

## **REQUEST FOR QUOTE**

### **CLASS 700 AND 400 BUS LINE INSPECTION SERVICES AND BUY AMERICA ANALYSIS**

**St. Cloud Metropolitan Transit Commission  
665 Franklin Ave N.E.  
St. Cloud, MN 26304  
Primary Contact**

**Gary Korneck – Procurement Manager  
Metro Bus  
Ph: 320-529-4488  
Email: [gkorneck@stlcoudmtc.com](mailto:gkorneck@stlcoudmtc.com)**

#### **Tentative Production Start Dates:**

Class 700 Buses – March 4-8, 2024 (Quantity 3)

Class 400 Buses – (Quantity 8)

- November 13, 2023 (Pilot Bus)
- January 15, 2024 (2<sup>nd</sup> Bus)
- January 22, 2024 (3<sup>rd</sup> Bus)
- January 29, 2024 (4<sup>th</sup> Bus)
- February 12, 2024 (5<sup>th</sup> Bus)

**(Remaining 3 buses TBD)**

- **RFQ Publication Date:** Friday, October 6, 2023
- **RFQ Questions Deadline:** Friday, October 13, 2023, 5:00 p.m. CDT
- **Proposal Due Date:** Wednesday, October 18, 2023, 12:00 p.m. CDT
- **Proposal Award:** Thursday, October 19, 2023, 5:00 p.m. CDT

## I. PROJECT OVERVIEW

The St. Cloud Metropolitan Transit Commission (DBE - Metro Bus) is requesting quotes from qualified firms to perform bus line inspection services, including a pre and post-delivery Buy America audit, in accordance with FTA 49 CFR, Part 663.37 for rolling stock procurements. Metro Bus has secured Federal grants for the procurement and manufacture of the following Class 700, Fixed Route and Class 400 Cutaway, Paratransit buses:

1. New Flyer Xcelsior, XN35, Low Floor, Fixed Route Buses
2. Fuel Type: Compressed Natural Gas (CNG)
3. **Quantity: Three (3) Buses in 2024, Four (4) Buses in 2025**

The buses will be manufactured at the following location:

**New Flyer of America, Inc.**  
**6200 Glenn Carlson Drive**  
**St. Cloud, MN 56301**

1. ARBOC Spirit of Mobility, Class 400 Low Floor, Cutaway Buses
2. Body/Chassis Type: Ford
3. Fuel Type: Compressed Natural Gas (CNG)
4. **Quantity: Five to Eight (5-8) Buses in 2023-2024, Eight (8) Buses in 2024-2025**
5. Vehicle Use: Paratransit
6. Bus Dealer: North Central Bus & Equipment

The buses will be manufactured at the following location:

**ARBOC Specialty Vehicles LLC**  
**51165 Greenfield Parkway**  
**Middlebury, IN 46540**

Conversion of the vehicles engines to Compressed Natural Gas (CNG) will take place at the following location:

**A-1 Alternative Fuel Systems**  
**28342 Glenview Drive**  
**Elkhart, IN 46514**

All bus inspections, road tests, and compliance verification will be completed at the New Flyer and ARBOC production facilities.

Upon completion of the Class 400 buses at ARBOC, the vehicles will be delivered to A-1 Alternative Fuel Systems for CNG conversion. The buses will then be transported back to ARBOC for final inspection before release to North Central Bus in St. Cloud, MN. The resident inspector must be present at the plant during the manufacturing process and at A-1 during the CNG conversion process.

Contractor must comply with FTA's handout titled "Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements". Proposers are responsible for being familiar with the most recent edition from FTA's website: <https://www.transit.dot.gov/buyamerica>

The Contractor shall be responsible for being familiar with and applying any updates, waivers, changes or amendments or other FTA communications as they pertain to Contractor provided services. The Contractor shall immediately notify Metro Bus of any changes that affect contracted work.

The successful Contractor shall ensure compliance with the Manufacturer's In-Plant Quality Assurance Program. This will include observing all bus assembly operations and predelivery testing procedures at the Manufacturer's plant prior to delivery to Metro Bus.

Metro Bus reserves the right to disapprove of any of Contractor's staff assigned to perform the work under this contract, and/or Contractor's proposed changes in staff. Metro Bus will not reimburse the Contractor for additional expenses for staff changes initiated by the Contractor or requested by Metro Bus under this contract. Upon any Metro Bus disapproval, Contractor will remove or reassign any staff found unacceptable by Metro Bus for good cause. Good cause includes, but not limited to, any conflict of interest or lack of performance, real or apparent. This right extends to Metro Bus's right to disapprove of any subcontractor used under this contract.

## II. PROPOSAL PROCESS

### 1. Primary Contact

2. All questions, request for clarifications, or comments related to this RFQ must be submitted in writing to: **Gary Korneck, Procurement Manager, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com) no later than: Friday, October 13, 2023, 5:00 p.m. CDT.** No guarantee of response by Metro Bus can be made upon late receipt.

### 3. Proposal Submission Requirements

Proposals must be received by Metro Bus no later than **Wednesday, October 18, 2023, 12:00 p.m. CDT.**

All proposals and related documentation must be submitted via email to the Attention of **Gary Korneck, Procurement Manager, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)**

It will be the responsibility of each Proposer to ensure their proposal arrives before the deadline.

### 4. Acceptance of Proposals

- A. Metro Bus reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive an informalities or irregularities in a proposal.
- B. Metro Bus reserves the right to withdraw this RFQ at any time without prior notice and

makes no representation that any contract or agreement will be awarded to any Proposer responding to this RFQ.

**5. Modification of Terms**

Metro Bus reserves the right to modify the terms, conditions, scope of work and provided data within this RFQ at any time at its sole discretion prior to the final RFQ due date.

**6. Executed Agreement**

Metro Bus and the selected Contractor will execute a contractual agreement with the terms and conditions and scope of services within this Request for Quote included as part of any final agreement.

**7. Tax Exemption**

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

**8. Force Majeure**

To the extent that either party is not able to perform its obligation under a subsequent 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.

**III. GENERAL REQUIREMENTS**

**1. Protest Procedures**

Contractors that feel an alleged violation of Metro Bus's procurement procedures has occurred during a solicitation may file a written protest with the Chief Executive Officer (CEO) up to the date and time of the proposal opening. The CEO will review the protest and determine if the proposals will be opened or delayed. The CEO's decision will be transmitted in writing to the protesting party within five (5) working days.

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

days.

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

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

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

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

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

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.
- c. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- d. Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:

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

Contactors 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. Contractors must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the Contractor agrees to be bound by these guidelines.

**2. 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 marketplace 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:

- I. Withholding monthly progress payments;
- J. Assessing sanctions;
- K. Liquidated damages (if applicable);

- L. 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:

- M. Certified at the time of bid opening or proposal evaluation;
- N. 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;
- O. 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.

**IV. PROPOSAL EVALUATION AND SELECTION**

**1. Basis for Award**

A contract award will be made to the Proposer whose overall proposal is the most advantageous to Metro Bus. Such determination will be made at the sole discretion of Metro Bus.

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

| <b>Evaluation Elements</b>  | <b>Max Score</b> |
|---|------------------|
| <b>Expertise, qualifications, and reliability of the Proposer</b> | 30               |
| <b>Ability to provide needed services</b>                         | 30               |
| <b>Price</b>  | 30               |
| <b>Proposal presentation</b>                                      | 10               |
| <b>TOTAL POINTS</b>   | 100              |

**V. SCOPE OF WORK**

The intent of this RFQ is to obtain high quality and professional bus line inspection/resident engineering services so as to ensure that the buses obtained by Metro Bus have been built using top quality materials, processes, and equipment per the agreed specifications along with compliance with all Federal Transit Administration rules, requirements, regulations.

The Contractors personnel shall possess thorough knowledge, expertise, skills and experience in public transit, quality assurance techniques, quality control techniques, quality management planning, Buy America provisions, FTA vehicle purchase regulations, factory and field product inspection and acceptance testing, auditing and project management.

The Contractor shall represent Metro Bus at the New Flyer, ARBOC and A-1 facilities and shall monitor the manufacturing and installation processes for Metro Bus’s vehicles. The Contractor will be authorized to approve the pre-delivery acceptance tests and to release the buses for delivery. The Contractor shall have access to New Flyer’s, ARBOC’s and A-1’s quality assurance files relative to the bus procurement. These files shall include drawings, material standards, parts lists, inspection processing and reports, records of defects, and packing slips, bill of lading of components and Buy America component compliance records.

Before the beginning of each type of bus manufacture, the Contractor will meet with New



Flyer's and ARBOC's Quality Assurance Staff. They shall review the inspection procedures and checklists. If deemed appropriate and feasible, the Contractor may begin monitoring bus construction activities prior to the start of bus fabrication. The same process will apply to the Class 400 Bus CNG conversion at A-1.

**1. Contractor Requirements**

- A. Review manufacturing and production process and quality assurance standards.
- B. Ensure conformity with FTA requirements, certifications, and standards for the manufacture of public transit buses.
- C. Be present throughout the bus manufacturing process (and CNG conversion process at A-1 for the Class 400 buses) and shall conduct inspection services during all processes to visually confirm compliance to Metro Bus's final Technical Specifications and ensure compliance with the performance standards contained therein.
- D. Confirm compliance to the findings of Metro Bus's Pre-Award Audit of New Flyer's and ARBOC's Buy America Certification.
- E. Observe the functional testing of each vehicle.
- F. Utilize techniques that will enable the inspectors to identify the maximum number of deficiencies as practical.
- G. Prepare and maintain video, photos, and records.
- H. Provide Metro Bus with the following Post-Delivery Reports as required by 49 CFR Part 663 in a form sufficient for submission to the Federal Transit Administration:
  - a. Post-Delivery Buy America
  - b. Post-Delivery Audit
  - c. Post-Delivery Buy America Content
  - d. Post-Delivery Purchasing Requirements Certification
  - e. Post-Delivery FMVSS
  - f. Post-Delivery TVM
- I. The Contractor will complete a Post-Delivery Audit Report in accordance with 49 CFR 663.31 through 663.37 inclusive. The Post-Delivery Audit, Buy America Analysis, and all reports and inspection records shall be delivered to **Gary Korneck, Procurement Manager, Metro Bus** within fifteen (15) working days upon completion of production.

**2. Inspections during the manufacturing process**

- A. (Class 400 Buses) Monitor and inspect all body-on-chassis suspension modifications during the manufacture of the Class 400 buses.
- B. Monitor and evaluate critical build-up and assembly of body frames including the roof, sidewall, front and rear sections, and floor structure.
- C. Visually monitor the manufacture, assembly and attachment of all undercarriage structures and upper body components.
- D. Verify uniformity of component installations, alignment and proper support.
- E. Check for proper thickness, type, and adhesion of undercoating's if applicable.
- F. Visually inspect the installation and observe functional tests of the ramps.
- G. Visually inspect uniformity, installation, and attachment of all CNG related components including torque of critical connections and fasteners.
- H. Visually inspect the installation and observe functional tests of the primary heating and air conditioning system along with auxiliary heaters. Ensure proper placement of auxiliary heaters.
- I. Visually inspect the installation and functional testing of the natural gas and fire suppression systems.
- J. Monitor and inspect routing of wiring harnesses and hoses. (Critical).
- K. Ensure proper routing and placement of all Metro Bus requested pre-wire electrical, harnesses and equipment locations.
- L. Monitor and inspect proper grade of bolts, appropriate type, and application of blind fasteners.
- M. Verify location and reliability of electrical circuits and terminals, electrical junction and component boxes.
- N. Monitor, test and verify the type and arrangement of passenger seating and any applicable seat belts.
- O. Monitor, test and verify the proper installation and function of the wheelchair securement equipment (Q-POD and V-PRO in Class 700 buses), proper wheelchair positions and wheelchair securement positions (Q'Straint, QRT360 in Class 400 buses).

- P. Monitor and inspect all component installations; alignment and support of all access doors, windows & frames, camera system, camera locations, floor covering, molding, compartments, interior barriers and panels, stanchions, hand rails, driver seat and power pedestal, dashboard, etc.
- Q. Inspect and monitor all engine and drive train components, brakes, mirrors, operator controls, signage/decals, interior and exterior lighting, hazard and vehicle detection lighting, bumpers, wheels, etc.
- R. Monitor and verify the proper installation and location of any applicable communication equipment.
- S. Visually identify and verify the repair of any air or fluid leaks.
- T. Visual and measured inspections of the overall fit and finish of the bus paint applications.
- U. Provide solutions to production line problems and implement approved change orders.
- V. Water and Road test inspections.
- W. Report on the progress and condition of each individual Class 700 and Class 400 buses as they move through the production process.

### **3. Progress Reports**

During the project, Metro Bus will receive from the Contractor weekly written reports and digital photos from the previous week's activities in regard to project progress and particular points of interest via email or SharePoint. These reports shall be provided to the following individuals:

- **Gary Korneck, Procurement Manager:** [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)
- **Mike Reid, Maintenance Manager:** [mreid@stcloudmtc.com](mailto:mreid@stcloudmtc.com)
- **Missy Kraemer, Operations Manager:** [mkraemer@stcloudmtc.com](mailto:mkraemer@stcloudmtc.com)
- **Mike Keller, Operations Manager:** [mkeller@stcloudmtc.com](mailto:mkeller@stcloudmtc.com)
- **Dave Green, Chief Operations Officer:** [dgreen@stcloudmtc.com](mailto:dgreen@stcloudmtc.com)

Weekly written reports will outline the work activity by bus number, hours of inspection, and deficiencies found along with the corrective action taken. The Contractor will work closely with Metro Bus, New Flyer, North Central Bus & Equipment, ARBOC and A-1 in providing solutions to production line problems, implementing approved change orders, and addressing open concerns. Progress reports will continue until all buses have been delivered to Metro Bus.

**4. Pre-Delivery Testing**

As part of the pre-delivery testing, upon completion of the production activities, the Contractor shall monitor the functional testing of each vehicle and conduct a configuration audit and road test of each vehicle in accordance with 49 CFR Part 663.37(b). A record of these tests shall be maintained. Any noted defects shall be called to the attention of New Flyer, ARBOC, or A-1 Quality Assurance for correction as appropriate.

Prior to the release for delivery, the Contractor shall maintain discrepancy reports on each bus. Prior to releasing each vehicle, the Contractor shall ensure that all noted discrepancies have been resolved or shall obtain Metro Bus's concurrence to accept the vehicle with the discrepancy. A list of noted discrepancies and completed forms shall be provided to Metro Bus along with completed release checklists.

**5. Post- Delivery Audit**

After all the vehicles have been delivered to Metro Bus, the Contractor shall review the report of its plant inspections to determine if a variance exists between the material listed on Metro Bus's Pre-Award Buy America audit and the material used by the vehicle manufacturer. Also, the Contractor shall confirm that the vehicles were built in compliance to Metro Bus's final technical specifications. If a variance exists, the Contractor shall review the resolution of the variance. If necessary, the vehicle manufacturer will be contacted. Once this review process is complete, the Contractor shall issue a report to Metro Bus stating that the vehicles comply with both the Pre-Award and Post-Delivery Buy America certification and the technical certification. Each separate report shall also contain a copy of New Flyer's or ARBOC's certification of compliance to FMVSS standards and a copy of the weekly reports in order to verify that inspectors were present during the manufacturing process. This report shall meet the Post-Delivery audit requirements of 49 CFR, Part 663.

**VI. QUOTATION REQUIREMENTS**

Proposers are required to submit the following information as part of their quote via email to **Gary Korneck, Procurement Manager, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com) Wednesday, October 18, 2023, 12:00 p.m. CDT.** In addition to the requirements in **1-3** below, Metro Bus encourages those quoting to provide any additional information as to the services included in their program as part of their Proposal.

- 1. Understanding Scope of Work** - Briefly describe the amount of time required by the inspector(s) at the manufacturing plant. Describe the services that will be performed and the documentation that will be submitted to Metro Bus. Briefly describe pre-delivery services, release of vehicles for delivery, post-delivery audits, progress reports and project deliverables. Address how the federal requirements will be met as to Buy America requirements. Provide examples of all documentation where applicable.

- 2. Statement of Qualifications** - Provide a brief history of bus line inspections performed by your company for Class 400 transit buses. Include the name of the person(s) who will perform the inspections and their qualifications on this type of work.
- 3. Price** - The price proposal shall include all fees and expenses (including but not limited to):
  - A. Travel
  - B. Lodging
  - C. Meals
  - D. Vehicle rental
  - E. Mobile phone service
  - F. Computer support
  - G. Overnight courier
  - H. Overhead and profit

The proposed price shall include the costs for performing the inspections during manufacturing and preparing all reports. In the event Metro Bus only receives one proposal, Metro Bus will be required to negotiate profit with the single proposer per FTA Circular 4220.1E. Metro Bus reserves the right to conduct negotiations on price for this service.

## **VII. ATTACHMENTS**

- A. Appendix A** – Sample Checklists
- B. Appendix B** – Sample Certificates and Forms
- C. Required FTA Certification Forms** – Must be signed, dated and returned with your proposal. Failure to do so will constitute your proposal as non-responsive and an automatic disqualification.
- D. Standard DOT Conditions**

## **VIII. 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.

**IX. FTA THIRD PARTY CONTRACT 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.

- a. 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.
- b. 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.
- c. 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.



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

### **Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro Bus requests which would cause Metro Bus to be in violation of the FTA terms and conditions.

- 1. METRIC REQUIREMENTS 15 U.S.C. §§205 2007-Pub. L. 110-69** As required by U.S. DOT or FTA, Metro Bus agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Metro Bus agrees to accept products and services with dimensions expressed in the metric system of measurement.
- 2. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS** 23 U.S.C. Section 517(d) 23 U.S.C. §502 Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.
- 3. CORRIDOR PRESERVATION 49 U.S.C. 5323(q)** The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.
- 4. VETERANS EMPLOYMENT 49 U.S.C. 5325 (k) Veterans Employment.** As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1.

Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Energy Conservation**

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

### **Termination for Convenience**

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Metro Bus may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by Metro Bus that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Metro Bus, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **Opportunity to Cure**

Metro Bus, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Metro Bus's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor 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 PARTICIPATION 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".