

**ST. CLOUD METROPOLITAN TRANSIT COMMISSION  
SOLID WASTE-RECYCLING DISPOSAL SERVICES  
INVITATION FOR BID  
May 2023**

The St. Cloud Metropolitan Transit Commission (DBA - Metro Bus) is requesting bids for providing solid waste, recycling and disposal services for a five (5) year period, beginning **July 3, 2023**, and ending **July 3, 2028**. All detailed information requirements are outlined in the following Invitation for Bid.

**I. SCOPE OF SERVICES**

**a. 665 Franklin Ave N.E., St. Cloud, MN 56304**

1. 8 yd. General Trash Dumpster (Weekly Service)
2. 3 yd. Recycling Dumpster (cardboard, paper, plastic, etc.) (Weekly Service)
3. 2 yd. Landfill Dumpster, classified as Industrial/Special Waste, not Hazardous Waste (Serviced as needed on a will-call basis).

**b. 700 West St. Germain, Suite 100, St. Cloud, MN 56303**

1. Qty of two (2) 96 gallon Cart Containers (Weekly Service)

**II. PROPOSAL CONTENTS**

- c. Bids must contain the total monthly charges for all containers with the exception of **1.A.3**, which will be a standard pick-up charge for will-call service.
- d. All solid waste-recycling management taxes, surcharges, and miscellaneous fees must be clearly identified separately from all standard service and industrial waste pick-up fees.

These fees shall include, but are not necessarily limited to:

1. Non-taxable fuel/environmental surcharge
2. Fuel/environmental surcharge
3. MN solid waste tax fee
4. County assessment fee

5. Recyclable material offset fee
6. Industrial/Special Waste Landfill dumpster, triennial re-test fee (estimated)
7. Administrative Fee

All additional taxes, fees, and surcharges not identified in items 1-7 above must also be included.

Each bid must include a percentage and total rate of cost for items I and II based upon current fuel-energy pricing, along with a detailed description as to how the rate is determined and how often (i.e. monthly) the rate is adjusted.

### III. **TERMS AND CONDITIONS**

- a. Metro Bus reserves the right to reject any or all bids, or to award the contract to the next most qualified vendor if the initial successful vendor does not execute a contract within five (5) days after award of the proposal. Metro Bus reserves the right at its sole discretion to accept the bid it considers most favorable to Metro Bus's interest, and the right to waive minor irregularities within the bid.
- b. Metro Bus reserves the right to request clarification of information submitted and to request additional information from any or all bidders.
- c. The initial proposed base price rate must be held firm for **twenty-four (24) months** after an agreement, resulting from this IFB, has been signed.
- d. Any proposed increases for years 3-5 must be proposed with supporting cost analysis that substantiates the rationale for the proposed increases.
- e. Proposed increases shall be limited to the increase in the Consumer Price Index (CPI) for any past 12-month period. This information will be reviewed and evaluated by Metro Bus prior to acceptance. This acceptance will not be unreasonably withheld.
- f. Metro Bus is tax exempt. A copy of Metro Bus's Certificate of Exemption Form will be provided upon request.
- g. If, through any cause, the vendor should fail to fulfill in timely and proper manner

the obligations agreed to, Metro Bus would exercise its right to appropriately terminate the contract at any time at Metro Bus's convenience after a mutually agreed upon time-frame to correct the acknowledged issue(s) by the vendor has passed.

- h. **This contract shall run for a period of five (5) years beginning July 3, 2023, to July 3, 2028.**
- i. Renewal conditions within standard industry service agreements are null and void to this specific contract.

IV. **PROPOSAL INSTRUCTIONS**

- a. ***All bids must be received by 12:00 p.m., Monday, June 5, 2023, at which time they will be opened.***
- b. All bids can be submitted via email, regular mail, or hand delivered to:

Gary Korneck, Procurement Mgr.  
St. Cloud Metropolitan Transit Commission  
665 Franklin Avenue N.E.  
St. Cloud, MN 56304  
Email: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)

Hand delivered or mailed bids must be clearly labeled:  
**"Metro Bus Solid Waste -Recycling Services Invitation for Bid".**

All questions relating to any portion of this IFB will be directed to:

Gary Korneck  
Metro Bus  
Ph. 320-529-4488  
Email: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)

- c. An award (if chosen) will be announced to the successful bidder by **5:00 p.m. Monday, June 5, 2023**, with the new contract to begin on **July 3, 2023**, and service to begin the week of **July 3, 2023**.

V. **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:

- a. To ensure non-discrimination in the award and administration of DOT assisted contracts;
- b. To create a level playing field on which DBE's can compete fairly for DOT assisted contracts;
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBE's;
- e. To help to remove barriers to the participation of DBE's in DOT assisted contracts;
- f. To promote the use of DBE's in federally assisted contracts and procurement activities;
- g. To assist the development of firms that can compete successfully in the market place outside the DBE/SBE program.
- h. 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:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages (if applicable);
- d. 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:

- a. Certified at the time of bid opening or proposal evaluation;
- b. 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;
- c. 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.

## VI. **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 bids 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 the bid opening may file a written protest with the CEO up to three working days after the date and time bids were opened. The CEO will review the protest and determine if the award of the contract to the responsive vendor 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 and bid name.
- 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.

## VII. **CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS**

Each vendor will submit to Metro Bus upon project award (and 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.

VIII. **The following Federal Transit Administration required certification forms must be completed and returned with the vendor's bid:**



**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY  
MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract) \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) or this certification; and
- 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation of this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

Date: \_\_\_\_\_

**APPENDIX A, 49 CFR PART 20 - - CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_ day of \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Title \_\_\_\_\_  
Company \_\_\_\_\_

**IX. STANDARD DOT CONDITIONS**

The FTA Standard DOT Conditions are incorporated as a required component of this Invitation for Bid document. A copy of the Standard DOT Conditions has been included as a separate attached PDF.

**X. CONTRACTING ETHICS**

**a. 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.

**b. 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.

**c. 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.

**d. 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.

**e. 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.

**f. Specification Documents**

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

**XI. 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 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.

**21.1 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.

#### **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.

**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.

**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).

**DBE PARTICITPATION GOAL:** 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.