

Appendix D: Federal, State and Local Clauses

Appendix E: Cost Proposal Form

## 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:

### **Bismarck-Mandan School Safety Crossing Study**

The MPO is requesting services to complete an evaluation of transportation safety needs on and around public school yards of the Bismarck and Mandan Public School Districts. This study will be in cooperation with the cities of Bismarck, Mandan, and Lincoln; the Bismarck Public School District, the Mandan Public School District, the North Dakota Department of Transportation (NDDOT), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA).

A selection committee will rank responding consultants upon their written proposals and interviews. Sealed cost proposals will be required with the study proposals. The cost proposals of the top ranked will be opened and reviewed after committee selection and prior to contract negotiations. After committee selection, review of the sealed cost proposal, and approval by the MPO's oversight boards, the MPO will enter into contract negotiations with the top ranked firm.

The MPO reserves the right to reject any and all submittals.

## II. GENERAL INSTRUCTIONS

**A. Any questions or comments regarding this proposal should be submitted to:**

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

Phone: 701.355.1852  
E-Mail: [rdrewlow@bismarcknd.gov](mailto:rdrewlow@bismarcknd.gov)

**B. Proposals shall be submitted to:**

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

**C. All Proposals must be clearly identified and marked as follows:**

Proposal For:  
Bismarck-Mandan School Safety Crossing Study  
Firm's Name  
Bismarck-Mandan MPO

**D. The MPO will only consider proposals received prior to 4:00 PM Central Time on March 9, 2016, which also contain a sealed cost proposal. Eight (8) copies of the written proposal, one (1) electronic copy, and one (1)**

<p>copy of the sealed cost proposal (submitted in a separate, sealed and clearly marked envelope) must be received by the deadline. Electronic copies may be sent via a flash drive or email to <a href="mailto:rdrewlow@bismarcknd.gov">rdrewlow@bismarcknd.gov</a>. Proposals received after the 4:00 PM deadline or missing the cost proposal will be considered unresponsive and will not be considered. Each written proposal will be evaluated by a seven (7) person selection committee.</p>
<p><b>E.</b> The MPO reserves the right to reject any or all proposals.</p>
<p><b>F.</b> Capacity and scope of the current study is greatly increased from the Bismarck School Safety Crossing Study (2005). The MPO realizes that the current study puts greater demands on the consultant's work load, and some elements require many hours on location (i.e. observations, meetings, etc.). Consultants are encouraged to partner with other firms and/or sub-consultants to ensure that local activities are completed accurately and completely.</p>
<p><b>G. Selection Committee:</b> The Selection Committee will consist of an eight (8) person panel, seven (7) voters and one (1) moderator. The committee will rank consulting firms based on the criteria listed in Section V: Evaluation Criteria and Process. Consultants will be ranked on both written proposal and in-person Interviews. Committee members represent the following entities: MPO, NDDOT, Bismarck City Engineering, Mandan City Engineering, Bismarck School District, Mandan School District, and the City of Lincoln. MPO Project Manager will moderate the interviews and provide a tie breaking vote if needed.</p>
<p><b>H. Interviews:</b> The MPO wishes to expedite consultant selection and contract negotiations for this study. To meet the expedited timeline, all proposing firms should expect an interview on March 11, 2016. Interviews are planned between 9:00 AM and 4:00 PM, and will be held at Bis-Man Transit (3750 E Rosser Ave, Bismarck, ND). The MPO reserves the right to shorten this window if needed. Consultants are directed to create travel plans for their interview teams if they submit a proposal.</p> <p>Consultants will be given twenty (20) minutes to present their proposals followed by ten (10) minutes for Q&amp;A. There will be fifteen (15) minute breaks between interviews for set up and tear down.</p>
<p><b>I. Disadvantaged Business Enterprise:</b> In the event of equally ranked consultants, additional positive consideration of prospective proposals will be given if the proposal contains any prime or sub-consultant work done by a Disadvantaged Business Enterprise (DBE) company currently certified by the North Dakota Department of Transportation (NDDOT). Any NDDOT certified DBE firm within the proposal should be identified.</p>
<p><b>J. Selection and Approvals:</b> Based on the cost proposal and selection committee recommendation, MPO Staff will request approval of the top rank firm by the TAC and Policy Board. These approvals will occur on March 14 and 15, respectively. In addition, MPO staff will seek approval of the contract, prior to its development, for an anticipated start date on April 1, 2016. Each Consultant's Project Manager will be notified of selection results by phone, email, or formal letter (postmarked) on March 16.</p>
<p><b>K. Contract Negotiations:</b> Contingent upon the Board approval, contract negotiations will begin immediately after March 15. Historically, the MPO requires consultants to develop the study contracts, and will expect the same for the current study. It is the desire of the MPO, with assistance from its partners and legal counsel, to finalize negotiations in March and begin the contract on April 1, 2016.</p>

### III. CONTENT OF PROPOSALS

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. Technical Capabilities
3. Personnel Assignments and Qualifications
4. Pertinent Previous Experience and Performance
5. Understanding of Project and Proposed Work Approach

**Length of Proposals:**

The proposal pages shall be numbered and limited to twenty (20) pages, preferably double sided. The appendix will not be included in the 20 page limit. Some required elements may be included in either the main proposal or the proposal appendix. If included in the main portion of the document, they will count toward the twenty (20) page limit. See 'Required Elements' and 'Proposal Appendix' for further detail.

**Required Elements:**

The consultant's proposal must include:

- **Sealed Cost Proposal:** See Appendix E. Sealed cost proposals will be opened for the top ranked consultant after consultant selection and prior to contract negotiations. Note: Cost estimates have no weight in the committee's ranking process. Consultants are directed to omit cost estimates from written proposals and presentation materials.
- **Proposed Project Schedule:** Proposed schedules may begin April 2016, 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
  - Steering Committee Meetings/ Activities
  - Documents/Tech Memos for Study Milestones
  - Stakeholder Interviews
  - Data Acquisition (Provided, as available, by MPO, Cities and School Districts)
  - School Yard/ Facility Observations
  - Public Input Meetings
  - Public Outreach Activities (Webpage, Meetings, Flyers, Social Media, News Releases, etc.)
  - Draft Report Development
  - Draft Report Review by Steering Committee, MPO, NDDOT, FHWA, and FTA (required before Commission and MPO Board Presentations)
  - Final Presentations to Commissions and MPO TAC and Policy Boards
- The primary contact and contact information for any sub-consultants utilized for the project.
- 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)
- Quality Control/Quality Assurance (QC/QA) 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.
- List of personnel who will be assigned to work on the project (including titles, education, and/or work experience).

**Proposal Appendix:**

The appendix may include an updated Federal Standard Form 330 (Architect-Engineer Qualifications). SF330 is an NDDOT requirement, and proves that the consultant is pre-qualified to provide architectural, engineering and/or planning services for NDDOT. See [http://www.dot.nd.gov/divisions/environmental/docs/cnsultnt\\_prequal\\_reqirments.pdf](http://www.dot.nd.gov/divisions/environmental/docs/cnsultnt_prequal_reqirments.pdf) for link to the SF 330. Consultants will not be penalized if SF 330 is not included in the proposal appendix, but pre-qualification is required for the selected consultant before contract negotiations are finalized.

The project schedule, QBS documents (Appendix A, B, and C), QC/QA program, and personnel information may be included in the appendix.

**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 recognized as such and protected by law may be exempt from disclosure.

#### IV: ADDITIONAL REQUIRMENTS AND MISCELLANEOUS INFORMATION

##### **Study Specific Requests/ Contract Requirements:**

The MPO wishes to expedite the process for consultant selections and contract negotiations concerning the Bismarck-Mandan School Safety Crossing Study. The office intends to have a contract executed by April 1, 2016. This effort will allow the selected consultant to begin their work and observations during the 2016 spring semester. NOTE: It is recommended that school observations be divided between spring and fall 2016. However, schools of similar district and type should NOT be divided between seasons (i.e. all Mandan Elementary Schools in same season, all Bismarck Elementary schools in same season, all Mandan Middle Schools in same season, etc.).

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 D: Local, State and Federal 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 45 days 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.*

##### **General Information:**

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

All design and project data will become the property of the Bismarck-Mandan MPO, City of Mandan, and City of Bismarck and NDDOT upon completion of the final report. 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 MPO, the Cities, and NDDOT. The final report will be submitted using the following formats and standards, if applicable:

- Word/Excel
- 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. Ability of professional personnel (staff experience and technical capabilities)
3. Related experience on similar projects
4. Location
5. Project understanding, issues and approach
6. Project Schedule

The final selection will be based on the consultants' written proposals along with in-person interviews. All firms not selected will be notified, via email and with a formal letter, of the selection decision.

In the event of equally ranked consultants, additional positive consideration of prospective proposals will be given if the proposal contains any prime or sub-consultant work done by a Disadvantaged Business Enterprise (DBE) company currently certified by the North Dakota Department of Transportation (NDDOT). Any NDDOT certified DBE firm within the proposal should be identified.

A final scope of work will be developed and price will be negotiated with the successful firm. 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 planning area is comprised of five (5) jurisdictions including the cities of Bismarck, Mandan, and Lincoln and portions of two (2) counties including Burleigh County and Morton County. The MPO planning area is centrally located within North Dakota, with the City of Bismarck being 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 394 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, due largely to energy development in western North Dakota. Historic growth trends in the area have traditionally experienced a 1% to 1.5% annual rate of population growth. Based on the most recent projections developed by the Bismarck-Mandan MPO the area is expected to grow by 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 has been projected in previous planning efforts.

While the 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 north-south connectivity, especially in the city of Bismarck. The heightened level of growth also may create a greater strain on area municipal services, schools, and transportation.

### **Bismarck School Safety Crossing Study (2005):**

Through 2004 and 2005, the MPO and City of Bismarck conducted the region's first School Safety Crossing Study to assess and evaluate traffic patterns and safety concerns on and near Bismarck's elementary schools. The previous study was confined to public elementary schools and the Early Childhood Education Program (BECEP) facility. The study

evaluated walking routes between home and school, pick up and drop off zones, traffic and pedestrian flow on school property, school crossings, lighting, traffic control devices, and safety policies. The final product included annotated maps of each school yard (including location of safety related signage, parking and loading zones, school exits, sidewalks, etc.), customized Safe Routes to School Maps, and a technical evaluation/ safety recommendation for each of the 16 facilities. Deliverables of this study have been a valuable resource to the City of Bismarck, the Bismarck School District staff, and elementary administration.

**Existing School Conditions:**

Energy development in western North Dakota has impacted local schools in the Bismarck-Lincoln and Mandan communities. Population increases within the last decade necessitated expansion and reorganization of facilities in both school districts. Bismarck Public Schools constructed one new high school (Legacy High School) and two new elementary schools (Liberty and Lincoln Elementary Schools). Within the same period, Mandan opened its first middle school (Mandan Middle School) – instructing grade 6, 7, and 8 – and its sixth elementary school (Red Trail Elementary).

Beyond construction, Bismarck middle schools have been reassigned to serve grades 6-8 (previously grades 6-9). Portable classrooms have been erected for expanding classes. Finally in town bussing has been instated in Bismarck to transport students who live beyond a ½ mile radius of each school.

School enrollment projections anticipate continued growth in the communities’ school age population. Cumulative enrollment for 2015/2016 academic year totaled 16,244, and this number is expected to increase an average of 4% annually for the next five years. Following is a complete list of schools to be evaluated in the current study:

<b>Bismarck High Schools</b>	<b>Mandan High Schools</b>
Bismarck High School	Mandan High School
Century High School	Brave Center Academy
Legacy High School	
South Central Alt High School	
<b>Bismarck Middle Schools</b>	<b>Mandan Middle Schools</b>
Horizon Middle School	Mandan Middle School
Simle Middle School	
Wachter Middle School	
<b>Bismarck Elementary Schools</b>	<b>Mandan Elementary Schools</b>
Centennial Elem School	Custer Elem School
Grimsrud Elem School	Ft Lincoln Elem School
Highland Acres Elem School	Lewis and Clark Elem School
Liberty Elem School	Mary Stark Elem School
Robert Place Miller Elem School	Red Trail Elementary
Dorothy Moses Elem School	Roosevelt Elem School
Rita Murphy Elem School	
Jeannette Myhre Elem School	Lincoln Elementary School (Bismarck School District)
Northridge Elem School	Lincoln Elem School
Pioneer Elem School	
Prairie Rose Elem School	Bismarck Pre-K Facility (Bismarck School District)
Roosevelt Elem School	BECEP Center
Saxvik Elem School	
Victor Solheim Elem School	
Sunrise Elem School	
Will-Moore Elem School	

## **VII. OBJECTIVE**

New facilities, increased transportation alternatives for students, and changing school environments require a reevaluation and expansion of the 2005 Bismarck School Safety Crossing Study. The current study will evaluate 34 schools, including all public elementary, middle, and high schools in the Bismarck-Lincoln and Mandan communities, as well as the Bismarck Early Childhood Education Program (BECEP) Center. At these schools, the study will assess and evaluate existing school facilities, including walking routes between home and school, pick up and drop off zones, traffic and pedestrian flow on school property, school crossings, lighting, traffic control devices, and ordinances.

The objective of this study is to evaluate the need, operation, and function of existing traffic control devices, drop off and pick up of students (bus and private), and parking facilities in the areas surrounding the region's public schools. The study will develop a uniform application of realistic policies, practices and standards for continuity and consistency for all schools in the implementation of traffic control devices, crossing guards, and drop-off and pick up zones, parking (including faculty, student, and ADA spaces), bussing, bicycling (where applicable), and establish school walking routes.

The consultant will provide recommendations for traffic control, safe walking routes between home and school, pick up and drop off zones, use of crossing guards, traffic and pedestrian flow on school property, school crossings, lighting, bicycle facilities and needs (where appropriate), guidelines and changes to ordinances (if necessary). Also the recommendations should include cost estimates, an implementation plan, and a 'chain of command' for each school district to follow when implementing requests.

## **VIII. SCOPE OF WORK**

### **Exiting Conditions:**

The MPO will provide a GIS database, collected by Advance Transportation Analysis Center (ATAC) of NDSU. The database will consist of traffic control devices, street signs, parking facilities, and school access doors on and immediately adjacent to the school yards. ATAC's data collection will expand upon the 2005 effort and occur in the summer of 2016, and the database should be available in the months following. Where available, the cities of Bismarck and Mandan will also provide data on street and right-of-way widths, public utilities, crash experience, volumes and turning movements, and other information.

The consultant may contact Bismarck and Mandan Public Schools for school census data and boundary information.

### **School Involvement:**

The consultant will interview/survey public school administrators, principals, janitors, safety directors, and transportation directors regarding school policies and practices for safety and transportation on school grounds. Other topics could include but are not limited to: use of crossing guards, availability of bus service, school yard accesses, function of public entrances, modal splits (percent of students who drive, bike, walk, bus, drop-off), issues with parking, loading and unloading zones, placement and function of ADA ramps and parking spaces, students leaving campus during school hours, or other concerns of the schools' officials.

### **School Observations:**

Consultant will observe all school yards at arrival and dismissal periods. Observations shall seek to understand vehicle and pedestrian traffic flow and the resulting logistics issues created by the physical environment (i.e. students using the best door; vehicles accesses and flow; adequate sidewalks, bicycle facilities, or vehicle parking spaces; best use of loading/unloading zones, etc.). If evident, observed issues should be categorized by: AM period, PM period, mode of transportation (Vehicle, Bus, Pedestrian, Bicyclist, Other), and other category.

### **Stakeholder Interviews:**

Consultant shall interview key individuals or groups that have vested interest or specialized knowledge of study issues. Stakeholders could include but are not limited to: NDDOT Safety Division Staff, area bussing companies (i.e. Harlow's Bussing Company), before- and after-hour child care providers, or organizers of the previous Bismarck School Safety Crossing Study (2005).

**Policies and Local Practices:**

The consultant shall survey other school districts and local governmental entities in North Dakota and surrounding areas regarding their policies and guidelines for school safety and traffic management. Topic could include, but are not limited to, walking or biking to school, the use of adult crossing guards, bussing (public and private), parking, loading zones, flashing beacons, students' ability to leave campus during school hours, and/or ADA ramps and parking spaces.

The consultant shall review all policies, procedures, and practices currently in place and used by police, the schools and the city engineering departments in the Bismarck, Lincoln and Mandan communities. It is also recommended that consultants review federal, state, and local guidance on acceptable installation of school crossings and the appropriate level of traffic control in the area surrounding a school.

**Steering Committee(s):**

The MPO project manager will assist the consultant in developing a Steering Committee(s) for the study. Up to two committees may be needed to address concerns/need of the separate school districts. The Committee(s) may contain but are not limited to the following members:

- City Engineers/ City Traffic Engineers
- Staff member(s) of the MPO
- Representatives of the Bismarck, Lincoln, and Mandan Police Departments
- School Safety/ Transportation Directors
- NDDOT Local Government Division
- NDDOT Safety Division
- FHWA

The consultant shall meet with the Steering Committee(s) periodically 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(s).

**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 three (3) personal appearances are also required before the TAC and Policy Board at appropriate times throughout the development of the study.

**Public Involvement:**

See Section IX: Public Involvement Plan for detailed information.

**Alternatives:**

The consultant will review, assess and analyze existing conditions for the areas surrounding each of the schools; identify safety deficiencies; propose low-cost methods for correcting these deficiencies; and develop a safe route map for each school.

*Special Note — Biking is a healthy mode of transportation but is a sensitive subject amongst community members. Winter weather, distance from home to school, age of student, and traffic volumes near or adjacent to the school yard can affect students' inclination and parents' encouragement to engage in active forms of transportation. Consultants are encouraged to incorporate bicycling needs and opportunities into their analysis, evaluation and recommendations. Select schools in both school districts are particularly well suited for bicycling. Bicycling is not intended to be a pervasive component of the Bismarck-Mandan School Safety Study, but should be highlighted and evaluated at all appropriate schools. These efforts could include: recommendation for number, style and placement of bike racks, suggestions for bicycle crossings/ pathways, survey of student and community perceptions of bicycling to school, and recommendations to capitalize on safe biking procedures, educational opportunities, and school policies relating to bicycles.*

Following is a list of alternatives to consider:

#### Low-cost improvements

- Traffic control device modifications
- Removal of on street parking
- Minor geometric revisions without significant right-of-way acquisition
- Vehicular traffic movements on school grounds
- Parent pick up and drop off locations
- Student access points
- Student Parking
- Faculty parking
- Use of crossing guards
- Pick up and drop off locations (private vehicles and public buses)
- Lighting
- Use of one way accesses
- Law enforcement recommendations
- Placement and function of ADA ramps and parking spaces

#### Safe Routes to School

- Improvements to existing walking routes
- Incorporate existing traffic control devices
- Use existing sidewalks or request installation of new sidewalks
- Recommend new safe walking routes
- Provide total extra walking distance as result of new routes.
- Evaluation of Bicycle facilities/ bicycle safety issues at appropriate schools

#### Crossing supervision – Adult control

- Usage criteria
- Qualifications

#### Implementation Procedures

- ‘Chain of Command’ for schools/ principals to use when requesting recommend improvements

The consultant is encouraged to submit additional areas for improvement.

#### **Develop Recommendations:**

- The consultant shall recommend a set of criteria to be applied to the areas surrounding the schools to determine the appropriate level of control.
- Based on these criteria, develop a set of recommendations for each school.
- Develop a set of overall recommendations related to issues that affect all schools.
- Develop a generalized cost estimate using basic unit costs for each recommended item.
- Recommend an implementation schedule that prioritizes the recommendations.

#### **Draft Development and Review:**

A draft report shall be produced after all recommendations have been developed and approved by the Steering Committee(s). The draft report should be divided into multiple books – one for each School District and possibly further by school type (elementary, middle, high school). Each book should be further divided into chapters, dedicating one chapter to each school. Additional chapters can be dedicated to general information such as the study introduction, study overview and processes, public engagement activities, and general recommendations for the School Districts overall.

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.

#### **Final Presentations/ Completion:**

The draft report shall be advertised and made available to the public for at least two week before the final presentations.

The consultant will be requested to make a presentation to the Bismarck City Commission, the Mandan City Commission, the Bismarck School Board, the Mandan School Board, the MPO Technical Advisory Committee, and the MPO Policy Board for review and acceptance/approval of the final draft report. Approval of the final draft report by the MPO Policy Board, and subsequent distribution of study deliverables, will mark the completion of the study.

**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 ten (10) paper copies shall be provided. Some entities will request paper copies of only the Bismarck Public School District or only the Mandan Public School District; other entities may request paper copies for both School Districts. A minimum of ten (10) CD's and a pdf-based electronic version shall also be provided. All products are to be delivered to the MPO project manager for dissemination to the City Engineers, School Districts, TAC and Policy Board Members, and oversight entities.

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

RFP Submittal Deadline	March 9, 2016
Notification for Interviews	Guaranteed with Proposal Submission
Interviews	March 11, 2016
Selection and Notice to Proceed	March 14 and 15, 2016
Notification of Firms	March 16, 2016
Negotiation of Scope of Work and Work Fee	March 16 – March 31, 2016
Final Project Report & Presentations	December 31, 2017*

\*The MPO's intends December 31, 2017 to be the latest date permissible to administer federal funding for the study. Therefore it is also the last date for reimbursement of eligible work, and the 'completion' of the study. Consultants are given flexibility to determine their own schedule for the development of the study. However, the MPO would prefer final presentations occur well before this deadline to ensure billing is completed by year end 2017.

**IX. PUBLIC INVOLVEMENT PLAN:**

Public involvement is a major component of activities utilizing federal funding and holds primary importance for MPO studies. Consultants shall prepare a Public Involvement Plan that is consistent with the MPO Public Participation Plan and complies with Title VI of the Civil Rights Act of 1964 and the Executive Order on Environmental Justice of 1994.

**Online Engagement:**

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 opportunities. 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 a 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.

The MPO is allowed to post on the City of Bismarck's Twitter account, and study outreach via Twitter can be coordinated between the MPO project manager, the designated consultant staff, and the City of Bismarck's Public Information Officer.

**In-Person/ Community Engagement:**

Consultants are encouraged to reach out to the community at large, especially students, parents, school faculty, 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 for students and parents, updates in school bulletins, radio or television PSA's, coordination with local public or commercial media outlets, surveys, booths at school sporting events, presence at community celebrations (i.e. Urban Harvest, Community Fourth of July Events, BisMarket/

Winter Market, Bismarck/Mandan Bike Safety Rodeo), and public meetings.

Consultants should prepare for at least two (2) public meetings, one in Bismarck and one in Mandan, in the beginning portion of the study. The ‘kick-off’ meetings will inform the community of the study’s purpose, extent, and what is hoped to be achieved. Existing conditions will be discussed, along with engaging the public to provide early input and information on school transportation safety 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.

Subsequent public meetings are not anticipated based on the input and sentiments of the RFP input committee. This does not preclude consultants from hosting additional public meeting or other in-person outreach (i.e. PTO/PTA meetings, presence at school events, presented at community events, etc.) as establish though direction of the Steering Committee(s).

Prior to the study’s completion, a draft study report will be created, reviewed, and commented upon by the MPO, NDDOT, FHWA, and FTA. After all comments have been addressed to the satisfaction of the respective entity, the consultant will prepare final presentations and seek study approval/ acceptance from the following: Mandan School Board, Bismarck School Board, Mandan Board of City Commissioners, Bismarck Board of City Commissioners, Lincoln Board of City Commissioners, the MPO Technical Advisory Committee, and the MPO Policy Board.

Public meetings and final presentations, except the School Board Meetings the MPO Policy Board, will be advertised in the local newspaper(s). Consultants are responsible for preparing newspaper advertisements for public meetings, and the MPO coordinates printing with local the newspaper(s). The MPO prepares advertisements for final presentations and coordinates printing with the local newspaper(s).

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

A variety of studies have occurred since the first Bismarck School Safety Crossing Study (2005) that will have influence on the current study. The following resources/data/information is available for the project from the Bismarck-Mandan MPO, City of Bismarck, City of Mandan, and City of Lincoln.

1. **Digital Orthophotography**
  - a. 2013 ½ foot – color
2. **Digital elevation data**
  - a. 2013 1’ contours
3. **Digital Orthophotography – anticipated completion late fall 2016**
  - a. 2016 5 inch – color
4. **Digital elevation data – anticipated completion late fall 2016**
  - a. 2016 1’ contours
5. **Land base/Infrastructure data from member jurisdictions**
6. **Jurisdictional ordinances**
7. **Bismarck-Mandan MPO Area GIS Trail Inventory**
8. [Bismarck School Safety Crossing Study – 2005](#)
9. [Lincoln Road Corridor Study – 2011](#)
10. [Mobility 2017 \(Transit Development Plan\) – 2012](#)
11. [43<sup>rd</sup> Avenue Corridor Study – 2013](#)
12. [North Mandan Subarea Study – 2013](#)
13. [ITS Architecture Update – 2013](#)
14. [Bismarck Growth Management Plan – 2014](#)
15. [City of Mandan Comprehensive Plan – 2015](#)
16. [Northeast Bismarck Subarea Study – 2015](#)
17. [Bismarck-Mandan Corridor Improvements Study \(ongoing\)](#)
18. [MPO 2010 Public Participation Plan](#)
19. [MPO 2011 Title VI/Non-Discrimination Plan](#)
20. [MPO 2016-2019 Transportation Improvement Plan](#)
21. [MPO 2015-2040 Long Range Transportation Plan](#)
22. [Bismarck-Mandan MPO Monitoring Report](#)

Appendix A: Proposed Sub-Consultant Request Form



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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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,

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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- 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 (\$3,000 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 (\$3,000 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 (\$3,000 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**

All Contracts and Subcontracts over \$100,000

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 \$100,000

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 \$100,000 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 (\$3,000 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 \$100,000.
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 (\$3,000 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**

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 \$100,000 financed in whole or in part with FTA assistance.

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

Applicability – All contracts except micro-purchases (\$3,000 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 (\$3,000 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 \$100,000

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," <https://www.sam.gov>, 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 <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, 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 (\$3,000 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 (\$3,000 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, or (g) Age, 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 \$100,000

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 (\$3,000 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 \$3,000 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 (\$3,000 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 (\$3,000 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 MAP-21, 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, December 14, 2005.

## **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 Restrictions**

The Recipient agrees that it will not use any State or local geographic preference, except: (1) A preference expressly mandated by applicable Federal law, or (2) A preference permitted by FTA; for example, a contractor's geographic location may be a selection criterion for a Recipient that is procuring architectural engineering or related services, provided that a sufficient number of qualified firms are eligible to compete for that contract, or (3) As provided in section 418 of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235, December 15, 2014, geographic preferences in construction hiring are protected from enforcement under former 49 C.F.R. § 18.36(c)(2), in accordance with any applicable federal regulations, requirements, and guidance and as implemented by FTA.

## **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 \$500,000 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. 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 \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

### **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**

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," 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).

**Appendix E: Cost Proposal Form**

(Include one completed form in a separate sealed envelope – labeled “SEALED COST FORM – Firm Name” and submit with technical proposal as part of the RFP response.)

The cost estimated should be based on a not to exceed budget of \$284,000. Changes in the final contract amount and contract extension are not anticipated.

**REQUIRED BUDGET FORMAT**  
*Please Use Audited DOT Rates Only*  
 Bismarck-Mandan School Safety Crossing Study

1. Direct Labor	<b>Hours</b>	X	<b>Rate</b>	=	<b>Total</b>
Name, Title, Function	0.00	X		=	0.00
		X		=	
		X		=	
		X		=	
2. Overhead					
3. General & Administrative Overhead					
4. Subcontractor Costs					
5. Materials and Supplies Costs					
6. Travel Costs					
7. Fixed Fee					
8. Miscellaneous Costs					
<b>Total Costs</b>					