

**ST. CLOUD METROPOLITAN TRANSIT
COMMISSION
REQUEST FOR PROPOSAL
FINANCIAL AUDITING SERVICES**

Date Issued: Friday, May 20, 2022

Requests for Clarification: Thursday, June 2, 2022, 5:00 p.m. CST

Response to Questions: Thursday, June 9, 2022, 5:00 p.m. CST

Proposal Due Date: Friday, June 17, 2022, 12:00 p.m. CST

Proposal Reviews: Friday, July 1, 2022

Proposal Award: Wednesday, July 17, 2022, 5:00 p.m. CST

**Metro Bus
Finance Department
665 Franklin Ave N.E.
St. Cloud, MN 56304**

Primary Contact: Paula Mastey – Director of Finance

Phone: 320-529-4490

Email: pmastey@stcloudmtc.com

Secondary Contact: Gary Korneck – Procurement Manager

Phone: 320-529-4488

Email: gkorneck@stcloudmtc.com

Proposal Evaluation Committee:

Paula Mastey – Director of Finance

Gary Korneck – Procurement Manager

Libby Dykema – Accounting Specialist

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INTRODUCTION

1. STATEMENT OF INTENT

The St. Cloud Metropolitan Transit Commission (DBA - Metro Bus) is seeking proposals from qualified firms of Certified Public Accountants to audit the financial information and prepare the financial statements for Metro Bus for the fiscal years ending September 30, 2022 through 2026.

The successful proposer will audit:

- I. Metro Bus's general-purpose financials as of each fiscal year beginning **October 1st** and ending **September 30th**;
- II. Metro Bus's compliance with laws and regulations related to federal, state, and local financial assistance;
- III. Metro Bus's schedule of Federal and State financial assistance.

2. SCOPE OF WORK

The successful proposer will conduct five (5) annual audits of Metro Bus in accordance with the following standards:

- I. Generally accepted auditing standards as set forth by the American institute of Certified Public Accountants;
- II. Generally accepted auditing standards as set forth by the General Accounting Offices (GAO);
- III. The provisions of the single audit act of 1996;
- IV. Government Auditing Standards, as issued by the Comptroller General of the United States;
- V. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" dated June 27, 2003, and any other Federal, State, or local requirements in effect now or placed into effect during the engagement of the contract.

3. REPORTS TO BE ISSUED

Each annual audit will include tests of the accounting records of Metro Bus and such other procedures as considered necessary. Following the completion of the audit of the fiscal year's financial information, the auditor shall render the following reports:

- I. A report on whether Metro Bus's financial statements are fairly represented, in all material aspects, in conformity with the generally accepted accounting principles;
- II. A report on the internal control structure as related to our audit of the financial statements and the auditor's understanding of internal control structure;
- III. A report on compliance with laws and regulations non-compliance with which may be material to the financial statements;
- IV. A report on the schedule of federal and state financial awards;
- V. A report on the internal control structure used in administering major federal and state financial assistance programs in accordance with OMB Circular A-133;
- VI. A report on compliance with the specific requirements related to major federal and state financial assistance programs identified on the schedule of financial assistance;
- VII. A report on compliance with general requirements of federal and state financial assistance;
- VIII. A report on compliance with specific program requirements related to non-major federal and state financial assistance transactions selected for testing;
- IX. A report on illegal acts and a report on findings and questioned costs, as required, depending upon the results of audit procedures.

In the reports on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements. In addition, reportable conditions that are also material weaknesses shall be identified as such in the report.

Non-reportable conditions discovered by the auditors shall be reported either verbally or in a separate letter to management.

Irregularities and illegal acts require the Auditors to make an immediate written report of all irregularities and illegal acts or

indications of illegal acts of which they become aware to the Metro Bus Board of Commissioners, the Chief Executive Officer and the Director of Finance.

Metro Bus will provide the basic information required for the audit. Management is responsible for the accuracy and completeness of that information. This responsibility includes the maintenance of adequate records and related internal control structure policies and procedures, the selection and application of appropriate principles, and the safeguarding of assets.

Auditing procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of physical existence of inventories and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions.

The auditors responsibility is limited to the period covered by the audit and does not extend to matters that arise during any later periods for which you have not been engaged as auditors and for which you have performed no auditing procedures.

4. REPORTING TO METRO BUS BOARD OF COMMISSIONERS

Auditors shall confirm that the Metro Bus Board of Commissioners is informed of each of the following:

- I. The Auditors responsibility under Generally Accepted Auditing Standards;
- II. Significant accounting policies;
- III. Management judgements and accounting estimates;
- IV. Significant accounting adjustments;
- V. Other information in documents containing audited financial statements;
- VI. Disagreements with management;
- VII. Management consultation with other accountants;
- VIII. Major issues discussed with management prior to retention;
- IX. Difficulties encountered in performing the audit;
- X. Results of the Single Audit.

5. SPECIAL CONSIDERATIONS

- I. Metro Bus may prepare one or more official statements in connection with the future sale of debt securities, which will contain the general purpose financial statements and the auditor's report thereon. The auditor shall be required, if requested by the fiscal advisor and/or underwriter, to issue a "consent and citation of expertise" as the auditor and any necessary "comfort letters".
- II. Additional assistance regarding the specifics of any future implementation and compliance with reporting requirements mandated by GASB may be required.

6. WORK PAPER RETENTION AND ACCESS TO WORK PAPERS

All work papers and reports must be retained, at the auditor's expense, for the required retention period recommended by the State of MN, unless the firm is notified in writing by Metro Bus of the need to extend the retention period. The auditor will be required to make work papers available, upon request, to the following parties or their designees:

- I. Metro Bus
- II. State Auditor's Office
- III. U.S. General Accounting Office (GAO)
- IV. Parties designated by the federal or state governments and by Metro Bus as part of an audit quality review process

7. BACKGROUND INFORMATION

- I. Metro Bus provides bus transit service to the cities of St. Cloud, Sauk Rapids, Waite Park, and Sartell in a radius that covers 36 square miles.
- II. Metro Bus has a current fluctuating staff of roughly 150 employees.
- III. Metro Bus has an operating budget of approximately \$13 million and is primarily funded by an 80% Federal and State grant appropriation with a 20% local contribution, consisting of a tax levy and bus fares.
- IV. Metro Bus participates in the following Pension Plans:
 - a. **PERA:** A defined benefit program with employer and employee contributions.
 - b. **Central States (Fixed Route drivers only):** A cost sharing, multiple-employer defined benefit plan that

is not a state or local government pension plan.

Contributions are fully paid by Metro Bus (employer).

- V. Metro Bus has one fund (General) and legally adopts one annual budget.
- VI. Metro Bus does not maintain an internal audit function other than internal checks performed by the Finance Department.

8. FINANCE DEPARTMENT STAFFING

Metro Bus's Finance Department is headed by Paula Mastey and consists of the following employees:

- Paula Mastey – Director of Finance
- Gary Korneck – Procurement Manager
- Libby Dykema – Accounting Specialist
- Kellen Rasmussen – Finance & Administration Specialist

9. COMPUTER SOFTWARE SYSTEMS

Avail Technologies, Inc.

- I. General Ledger
- II. Accounts Payable
- III. Accounts Receivable
- IV. Fixed Capital Assets
- V. Purchase Orders
- VI. Bus Parts Requisitioning
- VII. Bus Parts Inventory

Trapeze Ops

- I. Payroll Hour Tracking (union employees only)

Paycom Software, Inc.

- I. Payroll Processing
- II. Payroll Hour Tracking (non-union employees)
- III. Human Resources Tracking

10. AVAILABILITY OF PRIOR AUDIT REPORTS AND WORKING PAPERS

Interested Proposers who wish to review prior years audit reports and management letters may contact Paula Mastey, Director of Finance, by email at pmastey@stcloudmtc.com

Metro Bus will make every effort to make these reports available to the requesting proposer to aid in their response to the RFP.

11. AUDIT SCHEDULE

(A similar time schedule will be developed for audits of future fiscal years.)

I. Detailed Audit Plan

- a. The auditor shall provide Metro Bus both a detailed audit plan and a list of all schedules to be prepared by Metro Bus prior to **September 30, 2022**

II. Fieldwork

- a. The auditor shall complete all preliminary fieldwork by **November 18, 2022.**
- b. The draft financial statements will be complete by **December 12, 2022.**
- c. Presentation of the preliminary financials to the Metro Bus Board of Commissioners will take place on **December 20, 2022.**
- d. Final audited financials will be delivered when PERA information becomes available, approximately **Mid-March 2023.**

III. Fiscal Year Calendar

Metro Bus's Fiscal Year calendar runs from **October 1st – September 30th.**

12. ASSISTANCE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

I. Finance Department

Finance Department staff and responsible management personnel will be available during the audit to assist the firm by providing information, documentation, and explanations. The preparation of confirmations will be the responsibility of Metro Bus under the direction of the auditor.

II. Availability of work space and technology

Metro Bus will provide a conference room work space to include a conference table and chairs. The auditing staff will be provided access to computer wall jacks, telephones, copier, scanner, Wi-Fi and fax equipment.

III. Report Preparation

Report preparation, editing, printing, binding and distribution shall be the responsibility of the auditor.

RFP INSTRUCTIONS

1. Examination of Proposals

By submitting a proposal, the Proposer represents that it has thoroughly examined and become familiar with the scope of work and all requirements under this RFP and that it is capable of performing quality work to achieve Metro Bus's objectives.

2. Addendums

Any Metro Bus changes or revisions to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. Metro Bus will not be bound to any verbal or oral modifications to, or deviations from, the requirements set forth in this RFP.

3. Requests for Clarification

All questions, clarifications, or comments must be received in writing by Metro Bus no later than **Thursday, June 2, 2022, 5:00 p.m. CST**. Metro Bus prefers that questions be submitted via email to pmastey@stcloudmtc.com & gkorneck@stcloudmtc.com no later than the date and time specified above. No guarantee of response by Metro Bus can be made upon late receipt.

4. Metro Bus Response

All responses by Metro Bus will be in the form of a written Addendum to be provided to all known Proposers before or by **Thursday, June 9, 2022, 5:00 p.m. CST**.

5. Proposal Date and Time

I. Proposals must be submitted by **Friday, June 17, 2022, 12:00 p.m. CST**.

Proposal packets should be submitted in the following order:

- a. Title page, including contact person, contact information, and date of proposal
- b. Statement that proposal is irrevocable for 60 days
- c. Technical Proposal
- d. Cost Proposal

e. Proposer Guarantees and Warranties

II. Proposal packets should be emailed to:

Gary Korneck, Procurement Manager
Metro Bus
gkorneck@stcloudmtc.com
Phone: 320-529-4488

- IV. Proposals received after the above date and time will not be considered and the potential Proposer will be informed of their omission.
- III. Metro Bus reserves the right to postpone or delay proposal openings for its own convenience.

6. Acceptance of Proposal

Metro Bus reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in a proposal.

Metro Bus reserves the right to withdraw this RFP at any time without prior notice and makes to representations that any Contract or Agreement will be awarded to any Proposer responding to this RFP.

7. Failure to Respond

Metro Bus reserves the right to remove from its mailing lists for future RFP's for an undetermined amount of time, any Proposer for failure to accept a contract, failure to respond to two (2) consecutive RFP's and/or unsatisfactory performance. **Please note that a "No Bid" or a "Decline to Bid" is considered a response.**

8. Proposal Expenses

Metro Bus will not, in any event, be liable for any pre-contractual expenses incurred by the Proposer in preparation of responding to this RFP. The Proposer shall not include any such expenses as part of its proposal.

PROPOSAL REQUIREMENTS AND CONTENT

1. Qualifications, Related Experience and References

I. Table of Contents

II. Title Page

- a. Provide a brief resume to include the following:
 - Types of services offered;
 - Name and contact info of the primary company contacts;
 - The firm's name and address;
 - Size and location of offices;
 - Number of employees;
 - Number of years in business.
- b. Describe the firm's experience in performing work of a similar nature to that solicited in this RFP.
- c. Provide a minimum of three (3) references.

III. Transmittal Letter

Provide a signed letter of transmittal which briefly states the following:

- a. Proposer's understanding of the work to be done;
- b. The commitment to perform the work within the time period;
- c. A statement why the firm believes itself to be best qualified to perform the engagement;
- d. A statement that the proposal is a firm and irrevocable offer for sixty (60) days.

2. TECHNICAL REQUIREMENTS

I. General Requirements

- a. The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake an independent audit of Metro Bus in conformity with the requirements of this request for proposal. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposal requirements.

- b. The Technical Proposal should address all the points outlined in the request for proposal, excluding any cost information which should only be included in the sealed dollar cost bid. The Proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposal.

II. Independence

- a. The firm should provide an affirmative statement that it is independent of Metro Bus as defined by generally accepted auditing standards.
- b. The firm should also list and describe the firm's professional relationships involving Metro Bus for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.
- c. In addition, the firm shall provide Metro Bus written notice of any professional relationships entered into during the period of this agreement.

III. License to Practice in Minnesota

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in Minnesota.

IV. Firm Qualifications and Experience

- a. The firm is required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.
- b. The firm will also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the

firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

- c. The firm will also provide a brief narrative of its expertise with single audits.

V. Partner, Supervisory and Staff Qualifications and Experience

- a. Identify the principal supervisory and management staff, including engagement partners, managers and other supervisors and specialists who would be assigned to the engagement. Indicate whether each such person is licensed to practice as a certified public accountant in Minnesota. Provide information on the government auditing experience of each person.
- b. Provide information regarding the number, qualifications and experience of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.
- c. Audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

VI. Similar Engagements with Other Government or Transit Entities

- a. For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (minimum of 3, maximum of 5) performed in the last five years that are similar to the engagement described in this request for proposal.
- b. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the name and contact information of the principal client contact.

VII. Specific Audit Approach

- a. The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required of this request for proposal. In developing the work plan, reference should be made to such sources of information as Metro Bus's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.
- b. Proposers will be required to provide the following information on their audit approach:
 - a) Proposed segmentation of the engagement;
 - b) Level of staff and number of hours to be assigned to each proposed segment of the engagement;
 - c) Sample size and the extent to which statistical sampling is to be used in the engagement;
 - d) Type and extent of analytical procedures to be used in the engagement;
 - e) Approach to be taken to gain and document an understanding of Metro Bus's internal control structure;
 - f) Approach to be taken in drawing audit samples for purposes of tests of compliance;
 - g) Approach to be taken in determining laws and regulations that will be subject to audit test work.

VIII. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be requested by Metro Bus.

IX. Report Format

The proposal should include sample formats for required reports.

X. Acknowledgement of Required Audit Schedule

The proposal should include an acknowledgment of the required audit schedule and a statement as to the firm's ability to meet the schedule.

3. COST PROPOSAL

Total All-Inclusive Maximum Price

- a. The dollar cost proposal should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.
- b. Metro Bus will not be responsible for expenses incurred in preparing and submitting the technical proposal or the sealed dollar cost bid. Such costs should not be included in the proposal.
- c. The following information should be included in the dollar cost proposal:
 - a) Name of Firm
 - b) Certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with Metro Bus
 - c) A Total All-Inclusive Maximum Price for each of the five contract years
 - d) Rates by Partner, Specialist, Supervisory and Staff Level Times Hours anticipated for each
 - e) Cost for the preparation, editing, printing, and binding of the financial reports
 - f) A schedule of professional fees and expenses, presented in the format provided in the attachment (**Appendix B**), which supports the

total all-inclusive maximum price. The cost of special services should be disclosed as separate components of the total all-inclusive maximum price

g) Any out-of-pocket expenses, including those for firm personnel for its employees, shall be included in the total all-inclusive maximum price

d. **Rates for Additional Professional Services:** If it should become necessary for Metro Bus to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued throughout the engagement, then such additional work shall be performed only if set forth in an addendum to the contract between Metro Bus and the firm. Any such additional work agreed to between Metro Bus and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in the sealed dollar cost bid.

e. **Manner of Payment:** Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing shall cover a period of not less than a calendar month.

4. EVALUATION/AWARD PROCESS

I. Review Committee

Proposals submitted will be evaluated and interviews may be conducted by a committee consisting of the Metro Bus Finance Department Staff.

II. Evaluation Criteria

Metro Bus will evaluate proposals using the following criteria and corresponding weight:

Evaluation Elements	Max Weight
Company Qualifications & Experience	10
Staff Qualifications	15
Understanding of Technical Requirements & Scope of Work/Services Provided	25
Thoroughness in responding to the Request for Proposal	20
Past Performance, Quality of Services, Previous Experience of Similar Scope	15
Fee/Cost	15
TOTAL POINTS	100

III. Oral Interviews

During the evaluation process, the Metro Bus review committee may request any one or all firms to participate in an oral interview. Such interviews will provide firms the opportunity to answer any questions the Metro Bus review committee may have in regards to the firm’s proposal.

VI. Final Selection

Metro Bus will select a firm based upon the recommendations of the review committee.

5. CONTRACT TERM

- a. A contractual Agreement between Metro Bus and the successful Proposer will be for five (5) years.
- b. In the event of unsatisfactory performance or price, Metro Bus may choose to terminate the Agreement at any time upon ninety (90) days written notice.

GENERAL CONDITIONS

1. TAX EXEMPTION

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

2. 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.

3. LIABILITY INSURANCE REQUIREMENTS

Each Consultant will submit to Metro Bus, prior to any services performed, certificates of the Consultants 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 Consultants 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 Consultants negligence.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000

General Aggregate Limit \$2,000,000
(Other than Products/Completed Operations)
Coverage must include a Waiver of Subrogation endorsement as it pertains to the Consultants negligence.

4. PROTEST PROCEDURES

Proposers who 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 bid 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 (5) five business days.

Proposers who feel that an alleged violation of Metro Bus procurement procedure has occurred after proposal opening may file a written protest with the CEO up to (3) 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 bidder should be delayed. The CEO's decision will be transmitted in writing to the protesting party within three (3) business days.

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

Proposers should file all protests in care of the Chief Executive Officer or the Metro Bus Commission, as appropriate, to the following address:

St. Cloud Metropolitan Transit Commission
Bid Protest
665 Franklin Avenue NE
St. Cloud, MN 56304

The decision of the Metro Bus Commission is final.

5. PROHIBITED INTERESTS

No member, officer, or employee of Metro Bus or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement of the proceeds thereof.

6. INELIGIBLE CONTRACTORS

The Proposer hereby certifies that it is not one included on the U.S. Comptroller General's Consolidated List of Persons or Firms currently debarred for violations of various public contracts incorporating labor standards provisions.

7. BREACHES AND DISPUTE RESOLUTION

(1) Disputes. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Metro Bus's CEO. This decision shall be final and conclusive unless within (10) ten days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the CEO. In connection with any such appeal, the Proposer shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the CEO shall be binding upon the Proposer and Proposer shall abide by the decision.

(2) Performance during Dispute. Unless otherwise directed by Metro Bus, the Proposer shall continue performance under this Contract while matters in dispute are being resolved.

(3) Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or 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 or damage.

(4) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro Bus and the Proposer arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Metro Bus is located.

(5) Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall

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

8. GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in the State of Minnesota. The laws of Minnesota shall govern this transaction.

9. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26)

The St. Cloud Metropolitan Transit Commission (Metro Bus) has established a Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26, to ensure all entities have an equal opportunity to participate in DOT assisted contracts.

The objectives of Metro Bus's DBE/SBE program and of 49 CFR Part 26 are:

- I. To ensure non-discrimination in the award and administration of DOT assisted contracts;
- II. To create a level playing field on which DBE's can compete fairly for DOT assisted contracts;
- III. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- IV. To ensure that only firms that meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBE's;
- V. To help to remove barriers to the participation of DBE's in DOT assisted contracts;
- VI. To promote the use of DBE's in federally assisted contracts and procurement activities;
- VII. To assist the development of firms that can compete successfully in the market place outside the DBE/SBE program.
- VIII. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.

This contract is subject to the requirements of Title 49, Code of Federal Regulations Part 26. Therefore, the vendor/contractor must satisfy the requirements for DBE participation as stated herein. These requirements are in addition to all other Equal Opportunity Employment (EEO) requirements of this contract. The St. Cloud Metropolitan Transit Commission shall make all determinations with regard to whether or not a bidder/offeror is in compliance with the requirements stated herein.

The vendor/contractor, its subrecipients, or its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The vendor/contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the vendor/contractor to carry out these requirements is a material breach of this contract, which may result in termination of the contract or such remedy as deemed appropriate by the St. Cloud Metropolitan Transit Commission which may include, but is not limited to:

- I. Withholding monthly progress payments;
- II. Assessing sanctions;
- III. Liquidated damages (if applicable);
- IV. Disqualifying the vendor/contractor from future bidding as non-responsible (49 CFR Part 26.13 (b)).

The St. Cloud Metropolitan Transit Commission will only accept DBE's who are:

- I. Certified at the time of bid opening or proposal evaluation;
- II. An out-of-state firm who has been certified by either a local government, state government, or federal government entity who is authorized to certify DBE status;
- III. An agency whose DBE certification process has received FTA approval.

The vendor/contractor is required to pay its subcontractors for satisfactory performance of their work in relation to this contract no later than thirty (30) days after the vendor/contractor's receipt of payment for that work from the St. Cloud Metropolitan Transit Commission or in accordance with state statutes, whichever is more restrictive. In addition, the vendor/contractor is required to return any retainage payments to those subcontractors within thirty (30) days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

The vendor/contractor must promptly notify the St. Cloud Metropolitan Transit Commission whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work. The vendor/contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The vendor/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 St. Cloud Metropolitan Transit Commission.

DBE PARTICIPATION GOAL: There is no DBE participation goal for this contract.

10. FEDERALLY REQUIRED CERTIFICATION DOCUMENTS

The following certifications have been provided as part of this Request for Proposal and are required to be submitted with each proposal:

- I. Integrity Certification/Debarment-Suspension
- II. Non-Collusion Declaration
- III. Contractors Schedule of DBE Participation Parts C, D, & F

Copies of these required certification documents can be accessed at the following web address: <https://www.ridemetrobus.com/business-metro-bus/>

Failure to include these required documents with your proposal will constitute your proposal as non-responsive and it will not be considered.

11. CONTRACTING ETHICS

I. 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.

II. 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.

III. 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.

IV. 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.

V. 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.

VI. Specification Documents

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

12. 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/>

13. 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.

21. 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.

22. 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.

23. 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.

24. 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).

There is no DBE participation goal for this contract.

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.

APPENDIX A

PROPOSER GUARANTEES AND WARRANTIES

- I. The Proposer certifies it can and will provide and make available, as a minimum, all services set forth in Section II, Nature of Services Required.

- II. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.

- III. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the St. Cloud Metropolitan Transit Commission.

- IV. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official: _____

Name (typed): _____

Title: _____

Firm: _____

Date: _____