

**FARGO-MOORHEAD
METROPOLITAN COUICL OF GOVERNMENTS**

REQUEST FOR PROPOSALS (RFP)

PROJECT NO. 2017#004

MATBUS Transit Facility Analysis and Development Strategy

May 2017

REQUEST FOR PROPOSALS (RFP)

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) requests proposals from qualified consultants for the following project:

MATBUS Transit Facility Analysis and Development Strategy

Qualifications-based selection criteria will be used to analyze proposals from responding consultants. Upon completion of technical ranking, interviews, and possible discussion with candidate consultants, Metro COG will enter into negotiations with the top ranked firm. Sealed cost proposals shall be submitted with the RFP. The cost proposal of the top ranked firm will be opened during contract negotiations. Those firms not selected for direct negotiations will have their unopened cost proposals returned. Metro COG reserves the right to reject any or all submittals. This project is eighty (80) percent federally funded. The project has a not to exceed budget of \$250,000 dollars.

Interested firms can request a full copy of the RFP by telephoning 701.232.3242, or by email: leach@fmmetrocog.org. Copies will be available for download in PDF format at www.fmmetrocog.org and www.dot.nd.gov.

All proposals received by 4:30 p.m. on Tuesday, May 30, 2017 at the Metro COG office will be given equal consideration. Minority, women-owned, and disadvantaged business enterprises are encouraged to participate. Respondents must submit ten (10) copies of the proposal. The full length of each proposal should not exceed twenty (20) double-sided pages for a total of forty (40) pages; including any supporting material, charts, or tables.

Hard copies of technical and/or cost proposals should be shipped to ensure timely delivery to the contact as defined below:

Michael Maddox, AICP
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102-4807
maddox@fmmetrocog.org

Fax versions will be not accepted as substitutes for the hard copies. Once submitted, the proposals will become the property of Metro COG.

Note - This document can be made available in alternative formats for persons with disabilities by calling Savanna Leach, Executive Secretary at 701.232.3242

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Exhibit A – Cost Proposal Form

Exhibit B – Debarment and Suspension Certification

Exhibit C – Certification of Restriction on Lobbying

The Fargo-Moorhead Metropolitan Council of Governments (Metro COG) requests proposals from qualified firms to analyze existing transit hub locations including the operations surrounding those hubs, develop future locations of additional transit hubs where service would expand, examine the spacial needs of the MATBUS transit garage, identify needed improvements to existing facilities/hubs, and determine locations for transit shelters. Metro COG (hereafter referred to as the Client) intends that this study will help identify needs related to current MATBUS facilities as well as the projected needs for future facilities (to include all types of transit facilities: hubs, shelters, garage, etc).

All applicants meeting the deadline for submittal will receive consideration. Selection criteria will follow a qualifications-based review process to analyze proposals from responding firms. Qualified firms will be short-listed according to their ability to satisfactorily complete the objectives of the study.

Qualified firms will be asked to participate in an interview to demonstrate the ability of their firm to meet the needs of the Client. Upon completion of technical ranking, telephone interviews and possible discussion with candidate consultants, the Client will enter into negotiations with the top ranked firm.

This project will be funded in part with Federal transportation funds. The contract budget has a **not-to-exceed budget of \$250,000**. The selected firm shall develop a project schedule with project completion within one (1) year and present its findings in the form of a written plan within that timeline. All project invoices should be submitted monthly to the Client and the final invoice should be submitted no later than one (1) month after project completion.

Fax versions will be not accepted as substitutes for the hard copies. Once submitted, the proposals will become the property of the client.

This document can be made available in alternative formats for persons with disabilities by calling **Savanna Leach, Metro COG Executive Secretary, at 701.232.3242**.

I. PURPOSE OF REQUEST

As part of the regional transportation planning process, the Fargo-Moorhead Metropolitan Council of Governments (Metro COG), in coordination with Metro Area Transit (MATBUS), is seeking proposals from qualified consulting firms with the experience and resources necessary to conduct a transit facility analysis for the region. The purpose of this Request for Proposals (RFP) is to analyze the location of current MATBUS transit hubs and prepare a development strategy for the relocation or improvement to existing transit hubs as well as the addition of new transit hubs, which anticipate future system expansion. In addition, MATBUS wishes this analysis to include all of its facilities, with special deference paid to the transit garage.

II. PROJECT BACKGROUND

Metro Area Transit is currently the function of two separate municipal departments within the City of Fargo, North Dakota and the City of Moorhead, Minnesota. Over the past few decades, the City of Fargo and the City of Moorhead have entered into several agreements, both formal and informal, to assist in the operation of various elements of MATBUS. Some of these agreements have been specifically drafted to set forth a cost sharing/allocation plan for the distribution of costs related to major transit system expenditures. Significant MATBUS operating agreements include the Metro Transit Garage, MAT Paratransit, and the Ground Transportation Center.

In December 2016, Metro COG completed the 2016-2020 Transit Development Plan (TDP). The TDP establishes MATBUS' vision for public transportation, assesses needs, and identifies a framework for program implementation. The TDP considers both long-range and short-range strategies and actions to better enable the development of an integrated multimodal transportation system that efficiently moves people and addresses transportation demands.

The MATBUS Transit Facility Analysis and Development Strategy is anticipated to build upon prior work of the 2016-2020 TDP and other applicable planning documents and studies that have occurred in the region.

The following are a list of current transit facilities in the area:

West Acres Transit Hub - During the development of the 2016-2020 Transit Development Plan (TDP), a new hub and spoke philosophy was proposed. The main transit hubs in the region are the Ground Transportation Center (GTC), West Acres Mall, and the Marriott Hotel in Moorhead. The management of West Acres Mall approached MATBUS about their desire to move the transit hub from its current location, to an alternate location detached from the mall proper.

The possible relocation of this hub could also have an impact on MAT Paratransit service. It is unknown what percentage of current riders would need door-to-door service if the hub were not attached to West Acres Mall. MATBUS also does not know whether the mall is a destination for riders, or whether riders are transferring to other buses. MATBUS will provide boarding/lighting/transfer information generated from GTFS data; however, the consultant will need to determine, through public engagement, the activities transit riders partake in at West Acres Mall e.g. shopping, work, transfer to other routes, etc. This information could affect

how MATBUS provides service to West Acres Mall and whether the hub could be relocated off Mall property.

One of the objectives would be to study the mall property to determine where a transit hub would be feasible. This would include documenting all necessary requirements to move the current transit hub to a location within or adjacent to the mall property. This would include ADA pathways or other amenities that would provide for a safe transition between the hub and the Mall proper. The current West Acres Transfer Facility as well as strengthening of the internal roadway network was paid for with FTA funds and therefore must be dispensed according to federal procedures. This process will need to be investigated as part of this plan.

GTC - The GTC is the main transit hub for MATBUS, providing a location where most Moorhead and Fargo routes pulse out of every half hour. This hub was constructed in 1984 and is in need to be upgraded, especially as the transit system grows.

Operations at this facility need to be studied in order to determine any needs as well as looking at the building itself for opportunities to upgrade the facility. NP Avenue, which provides access to the facility, is slated to be reconstructed within the next few years. An objective of this study would be to determine the impacts of the new roadway cross-section on operations at the GTC. This could include making recommendations for street improvements to accommodate buses.

Moorhead Marriott Transfer Hub - Currently, MATBUS has an informal hub in the public right of way adjacent to the Moorhead Marriott, which is utilized to make connections to/from routes 1, 2, 3, and 5. This provides riders with options to access Concordia College, Minnesota State University - Moorhead (MSUM), and Minnesota State Technical and Community College as well as accessing southern and eastern Moorhead without having to return to the GTC.

An objective of the study is to analyze the current operations of the Marriott transfer hub focusing on the adequacy of the site, how bus operations could change to save travel time, and if alternate areas would provide a more convenient location for a transfer hub.

New Transit Hub(s) - As the region grows, MATBUS realizes that the transit system must grow as well. The 2016-2020 TDP looked at new transit service such as: routes to West Fargo (south of I-94), possibility of commuter service, and the need for service at areas that are now at the fringe but are developing quickly i.e. Horace. The objective is to identify locations where transit hubs would be viable, taking operations into account.

MATBUS Transit Garage - As the transit system expands, additional office space and additional room for bus storage will be necessary. The current facility was constructed in 2007 and since then the expansion of transit service in the Fargo Moorhead region has created space deficiencies, namely office space for staff, employee parking, and space to store the bus fleet. The objective would be to analyze how the transit garage should expand on-site or identifying the need to utilize adjacent city-owned parcels.

Transit Shelters - With the expansion of the transit system, purposed route modifications, and new ridership information, MATBUS is looking for direction in the placement of transit shelters

on their system. This analysis will comprise of a small portion of the overall project scope. However, the consultant should utilize GTFS data developed as part of the TDP to select locations where transit shelters could be placed. This may include the review of existing criteria to determine where shelters should be placed.

III. PROJECT OBJECTIVES

- 1) Identify broad areas where future transit hubs may need to be located based upon development patterns within the region;
- 2) Identify improvements to existing transit hubs and facilities;
- 3) Analyze the capacity needs and the expansion opportunity for the MATBUS transit garage;
- 4) Analyze the placement, condition, and amenities of other transit facilities such as transit shelters;
- 5) Evaluate existing and planned transportation uses including transit, freight, pedestrian, bicycle, and general traffic;
- 6) Evaluate existing facility features and community visions for future facility needs, including previous facility and transportation planning studies;
- 7) Develop 2020 and 2040 hub alternatives including conceptual plans and preliminary projects;
- 8) Work with stakeholders to develop a hub plan that will be the focus of the final development strategy; and
- 9) Provide a growth plan for the Municipal Transit Garage (MTG)

IV. SCOPE OF WORK

The successful firm will demonstrate their ability and expertise in completing the following project steps:

0. Project Management
 - a. The consultant shall set up biweekly progress meetings with the Client.
 - b. The consultant shall develop and adhere to an aggressive project schedule with significant project completion within one (1) year of award.
 - c. The consultant shall develop a project keystones and deliverables checklist denoting significant project benchmarks as well as deliverables that are due to the Client within each task.
 - d. The consultant shall provide the Client with monthly invoices recording hours spent by each project staff member, description of work tasks, and expenses incurred.
1. Public Participation
 - a. Within the proposal, the consultant shall specifically detail the steps to which they will take to solicit public input for the study. This shall include the number of public meetings, number of Study Review Committee (SRC) meetings, and the number of stakeholder meetings. The consultant should also detail public engagement methods the firm would employ.

- b. At the outset of the project, the consultant shall prepare a public engagement memorandum specifically listing the efforts it will employ at each of the public involvement steps. This will be done in a collaborative effort with the consultant and the Client. Modifications to this mantra made throughout the course of the plan should be amended into this document as the project progresses.
- c. The consultant will be responsible for public notification requirements (can be referenced from the Metro COG Public Participation Plan) and those public notification requirements negotiated as part of the contract.

2. Transit Hub Analysis

- a. The consultant shall prepare an analysis of the location and operations surrounding each of the aforementioned transit hubs. The consultant will work with the Client to delve into the specific issues of each transit hub location. This effort may require in-person meetings and/or site visits in order to address any problems or vet solutions.
- b. The consultant may rely upon data sets such as General Transit Feed Specification (GTFS), boarding and lightings, and route network maps generated by the Client.
- c. The consultant shall prepare a rigorous ridership, Title VI, and Environmental Justice (EJ) impact report per Federal Transit Administration (FTA) standards for scenarios that relocate existing hubs.
- d. The consultant should take into account various transit philosophies/services such as Transit-Oriented Development (TOD) and park and ride when analyzing future hub needs.

3. Transit Facility Analysis

- a. The consultant will determine the overall size of the fleet given a twenty (20) year growth horizon. This shall determine the capacity needs for an expanded transit garage.
- b. The consultant will analyze and document the availability of lands adjacent to the transit garage for expansion. This will include documentation of how much land will be required for expansion concepts, how operations on the site will be impacted, addition of parking stalls, and shall identify estimated costs of all alternatives.
- c. The consultant will study the placement of shelters throughout the region to determine the adequacy of the shelters, any amenities that should be added to specific shelter locations, the placement of shelters at additional locations, ADA pathways and lighting, the necessity for alternative shelter designs, or the relocation of shelters to more productive areas. This will take into account the planned expansion of the transit network as well as a twenty (20) year forecast of transit service, and the results from the hub analysis.
- d. The consultant will establish criteria for the expansion facility and shall include sketch plans of all facility concepts for both on-site and off-site expansion options.

4. Site Requirements

- a. The consultant shall prepare recommendations for the conceptual layout of new transit hubs. This shall include:
 - i. Minimum lot size requirements for various types of facilities
 - ii. Amount of space needed to handle operations, staffing, or other community needs, such as meeting rooms, police sub-station, etc
 - iii. Pavement improvement needs
 - iv. Operations of the purposed hub or operational improvements recommended
 - v. ADA accessibility
 - vi. Pathways to adjacent destinations
 - vii. New or improved roadway accesses
 - viii. Costs associated with these improvements
- b. The consultant shall identify suitable locations where transit hubs could be located/relocated.

5. Documentation

- a. The consultant shall prepare a document detailing the information obtained within the study. This shall include an executive summary for quick reference.
- b. The consultant shall append all public comments and a summary of public participation efforts to the plan.
- c. The consultant shall provide twenty-five (25) copies of the final plan.

V. IMPLEMENTATION SCHEDULE

Selection Schedule

Advertise for Proposals	May 8, 2017
Due Date for Proposal Submittals (by 4:30 pm)	May 30, 2017
Review Proposals/Identify Finalists	June 2, 2017
Interview Finalists/Contract Negotiations	June 5-9, 2017
Approval and Contract Execution	July 2017 (tentative)
Notice to Proceed	One day following completion of QBS process

VI. EVALUATION AND SELECTION PROCESS

1. **Selection Committee.** The Client has established a selection committee to review the proposals and evaluate potential vendors. The committee consists of officials from Metro COG, and MATBUS.

The selection process will be administered under the following criterion:

- 20% - The expertise in transit planning, background, and prior examples of like work of project staff.
- 20% - The consultant’s individual approach in completing the public participation component.
- 50% - Description of the approach the consultant will take in addressing Tasks 2-3.
- 10% - The ability of the consultant to provide personnel to accomplish the goals of the plan (workload).

The selection committee will entertain in-person presentations for the top candidates to provide additional input and help guide the evaluation process. The presentations may be followed by a question and answer period during which the committee may ask the prospective vendors additional questions about their project approach. The Client may entertain questions prior to the proposal due date that would serve to clarify the intent of this RFP; however, the Client reserves the right to refrain from answering any question that discusses knowledge specific to transit operations and issues that will be investigated as part of the study.

The Client reserves the right to reject any or all proposals or to waive minor irregularities in said proposal, and reserves the right to negotiate minor deviations to the proposal with the successful vendor. The Client reserves the right to award a contract to the firm that presents the proposal, which, in the sole judgement of the Client, best accomplishes the desired results.

The RFP does not commit the Client to award a contract, to pay any costs incurred in the preparation of the contract in response to this request or to procure or contract for services or supplies. The Client reserves the right to withdraw this RFP at any time without prior notice.

All proposals, whether selected or rejected, shall become the property of the Client.

VII. PROPOSAL CONTENT

The purpose of the proposal is to demonstrate the qualifications, competence, and ability of vendors to provide a MATBUS Transit Facility Analysis and Development Strategy study to the Client within the requirements of the RFP. The proposal must address each of the data specifications listed in the Tasks section of this RFP.

The Client is asking qualified vendors (bidders must be prequalified by the NDDOT - <https://www.dot.nd.gov/business/bidrequirements.htm>) to supply the following information. Please include all requested information in the proposal to the fullest extent practical.

1. **Contact Information.** Name, telephone number, email address, mailing address and other contact information for the vendor's point of contact.
2. **Introduction and Executive Summary.** This section shall document the firm name, business address (including telephone, FAX, email address(es), year established, type of ownership and parent company (if any), point of contact name, and any major facts, features, recommendations or conclusions that may differentiate this proposal from others, if any).
3. **Overview of Vendor's Project Approach.** Proposals shall address the items listed within the Tasks section of this RFP. The vendor shall provide three (3) related precedent transit studies that were completed by the vendor that would be of particular relevance to the proposed study. The vendor should include the organization that the precedent studies contracted with as well as the contact information of a reference from either the transit agency or the organization itself.
4. **Team Organization and Staff Profiles.** Proposals shall include all the background and expertise of each staff person who will be working on the project. The project manager should specifically be designated. An organizational chart showing the hierarchy of

project staff members within the organization should be included as well. This shall include a listing of all projects staff is currently assigned and their respective availability (represented as a percentage of time they have available).

5. **Signature.** Proposals shall be signed in ink by an authorized member of the firm.
6. **Attachments.** Review, complete, and submit the completed versions of the following RFP Attachments with the proposal:

Exhibit B – Debarment of Suspension Certification
Exhibit C – Certification of Restriction on Lobbying

VIII. SUBMITTAL INFORMATION

Hard copies of technical and cost proposals should be shipped to ensure timely delivery to:

Michael Maddox, AICP
Fargo-Moorhead Metropolitan Council of Governments
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102
maddox@fmmetrocog.org

All proposals received by **4:30 p.m. on May 30, 2017** will be given equal consideration. Minority, women-owned, and disadvantaged business enterprises are encouraged to participate. Respondents must submit ten (10) hard copies and one Adobe Acrobat (.pdf) copy of the proposal. The body of written length of the proposal should not exceed twenty (20) double-sided pages for a total of forty (40) pages. Supporting material, including graphics, charts, or tables may be included as appendices to the proposal.

The vendor may ask for clarifications of the RFP by submitting written questions to Michael Maddox, Fargo-Moorhead Metro COG, at maddox@fmmetrocog.org. The Client reserves the right to decline a response to any question if, in the Client’s assessment, the information cannot be obtained and shared with all potential vendors in a timely manner.

IX. GENERAL RFP REQUIREMENTS

Debarment of Suspension Certification and Certification of Restriction on Lobbying.

Respondents must attach signed copies of Exhibit A – Debarment of Suspension Certification and Exhibit B – Certification of Restriction on Lobbying within the sealed cost proposal.

Respondent Qualifications. Respondents must submit evidence that they have relevant past experience and have previously delivered services similar to the requested services within this RFP. Each respondent may also be required to show that similar work has been performed in a satisfactory manner and that no claims of any kind are pending against such work. No proposal will be accepted from a respondent whom is engaged in any work that would impair his/her ability to perform or finance this work.

Disadvantaged Business Enterprise. Pursuant to Department of Transportation policy and 49 CFR Part 23, NDDOT supports the participation of DBE/MBE businesses in the performance of

contracts financed with federal funds under this RFP. Consultants shall make an effort to involve DBE/MBE businesses in this project. If the consultant is a DBE/MBE, a statement indicating that the business is certified DBE/MBE in North Dakota shall be included within the proposal. If the consultant intends to utilize a DBE/MBE to complete a portion of this work, a statement of the subcontractor's certification shall be included. The percent of the total proposed cost to be completed by the DBE/MBE shall be shown within the proposal. Respondents should substantiate (within proposal) efforts made to include DBE/MBE businesses.

1. **North Dakota Department of Transportation Consultant Administration Services Procedure Manual.** Applicants to this Request for Proposal are required to follow procedures contained in the Federal Standard Form 330. Copies of this form are available on the NDDOT website at:
<https://www.dot.nd.gov/business/consultants.htm>

X. CONTRACTUAL INFORMATION

1. The Client reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within forty-five (45) days after the award of the proposal. The Client will not pay for any information contained in proposals obtained from participating firms.
2. The Client reserves the right to request clarification on any information submitted and additionally reserves the right to request additional information of one (1) or more applicants.
3. Any proposal may be withdrawn up until the proposal submission deadline. Any proposals not withdrawn shall constitute an irrevocable offer for services set forth within the RFP for a period of ninety (90) days or until one or more of the proposals have been approved by the Client.
4. If, through any cause, the firm shall fail to fulfill in a timely and proper manner the obligations agreed to, The Client shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least ninety (90) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.
5. Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the Client and shall contain, as a minimum, applicable provisions of the Request for Proposals. The Client reserves the right to reject any agreement that does not conform to the Request for Proposal and any Client requirements for agreements and contracts.
6. The firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Client.

XI. PAYMENTS

The selected consultant will submit invoices for work completed to Metro COG. Payments will be made to the consultant by Metro COG in accordance with the contract after all required services, and items identified have been completed to the satisfaction of the Client.

XII. FEDERAL AND STATE FUNDS

The services requested within this RFP will be partially funded with funds from the Federal Highway Administration (FHWA). As such, the services requested by this RFP will be subject to federal and state requirements and regulations.

The services performed under any resulting agreement shall comply with all applicable federal, state, and local laws and regulations. In addition, this contract will be subject to the requirements of 49 CFR 18. Cost eligibility/requirement will be subject to 48 CFR 31.2.

XIII. TITLE VI ASSURANCES

Prospective vendors should be aware of the following contractual (“contractor”) requirements regarding compliance with Title VI should they be selected pursuant to this RFP:

- a. **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).
- b. **Nondiscrimination.** The Contractor, with regard to the work performed by it, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, 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.
- c. **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 to the Client and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**.
- d. **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 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 North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.

- e. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions as outlined herein, the North Dakota Department of Transportation shall impose such 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; or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.

Incorporation of Title VI Provisions. The Contractor shall include the provisions of Section XII, 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 NDDOT 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 NDDOT enter into such litigation to protect the interests of NDDOT and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

XIV. TERMINATION PROVISIONS

Metro COG reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the Contractor to provide services in the quantity or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or Metro COG.

Metro COG may cancel or reduce the amount of service to be rendered if there is, in the opinion of Metro COG, a significant increase in local costs; or if there is insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, Metro COG may give a minimum of 30 days' notice to terminate this agreement/contract and have no further obligation to the Contractor.

In the event of any termination, Metro COG shall pay the agreed rate only for services delivered up to the date of termination. Metro COG has no obligation to the Contractor, of any kind, after

the date of termination. Contractor shall deliver all records, equipment and materials to Metro COG within 24 hours of the date of termination.

XV. LIMITATION ON CONSULTANT

All reports and pertinent data or materials are the sole property of Metro COG and may not be used, reproduced or released in any form without the explicit, written permission of Metro COG.

The Consultant should expect to have access only to the public reports and public files of local governmental agencies and NDDOT in preparing the proposal or reports. No compilation, tabulation or analysis of data, definition of opinion, etc., should be anticipated by the Consultant from the agencies, unless volunteered by a responsible official in those agencies.

XVI. CONFLICT OF INTEREST

No consultant, subcontractor or member of any firm proposed to be employed in the preparation of this proposal shall have a past, ongoing or potential involvement which could be deemed a conflict of interest under North Dakota Century Code or other law. During the term of this Agreement, the consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with Metro COG or NDDOT, or in any way compromise the services to be performed under this agreement. The consultant shall immediately notify Metro COG and NDDOT of any and all potential violations of this paragraph upon becoming aware of the potential violation.

XVII. INSURANCE

The successful firm or individual shall provide evidence of insurance prior to the execution of the contract.

XVIII. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS.

Prospective consultants should be aware of the following requirements regarding compliance with FTA federal clauses should they be selected pursuant to this RFP:

1) No Government Obligation to Third Parties.

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

2) Program Fraud & False or Fraudulent Statements & Related Acts.

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3) Access to Records.

- a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives,

including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

- c) 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 the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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.
 - d) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purpose of conducting an audit and inspection.
 - e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - f) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of the litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).
- 4) **Federal Changes.** The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they 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.
- 5) **Civil Rights Requirements (EEO, Title VI & ADA).** The following requirements apply to the underlying contract:
- a) **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as

amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b) **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

- i. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of labor, 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, Equal Employment Opportunity, as amended by Executive Order No. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementation requirements FTA may issue.
- ii. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- iii. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing

requirements FTA may issue.

- c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 6) **Incorporation of FTA Terms.** The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth 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 Purchaser requests which would cause the Purchaser to be in violation of the FTA terms and conditions.
- 7) **Energy Conservation.** The Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).
- 8) **Termination Provisions.**
 - a) Metro COG reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the Contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or Metro COG.
 - b) Metro COG may cancel or reduce the amount of service to be rendered if there is, in the opinion of the Client, a significant increase in local costs; or, in the opinion of the Client, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, Metro COG will notify the Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

In the event of any termination, Metro COG shall pay the agreed rate only for services delivered up to the date of termination. Metro COG has no obligation to the Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.
- 9) **Debarred, Suspended, or Ineligible Contractors.** The Contractor certifies that his/her firm is not included on the U.S. Comptroller General's or General Services Administration's Consolidated List of Persons or Firms Currently Debarred or Suspended for Violations of Various Public Contracts Incorporating Labor Standards.

10) Breach of Contract and Dispute Resolution.

- a) Disputes will be presented in writing to the Metro COG Project Manager. Metro COG personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

If Metro COG and the Contractor cannot resolve the dispute, the issue will be presented in writing to the Metro COG Executive Director within ten [10] working days of dispute. If the dispute cannot be resolved by the Executive Director, it will be submitted in writing within ten [10] working days of the Metro COG Executive Director's decision to the Metro COG Policy Board or Executive Committee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Metro COG Policy Board or Executive Committee shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the Client, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) 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 a reasonable time after the first observance of such injury of damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Client and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

11) Lobbying Restrictions. The Proposer certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) 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 agreement) and that all sub-recipients shall certify and disclose accordingly.

12) Clean Air.

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13) Clean Water.

- a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

- 14) Fly America Requirements.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S 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. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. 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. The Contractor agrees to include the requirements of this

section in all subcontracts that may involve international air transportation.

15) **Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act.** The Contractor agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. 3702, and with implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provision Applicable to Nonconstruction Contracts Subject to the Contract Work hours and Safety Standards Act),” 29 CFR Part 5.

16) **Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

- a) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in 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.
- c) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

17) **Rights in Data and Copyrights.** The following requirements apply to each contract involving experimental, developmental or research work:

- a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory.

Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

- b) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
- i. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - ii. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - iii. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be

delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- iv. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - v. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - vi. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - vii. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- c) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.* , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

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.

- d) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

18) **Disadvantaged and Small Business Enterprise.** In connection with the performance of this service, the Contractor will cooperate with the Purchaser in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by the Purchaser for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the Purchaser with the necessary certification and records for reporting purposes. The majority of the contract is labor, which is not a contracting opportunity.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted 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 Cities deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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 Purchaser. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The Contractor must promptly notify the Purchaser 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 Purchaser.

Fostering Small Business Participation

The Purchaser has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business

enterprises (SBE)/participation in contracting with the Purchaser. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

- 19) **Prompt Payment and Return of Retainage.** Pursuant to 49 CFR 26.29, for each covered prime contract issued by the Purchaser with support from FTA funds, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fourteen calendar days from the receipt of each payment the prime contractor receives from the Purchaser. The prime contractor agrees further to return retainage payments to each subcontractor within fourteen calendar days after the subcontractor's 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 Purchaser.

Exhibit A – Cost Proposal Form

Cost Proposal Form – Include completed cost form (see below) in a separate sealed envelope – labeled “**Sealed Cost Form – Vendor Name**” and submit with concurrently with the technical proposal as part of the overall RFP response. The cost estimate should be based on a not to exceed basis and may be further negotiated by Metro COG up identification of the most qualified contractor. Changes in the final contract amount and contract extensions are not anticipated.

REQUIRED BUDGET FORMAT Summary of Estimated Project Cost

1.	Direct Labor	Hours	x	Rate	=	Project Cost	Total
	Name, Title, Function	0.00	x	0.00	=	0.00	0.00
			x		=	0.00	0.00
			x		=	0.00	0.00
				Subtotal	=	0.00	0.00
2.	Overhead/Indirect Cost (expressed as indirect rate x direct labor)					0.00	0.00
3.	Subcontractor Costs					0.00	0.00
4.	Materials and Supplies Costs					0.00	0.00
5.	Travel Costs					0.00	0.00
6.	Fixed Fee					0.00	0.00
7.	Miscellaneous Costs					0.00	0.00
Total Cost					=	0.00	0.00

Exhibit B - Debarment or Suspension Certification

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-255, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

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

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined in 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this order. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor _____

Signature of Authorized Official _____ Date ___ / ___ / ___

Name & Title of Contractor's Authorized Official _____

Exhibit C - Certification of Restriction on Lobbying

I, _____ hereby certify on
(Name and Title of Grantee Official)

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, an 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 subcontracts, 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. Code 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 ____ / ____ / ____

(Title of authorized official)