

**St. Cloud Metropolitan Transit Commission  
(Metro Bus)**

**Request for Proposal  
Physical Access Project**

**Metro Bus  
665 Franklin Avenue N.E.  
St. Cloud, MN 56304**

**Primary Contacts:**

Steve Williams – I.T. Manager

Phone: 320-529-4496

Email: [swilliams@stcloudmtc.com](mailto:swilliams@stcloudmtc.com)

Gary Korneck – Procurement Manager

Phone: 320-529-4488

Email: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)

**Project Schedule:**

**RFP Release Date:** July 19, 2021

**Pre-Proposal Meeting:** July 26 – 29, 2021 (Contact Steve Williams to schedule an appointment)

**Proposals Due:** August 11, 2021, 12:00 p.m. CST

**Contract Award:** August 16, 2021, 5:00 p.m. CST

**Executed Contract:** August 23, 2021, 5:00 p.m. CST

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**I. Project Overview**

The St. Cloud Metropolitan Transit Commission (Metro Bus) will be accepting proposals from qualified Vendors for the replacement of existing door access nodes, updating the licensing and maintenance contract for existing physical access system, and addition of 5 additional portals (including required door hardware).

**II. Project Locations**

Metro Bus Main Operations Center  
665 Franklin Avenue N.E.  
St. Cloud, MN 56304

Mobility Training Center  
700 West St. Germain, Suite 100  
St. Cloud, MN 56301

Transit Center  
510 1<sup>st</sup> St. South  
St. Cloud, MN 56301

**III. Proposal Process**

**1. Proposals Due**

Proposals must be submitted no later than **Wednesday, August 11, 2021, 12:00 p.m. CDT to Attn: Gary Korneck, Procurement Manager.** Proposals may be sent via email, certified mail, or hand delivered. Submitted proposals must be clearly identified as: **“Metro Bus Physical Access Proposal”**.

**2. Pre-Proposal Conference and Site Visit**

A pre-proposal conference and site visit will be held at **Metro Bus Operations Center located at 665 Franklin Avenue N.E, St. Cloud, MN 56304 (Please contact Steve Williams, IT Manager, to schedule your appointment)** from Monday, July 26 through Thursday, July 29, 2021, 11:00 AM to 3:00 PM CDT. During the site conference vendors will have the opportunity to view installation location and existing physical access infrastructure.

Masks will be required and social distancing guidelines will be followed.

**3. Pre-Proposal Inquiries**

All inquiries pertaining to the project specifications must be directed to:

**Steve Williams, I.T. Manager**

**Phone: 320-529-4496**

**Email: [swilliams@stcloudmtc.com](mailto:swilliams@stcloudmtc.com)**

**4. Late Proposals**

Proposals received after the closing date and time as stated in this RFP shall be deemed late, shall not be considered, and shall remain unopened.

**5. Modification/Withdrawal of Proposal**

Vendors will not be allowed to withdraw their proposal after the closing date and time. Vendors may not change the wording of their proposal after the closing date and time and no words or comments may be added unless requested by Metro Bus for purposes of clarification. Metro Bus will be under no obligation to receive further information, whether written or oral, from any Vendor after the final closing date and time.

Metro Bus reserves the right to modify the language or specification of this Request for Proposal at any time via Addendum prior to the proposal due date.

**6. Errors and Omissions**

Vendors will not be allowed to take advantage of any errors or omissions in the specifications. Inconsistencies in the specifications should be reported to Metro Bus whenever found. The information contained is presented solely as a guideline for all Vendors and is not guaranteed or warranted to be accurate.

**7. Acceptance of Proposals**

This Request for Proposal should not be construed as an agreement of services. Metro Bus is not bound to accept the lowest price proposed or any of those submitted. Metro Bus may cancel this RFP at any time and shall have no liability to the Vendor for any costs incurred in connection with preparation of a response to this Request for Proposal.

**8. Addendums**

Metro Bus may modify the RFP prior to the proposal due date by issuance of an addendum. In the event a Vendor should identify a discrepancy or omission in this RFP or any other documentation provided by Metro Bus, the Vendor shall immediately notify Metro Bus of such potential discrepancy or omission in writing via email. An addenda to this RFP shall be issued in writing. No oral statements, explanations, or commitments by anyone shall be acknowledged by the Vendor without receipt of a written addendum.

**9. Tax Exemption**

Metro Bus is tax exempt. A copy of Metro Bus's Certificate of Exemption Form will be provided upon request.

**10. Agreement of Terms**

By submitting a proposal, the Vendor agrees to all of the terms and conditions set forth in this RFP. Vendors must not alter any portion of the RFP document with the exception of providing the information as requested. The conditions set forth within this RFP will hold precedence over any and all other executed agreements.

**11. Final Agreement**

The final contract, including all attachments, certifications, conditions, specifications, etc. as made part of this Request for Proposal will contain the entire understanding of the parties hereto. With the subject matter hereof and there are no other agreements, understandings, representations or warranties whether expressed, implied, statutory or otherwise, other than set forth herein.

**12. Contract Period**

The chosen Vendor and Metro Bus shall sign a formal contract within five (5) working days after the proposal award date. Any contract award as a result of this RFP will be for a minimum of one (1) year. The Vendor shall not in any way assign or transfer its rights or interests under this agreement in any way whatsoever without prior written consent of Metro Bus.

### 13. Proposal Award

Metro Bus will make an award to the most responsible Vendor in the best interest of Metro Bus and considering the ultimate economy of the quote within the guidelines of the specifications.

**Evaluation and selection of a proposal by Metro Bus will include as follows:**

Evaluation Elements	Max Score	Awarded Points
<b>Experience/Qualifications:</b> The Vendor has an established reputation in the industry and has a recognized presence in the St. Cloud area. An account executive has been identified.	<b>25</b>	
<b>Implementation Plan:</b> The Vendor has outlined a detailed installation plan for all locations which includes date and time of delivery, removal of existing equipment, set-up and configuration of new equipment, training of Metro Bus staff and estimated completion.	<b>20</b>	
<b>Technical/Service Support:</b> The Vendor has identified its technical and maintenance support structure including all primary contact info, estimated response times, hours of support operation and troubleshooting techniques.	<b>20</b>	
<b>Price Proposal:</b> The proposed pricing appears complete, realistic, and cost effective. The total price represents value and incentive for Metro Bus.	<b>35</b>	
<b>TOTAL POINTS:</b>	<b>100</b>	

### 14. Force Majeure

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, epidemics, pandemics, any federal or state coronavirus mandates or protocols, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and continues performance whenever and to the extent such causes are removed.

### **15. Indemnification**

The Vendor agrees to indemnify and hold harmless Metro Bus, its contractors and all officers, agents and employees thereof from any and all claims or losses occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of the contract and from any and all claims or losses occurring or resulting to any person, firm or corporation who may be injured or damaged by Metro Bus, its contractors, agents, or employees, arising out of the performance of the contract.

### **16. Change Orders**

A Change Order may result in changes in the scope of the contract after official award and execution. Change Order requests shall be based upon an agreement between the Vendor and Metro Bus, and shall state their agreement upon all of the following:

- a. A change in volume or product;
- b. The amount of adjustment in the Contract sum, if any;
- c. The extent of the adjustment in the Contract sum, if any.

Adjustments to the final executed contract proposed by a change order shall be initiated when the Vendor and Metro Bus have duly executed the following:

- a. Fully executed contract addendum between the Vendor and Metro Bus.

## **IV. Warranty Provisions**

### **1. General**

The Vendor, its Sub-Contractors, Manufacturers and Suppliers shall indicate and provide for warranty periods on all required equipment and supplies. Warranties shall be based upon the typical structural components of the equipment and supplies used. The equipment and supplies shall maintain their structural and functional integrity throughout the warranty period. The Vendor shall provide a list of product and manufacturer names (including product stock numbers) and product specifications to include ongoing maintenance and care.

### **2. Detection of Defects**

If Metro Bus detects a defect within the warranty period, it shall promptly notify the Vendor. Within three (3) working days after receipt of

notification, the Vendor shall either agree that the defect is, in fact, covered by warranty, or reserve judgment until the Vendor's representative inspects the item. In the event that defects of materials or workmanship become evident during the warranty period, the corrections of such defects shall be deemed to be within these warranty provisions, even though the necessary corrective work may extend beyond the warranty period.

**3. Out-of-Warranty Repairs**

In the event that defects of materials or workmanship become evident beyond the stated warranty period but within the expected or stated life expectancy, the Vendor will agree to negotiate in good faith with Metro Bus a "policy adjustment" on all materials and labor for repairs deemed necessary and performed in relation to the reported defect.

**4. Repair Performance**

Metro Bus shall require the Vendor or its designated representative to perform warranty-covered repairs. In the event Metro Bus requires the Vendor or its designated representative to perform warranty covered repairs, the necessary repairs must be completed within two (2) working days after receiving notification of a defect from Metro Bus.

**V. Insurance Requirements**

The Primary Vendor and its Sub-Contractors will submit to Metro Bus, prior to any services performed, certificates of the Vendor's insurance coverage indicating the presence of coverages and limits no less than the following:

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Vendor's negligence.



2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for "Any Auto" or "All Owned, Scheduled, Hired and Non-Owned".

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Vendor's negligence.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
General Aggregate Limit (Other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Vendor's negligence.

**VI. DBE/SBE**

It is the policy of Metro Bus that disadvantaged and small business enterprises as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with funds under this agreement. Consequently, the DBE/SBE requirements of 40 CFR, Part 23 apply to this agreement. The Contractor agrees to ensure that disadvantaged and small business enterprises as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this agreement. In this regard all respondents shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to assure that disadvantaged and small business enterprises have the maximum opportunity to compete for and perform contracts. Respondents shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

**The DBE Goal (not requirement) for this project is two (2) percent**

**VII. Protest Procedures**

Vendors that feel an alleged violation of Metro Bus's procurement procedures has occurred during a solicitation may file a written protest with the Chief

Executive Officer (CEO) up to the date and time of the proposal opening. The CEO will review the protest and determine if the proposals will be opened or delayed. The CEO's decision will be transmitted in writing to the protesting party within five (5) working days.

Vendors that feel that an alleged violation of Metro Bus's procurement procedure has occurred after proposal opening may file a written protest with the CEO up to three working days after the date and time proposals were opened. The CEO will review the protest and determine if the award of the contract to the responsive Proposer should be delayed. The CEO's decision will be transmitted in writing to the protesting party within three (3) working days.

Parties not satisfied by the CEO's decision regarding either type of protest described above, may, within five (5) working days of receipt of the CEO's written decision, appeal the decision to the Metro Bus Board of Commissioners. The appeal must be made in writing. The Commission Board will schedule a hearing where the appellant may be heard. Once the Commission's decision is announced, no further local appeals may be made.

Vendors should file all protests in care of the CEO, as appropriate, at the following address:

Metro Bus  
Request for Proposal Protest  
665 Franklin Avenue NE  
St. Cloud, MN 56304

The decision of the Metro Bus Board of Commissioners is final.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the purchases to have a written protest procedure or alleged failure to follow such procedures. Protestors may file a protest with the FTA regional office no later than five federal working days after a final decision of Metro Bus. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.

- c. Contain a statement of the grounds for protest and any supporting documentation.

This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.

(d) Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:

Office of Program Oversight  
Federal Transit Administration  
200 West Adams Street, Suite 320  
Chicago, IL 60606

Vendors are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to assessment of Metro Bus's cost and legal fees in responding to the protest. Vendors must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the Vendor agrees to be bound by these guidelines.

## **VIII. Termination of Service**

Metro Bus, by giving written thirty (30) day's notice specifying the effective date thereof, may terminate this contract in whole or in part without cause. The Vendor shall be entitled to compensation for services properly performed up to the date of notice of termination of this agreement including all reimbursable expenses.

## **IX. Vendor Requirements**

1. Each Vendor must include the following information with their proposal:
  - a. Vendor's principal business name
  - b. Vendor's principal business address
  - c. Vendor's business address through which most contract work will be performed
  - d. Vendor's main point of contact to include:
    - a) Name

- b) Business phone
- c) Mobile phone
- d) Email address

**2. Pricing Spreadsheet**

Vendors are required to submit an itemized price proposal.

**X. Current Equipment**

**Operations Center**

Description	Notes
S2 NetBox Extreme Controller	Will not be replaced
S2 Network Node (Rack Mount)	7 blades
S2 Network Node (Rack Mount)	7 blades
S2 Network Node (Wall Mount)	6 blades
Interfaced with floor sensors and garage door openers	
Portals Used: 39	

**Mobility Training Center**

Description	Notes
S2 Network Node (Wall Mount)	7 blades
S2 Network Node (Wall Mount)	5 blades
Interfaced with fire alarm panel, elevator, and front door lock override button	
Portals Used: 21	

**Transit Center**

Description	Notes
S2 Network Node (Wall Mount)	2 blades
Portals Used: 4	

Total Portals Licensed (Entire System): 64
Total Portals Used (Entire System): 64
Card readers are HID multiCLASS SE and current cards include MiFARE and DesFIRE
All doors have door contacts and request to exit sensors

## **XI. New Equipment Specifications**

This project will be broken down into two options. Option A and Option B. Metro Bus may select Option A, Option B, or both Option A and B for the project.

### **Option A Specifications**

- Replace existing six (6) S2 Network Nodes and thirty-four (34) blades with new S2 Network Nodes and blades that are compatible with the existing system. While still functioning, the current S2 nodes and blades have reached the end of their useful life.
- Renew currently expired maintenance and support license on system for a period of three years (one year if three years is not an option). Please note that this requirement is also listed in Option B; if both Option A and Option B are awarded, only one license is required.
- The S2 Extreme controller was replaced in 2020 and is not being replaced as part of this project.
- All existing power supplies, readers, door contacts, request to exit sensors, and wiring will be reused for this project.
- Provide all required installation, programming, and configuration for new equipment. All work must be done during normal business hours.
- Provide training on new equipment, programming, and configuration for one (1) Metro Bus employee to be performed at Metro Bus Operations Center.
- Proposed system must be compatible with existing physical access infrastructure. Approved equal or better substitutions providing features and functionality equal or better than the existing system will be considered.
- Provide a minimum of one (1) year parts and warranty on parts and labor.

### **Option B Specifications**

- Provide and install one (1) new S2 Network Node (S2-NN-E2R-WM) and two (2) additional blades for a total of three (3) blades in the Operations Receiving area next to the existing node.
- Provide and install one (1) new power supply suitable for at least 5 expansion portals (Altronix AL600ULACM or similar).
- Provide and install backup batteries for network node and power supply.

- Renew currently expired maintenance and support license on system for a period of three years (one year if three years is not an option). Please note that this requirement is also listed in Option A; if both Option A and Option B are awarded, only one license is required.
- Provide and apply (1) expansion 64 portal license for existing system.
- Provide and install cabling, HID multiCLASS SE Reader (RP40), door contact, request to exit motion sensor for five (5) new doors.
- Provide and install all necessary electronic locking hardware, closures, hinges, and any other required door hardware for a fully functional door.
- Provide all required installation, programming, and configuration for new equipment. All work must be done during normal business hours.
- Provide training on new equipment, programming, and configuration for one (1) Metro Bus employee to be performed at Metro Bus Operations Center.
- Proposed system must be compatible with existing physical access infrastructure. Approved equal or better substitutions providing features and functionality equal or better than the existing system will be considered.
- Provide a minimum of one (1) year parts and warranty on parts and labor.

Metro Bus will provide the following items.

- Access to an onsite lift if requested.
- 120 volt AC connections for Option B new power supply and Network Node.
- Network access for Option B Network Node connection to existing NetBox Extreme controller.

A site visit shall be scheduled before submitting proposal.

## **XII. Required Forms and Certifications**

The following required forms **MUST** be signed, dated and returned with each proposal:

1. Integrity Certification, Debarment-Suspension
2. New Restrictions on Lobbying
3. Non-Collusion Affidavit
4. Organizational Conflict of Interest
5. Schedule C – Contractors Schedule of DBE Participation
6. Schedule D – Certificate of Compliance with DBE Requirements

7. Schedule F – Letter of Intent to Perform as a Subcontractor
8. Responsible Contractor Verification Form
9. STATE OF MINNESOTA Resident Vendor Form

**Copies of the above referenced forms can be found at the following web address: <https://www.ridemetrobus.com/business-metro-bus/>**

### **XIII. Contracting Ethics**

#### **1. Gratuities**

It is a breach of contracting ethics for any person to offer, give, or agree to give any Metro Bus employee or former employee, or for any Metro Bus employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

#### **2. Kickbacks**

It is a breach of contracting ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### **3. Contingent Fees**

It is a breach of contracting ethics for a person to be retained, or to retain a person, to solicit or secure a Metro Bus contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### **4. Collusion**

It is a breach of contracting ethics for a person to collude, conspire, or agree with other persons, firms or corporations to submit a sham proposal, to refrain from proposal, to fix prices, costs, or profits, or to secure any other advantage against Metro Bus.

#### **5. Certification**

When signing the Proposal Quotation Form, Vendors are cognizant of these requirements and thereby certify that it has not breached any of the foregoing contracting ethics. No Vendor shall sign the proposal without reviewing all material facts. False or fraudulent certifications shall subject the Vendor to all penalties and remedies provided by law, and to liability for Metro Bus costs and fees, including attorney's fees, in enforcing this provision.

**6. Specification Documents**

These documents shall not include any exclusionary or discriminatory provisions that are not needed to meet the requirements of Metro Bus.

**XIV. Standard DOT Conditions**

The FTA Standard DOT Conditions are incorporated as a required component of this Request for Proposal document. A copy of the Standard DOT Conditions can be accessed at the following web address:

<https://www.ridemetrobus.com/business-metro-bus/>

**XV. FTA Third Party Clauses**

**No Federal Government Obligation to Third Parties**

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

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

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the



underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

### **Access to Records and Reports**

**a. Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

**b. Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

**c. Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

**d. Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **Federal Charges**

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 Metro Bus and FTA, as 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.

### **Civil Rights and Equal Opportunity**

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

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

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24,

1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

### **Incorporation of FTA Terms**

The preceding provisions include, 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 the most current FTA Circular 4220, 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 Metro Bus requests which would cause Metro Bus to be in violation of the FTA terms and conditions.

**1. METRIC REQUIREMENTS 15 U.S.C. §§205 2007-Pub. L. 110-69** As required by U.S. DOT or FTA, Metro Bus agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Metro Bus agrees to accept products and services with dimensions expressed in the metric system of measurement.

**2. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS)**

**ARCHITECTURE AND STANDARDS 23 U.S.C. Section 517(d) 23 U.S.C. §502**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**3. CORRIDOR PRESERVATION 49 U.S.C. 5323(q)** The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

**4. VETERANS EMPLOYMENT 49 U.S.C. 5325 (k)** Veterans Employment. As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give

a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Energy Conservation**

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

### **Termination for Convenience**

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

### **Termination for Default [Breach or Cause]**

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

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

### **Opportunity to Cure**

Metro Bus, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to

cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Metro Bus's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [30 days] after receipt of written notice from Metro Bus setting forth the nature of said breach or default, Metro Bus 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 Metro Bus from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**DBE**

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

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

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

**The DBE participation goal for this Contract is set at two (2) %.** This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than ten (10) percent of the total Contract price.

### **Recycled Materials**

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