

EXHIBIT A
ST. CLOUD METROPOLITAN TRANSIT COMMISSION
(DBA - Metro Bus)
REQUEST FOR PROPOSAL
VENDING SERVICES

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

Primary Contact:
Gary Korneck, Procurement Manager
Phone: 320-529-4488
Email: gkorneck@stcloudmtc.com

PROJECT SCHEDULE:

RFP Publish Date: March 5, 2024

Written Addenda Questions Due: Wednesday, March 13, 2024, 5:00 p.m. CT

Response By Metro Bus: Monday, March 18, 2024, 5:00 p.m. CT

Proposals Due: Monday, March 25, 2024, 12:00 p.m. CT

Selection and Award: Thursday, March 27, 2024, 5:00 p.m. CT

Signed Contract: Monday, April 1, 2024, 5:00 p.m. CT

Projected Start Date: Friday, April 5,

1. PROJECT OVERVIEW

The St. Cloud Metropolitan Transit Commission (DBA – Metro Bus) is seeking proposals from experienced and qualified firms to install, service, and maintain beverage, candy-snack, and cold food option vending machines at the following locations:

1.1 Metro Bus Operations Center
665 Franklin Avenue N.E.
St. Cloud, MN 26304

1.2 Metro Bus Transit Center
510 1st Street South
St. Cloud, MN 56301

2. PROPOSAL INSTRUCTIONS

2.1 Primary Contact

Any immediate questions, requests for clarifications, or comments related to this RFP must be submitted via email to: **Gary Korneck, Procurement Manager, Phone: 320-529-4488, Email: gkorneck@stcloudmtc.com**

2.2 Proposal Submission Requirements

Proposals must be received by Metro Bus on: **Monday, March 25, 2024, 12:00 p.m. CT.**

Proposals and all supporting documentation may be submitted via email or hand delivered to the Attention of: **Gary Korneck, Procurement Manager.**

Hand delivered proposals must be clearly marked: **Metro Bus Vending Services Request for Proposal.**

2.3 Late Proposals

It will be the responsibility of each vendor to ensure their proposal arrives before the deadline. Late proposals will not be accepted, will be deemed "non-responsive" and will be left unopened.

2.4 Addendums

Any Metro Bus changes or revisions, or any vendor requests for clarification/revision to the RFP requirements must be communicated by written correspondence by: **Wednesday, March 13, 2024, 5:00 p.m. CT.** Any written addendum to this RFP will be collectively transmitted electronically to

all known proposers. A copy of each addendum will also be placed on Metro Bus's website: <https://www.ridemetrobus.com/business-metro-bus/> where the RFP has been advertised. All changes/revisions or accepted vendor requests for clarification/revision will be incorporated into the terms and conditions of any resulting agreement.

2.5 Proposal Detail

It will be the responsibility of each Proposer to examine the entire RFP and supporting documentation thoroughly and to seek clarification of any item or requirement prior to submitting a proposal.

2.6 Acceptance of Proposal

- a. 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.
- b. Metro Bus reserves the right to withdraw this RFP at any time without prior notice and makes no representations that any contract or agreement will be awarded to any consultant responding to this RFP
- c. Metro Bus reserves the right to postpone or delay proposal openings or contract award for its own convenience.
- d. Metro Bus will not be bound by any verbal or oral modifications to, or deviations from, the requirements set forth within this RFP. When provided by written request, proposers may amend or withdraw their proposal prior to the RFP due date and time. Proposers may not change the wording of their proposal after the RFP closing date and time and no words or comments may be added unless requested in writing by Metro Bus for purposes of clarification. Metro Bus will be under no obligation to receive further information, whether written or oral, after the RFP due date.
- e. Metro Bus will not be liable in any event 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.

2.7 Agreement of Terms

By submitting a proposal, the Proposer agrees to all the terms and conditions set forth within this RFP. Proposers must not alter any portion of the RFP document apart from providing information as requested.

2.8 Executed Agreement

Metro Bus and the selected Vendor will execute a contract agreement with the terms and the conditions and scope of services within this Request for Proposal included as part of the final agreement. **The term of this agreement will be for a period of five (5) years.**

(Metro Bus's current vending agreement will expire on April 5, 2024).

2.9 Final Agreement

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

2.10 Modification of Terms

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

2.11 Liability of Information

Metro Bus has placed considerable effort to ensure the accuracy of the data provided within this Request for Proposal and all supporting documentation.

2.12 Tax Exemption

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

2.13 Proprietary Information

Any information contained in a proposal that the Vendor considers proprietary must be clearly identified as such. Metro Bus will respect requests for non-disclosure of proprietary information to the extent that restricted information conforms to the Freedom of Information Act and any court rulings.

2.14 Governing Law

The 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.

3. GENERAL CONDITIONS

3.1 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.

3.2 Protest Procedures

Proposers 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 city working days.

Proposers 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 business working days.

Parties not satisfied by the CEO's decision regarding either type of protest described above may, within five business working 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 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 not later than five federal working days after a final decision by 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

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

4. Liability Insurance Requirements

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

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

Bodily Injury by accident \$1,000,000 each accident

Bodily Injury by disease \$1,000,000 policy limit

Bodily Injury by disease \$1,000,000 each employee

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

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 for 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: \$2,000,000

(Other than Products/Completed Operations)

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

5. 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:

- 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)).
- e. The St. Cloud Metropolitan Transit Commission will only accept DBE's who are:
- f. Certified at the time of bid opening or proposal evaluation;
- g. 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;
- h. 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.

6. EVALUATION AND SELECTION

6.1 Metro Bus will evaluate all proposals submitted and will select the proposal that best demonstrates the experience and capability to perform the scope of work defined in this RFP.

6.2 Each proposal will be initially reviewed to ensure it follows the proposal format and instructions and that all required documentation has been properly executed and submitted. Proposals that do not follow the specific format will not be considered.

6.3 Basis for Award

Evaluation Elements	Max Score
Experience and Qualifications	30
Quality of Products and Services Offered	20
Alignment to Metro Bus's Business Needs	20
Price Proposal	30
TOTAL POINTS	100

6.4 Award of a Contract

- a. Terms and conditions of a contract will be negotiated upon completion of the evaluation process. Metro Bus staff will recommend the contract be awarded to the best value responsible respondent whose proposal is most advantageous to Metro Bus based upon the evaluation criteria listed above.
- b. Cost shall not be the sole determining factor, however, Metro Bus, at its option, may request a best and final offer from the selected vendor regarding the Scope of Work and other associated fees.
- c. The contract award will not be final until Metro Bus and the successful proposer have executed a mutually satisfactory contractual agreement. No activity may begin prior to the execution of a contractual agreement between the successful proposer and Metro Bus.
- d. If the successful proposer refuses or fails to execute a contract, Metro Bus may award the contract to another proposer whose proposals comply with all the requirements of the RFP and any associated addenda.

7. TERMINATION

7.1 Termination for Convenience (General Provision)

Either party may terminate this contract, in whole or in part, at any time by thirty (30) day written notice to the other party when it is in both parties best interest. The Vendor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Vendor shall promptly submit its termination claim to Metro Bus within thirty (30) business days. If the Vendor has any property in its possession belonging to Metro Bus, the Vendor will account for the same, or dispose of it in the manner Metro Bus directs.

7.2 Termination for Default [Breach or Cause] (General Provision)

If the Vendor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Vendor fails to perform in the manner called for in the contract, or if the Vendor 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 Vendor setting forth the manner in which the Vendor is in default. The Vendor 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 Vendor 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 Vendor or Metro Bus, after setting up a new delivery of performance schedule, may allow the Vendor to continue work, or treat the termination as a Termination for Convenience.

7.3 Opportunity to Cure (General Provision)

Metro Bus or the Vendor, in its sole discretion may, in the case of a termination for breach or default, allow the offending party ten (10) business days in which to cure the defect. In such a case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions to cure the defect. If either party fails to remedy to the other's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) business days after receipt of written notice from either party setting forth the nature of said breach or default, both parties shall have the right to terminate the contract without any further obligation. Any such termination for default shall not in any way operate to remove either party from pursuing all available remedies and its sureties for said breach or default.

7.4 Waiver of Remedies for any Breach

In the event that either party elects to waive its remedies for any breach of any covenant, term or condition of this contract, such waiver shall not limit either parties remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

8. VENDOR INFORMATION

8.1 Company Information

Official company name:

Company address:

Primary contact name, title, phone number, email

9. VENDOR PROPOSAL REQUIREMENTS

- a. The firm selected for this contract must be licensed, bonded and insured, and be able to demonstrate and provide record of a minimum of five (5) years of successful experience in providing vending services.
- b. The Vendor will include with their proposal a list of the products to be offered in the respective vending machines along with the retail price list for each item.
- c. The proposal shall include the Commission schedule for each product type (i.e. – Beverages, Candy-Snack). Commissions shall be paid to Metro Bus on a monthly basis, no later than the 15th of the close of the following month.
- d. The proposal shall describe in as much detail as possible the types of vending machine equipment that will be installed at each location per the equipment listed in **Exhibit D**.
- e. Proposals shall include all standard payment options for each vending machine and must indicate whether the vending machines are new or used.
- f. Proposals shall include the following:
 - a) Product restocking schedule
 - b) Maximum response time for service calls
 - c) Average response time for refund requests
- g. Proposals shall include the vendors method for providing sales reports and the frequency in which the reports will be provided.
- h. Reports shall include, at a minimum, the following:
 - a) Product volume sold by facility
 - b) Revenue sales for each vending machine by facility
 - c) Revenue sales commission provided to Metro Bus by vending machine and facility

10. SCOPE OF WORK

- a. The Vendor agrees to comply with all federal, state and local laws and regulations governing the preparation, handling and serving of food and beverages, and to procure and keep in effect all necessary licenses and permits required by law, and to post such licenses and/or permits within the vending areas as may be required by law.
- b. Metro Bus will provide the Vendor with the necessary space for the operation of all of the vending equipment and shall furnish utilities for the efficient operation and performance of the equipment throughout the contract.

- c. Metro Bus will allow the Vendor's employees access to its vending machines during normal Metro Bus business hours.
- d. All vending machine equipment installed by the Vendor pursuant to this RFP and subsequent contract shall, at all times, remain the property of the Vendor.
- e. The Vendor assumes all responsibility for the equipment, materials, and services provided under this agreement.
- f. No storage of additional beverages or food by the Vendor will be provided by Metro Bus.
- g. Metro Bus assumes no responsibility for damages to the vending equipment resulting from vandalism or malicious acts of others. The Vendor shall not penalize Metro Bus in any manner as a result of the Vendor's removal of a machine as a result of vandalism or malicious acts of others.
- h. The Vendor shall honor all reasonable requests for refunds. It will be the Vendor's responsibility to address and resolve all refund requests without assistance from any Metro Bus employees.
- i. The Vendor shall post in a visible location on each piece of vending equipment clear instructions and contact information for resolving refund requests.
- j. The Vendor shall provide a local or toll free number for reporting vending machine related malfunctions or maintenance requests. This information shall be posted in a visible location on all vending machines.
- k. The Vendor shall keep vending machines stocked to provide sufficient amounts of products of good quality, dispensed in conformity with all applicable federal, state and local laws. The Vendor will adjust service frequency if unacceptable product outages occur more than one in any one-month period.

11. REMOVAL OF EXPIRED PRODUCT

Perishable food and beverages shall have a clearly visible expiration date on exterior or wrapper of the product. All expired food and beverages shall be promptly removed and properly disposed of by the vendor with no cost to Metro Bus.

12. REMOVAL OF EQUIPMENT UPON CONTRACT TERMINATION

- a. Upon termination or expiration of this contract, the Vendor shall have five (5) business days after said termination or expiration to remove all of the Vendor's equipment from Metro Bus properties. The Vendor

shall not cause any damage to Metro Bus premises during such removal and shall return each area where the vending machines were located to its original condition with the exception of normal wear and tear.

- b. In the event of a change in Vendor's, the outgoing and incoming Vendor's will coordinate their schedules to allow for the timely and efficient removal of existing vending machine equipment and the installation of new vending machine equipment to mitigate as much as possible any disruption in vending machine services to Metro Bus's customers and employees.

- 13. PRE-INSTALLATION MEETING/EQUIPMENT INSTALL** The Vendor will participate in a pre-installation meeting and facility walk-through with Metro Bus staff prior to the installation of any equipment.

14. FTA REQUIRED CERTIFICATIONS AND DBE SCHEDULES

- a. FTA Debarment-Suspension Form
- b. Schedule C – Contractors Schedule of DBE Participation
- c. Schedule D – Certification of Compliance with DBE Requirements
- d. Schedule F – Letter of Intent to Perform as a Subcontractor

Any proposal which does not include these fully executed documents will be considered non-responsive.

15. 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.

16. FTA THIRD PARTY CLAUSES

REQUIRED CLAUSES AND CONTRACT PROVISIONS

The services identified in these specifications are to be purchased with the assistance of a grant from the Federal Government under the Urban Mass Transportation Act of 1964, as amended hereinafter referred to as Federal Transit Administration (FTA). The successful Vendor will be required to comply with all terms and conditions prescribed for third party contracts in grant contracts between the United States of America and the St. Cloud Metropolitan Transit Commission (DBA – Metro Bus).

FEDERAL CHANGES

Vendor 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 the FTA, as they may be amended or promulgated from time to time during the term of this contract. The vendor's failure to comply shall constitute a material breach of this contract.

ACCESS TO RECORDS AND REPORTS

Applicability to Contracts

Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

a. Record Retention. The Vendor will retain and will require its subcontractor 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 Vendor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Vendor shall maintain all books, records, accounts and reports required under this Contract for a period of 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 Vendor agrees to provide sufficient access to FTA and its Vendors 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 Vendor agrees to permit FTA and its Vendors access to the sites of performance under this contract as reasonably may be required.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Clause

The Vendor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with all requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Violations will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY

Flow Down

Civil Rights requirements flow down to all third party Vendors and their contracts at every tier.

Clause

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

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 fairly 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.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Overview

It is the policy of Metro Bus and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. Metro Bus's DBE Program and DBE Goal can be found on our website at ridemetrobus.com.

Clause

For all DOT-assisted contracts, each third party vendor must include assurances that they will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Vendor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Vendor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Vendor 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 Vendor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, all prime Vendors agree to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment Metro Bus makes to the prime Vendor. (49 C.F.R. § 26.29(a)).

Finally, for contracts with defined DBE contract goals, the Vendor shall utilize the specific DBEs listed unless the Vendor obtains Metro Bus's written consent; and that, unless Metro Bus's consent is provided, the Vendor 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).

For the purpose of this Contract, Metro Bus will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)].

PROMPT PAYMENT

1. The Vendor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Vendor has received payment from Metro Bus.
2. In addition, all retainage amounts must be paid by the Vendor to the Subcontractor no later than fifteen (15) business days after the Subcontractor has, in the opinion of Metro Bus, satisfactorily completed its portion of the work.
3. A delay in, or postponement of, payment to the Subcontractor requires good cause and prior written approval of Metro Bus.
4. The Vendor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
5. Metro Bus will not pay the Vendor for work performed unless and until the Vendor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as

evidenced by the Vendor's sworn statement that it has complied with the prompt payment requirements.

6. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Vendor debarment.

EMPLOYEE PROTECTIONS

Prevailing Wage and Anti-Kickbacks

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the Vendor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Vendor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Vendor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Vendor agrees to pay wages not less than once a week. The Vendor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Vendors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Vendor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards For Awards Not Involving Construction

The Vendor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Vendor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including

guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Vendor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Vendor will permit such representatives to interview employees during working hours on the job. The Vendor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ADA ACCESS

The Vendor agrees that all work performed will be in compliance with all applicable laws pertaining to access. The Vendor also agrees to comply with all applicable provisions of the ADA Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.

ENERGY CONSERVATION

Clause

The Vendor 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.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Vendor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles company rented vehicles, or personally operated vehicles. The terms "company-owned vehicles" and "company-leased vehicles" refer to vehicles owned or leased either by the Vendor or Metro Bus.

Distracted Driving

The Vendor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer and driving a vehicle

the driver owns or rents, a vehicle the Vendor owns, leases, or rents, or a privately-owned vehicle on official business in connection with the work performed under this agreement.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Clause

The Vendor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Vendor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by Metro Bus. If it is later determined by Metro Bus that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro Bus, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Clause

Metro Bus and Vendor 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, Vendor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Vendor 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 AND RELATED ACTS

Clause

The Vendor 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 Vendor 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 Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

The Vendor 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 Vendor, to the extent the Federal Government deems appropriate.

The Vendor 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.

RECYCLED PRODUCTS

Clause

The Vendor 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.

TERMINATION

Termination for Convenience (General Provisions)

Metro Bus or the Vendor may terminate this contract, in whole or in part, at any time by thirty (30) day written notice to either party when it is in Metro Bus's or the Vendor's best interest. The Vendor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Vendor shall promptly submit its termination claim to Metro Bus to be paid. If the Vendor has any property in its possession belonging to Metro Bus, the Vendor will account for the same, and dispose of it in the manner Metro Bus directs.

Termination for Default (Breach or Cause) (General Provision)

If the Vendor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services and the Vendor fails to perform in the manner called for in the contract, or if the Vendor fails to comply with any other provision of the contract, Metro Bus may terminate this contract for default. Termination shall be effected by serving an advanced thirty (30) day written Notice of Termination on the Vendor setting forth the manner in which the Vendor is in default. The Vendor 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 Vendor 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 Vendor, Metro Bus, after setting up a new delivery of performance schedule, may allow the Vendor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

Metro Bus, in its sole discretion may, in the case of a termination for breach or default, allow the Vendor [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 any other appropriate conditions will be specified.

If the Vendor fails to remedy to Metro Bus's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Vendor 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 the Vendor. Any such termination for default shall not in any way operate to preclude Metro Bus from also pursuing all available remedies against the Vendor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event Metro Bus elects to waive its remedies for any breach by Vendor of any covenant, term or condition of this contract, such waiver by Metro Bus shall not limit Metro Bus's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

VIOLATION AND BREACH OF CONTRACT

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 or the Vendor shall constitute a waiver of any right or duty afforded any of them 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.

Substantial failure of the Vendor to complete the project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, Metro Bus will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Vendor recognizes that in the event of a breach of this Agreement by the Vendor before Metro Bus takes action contemplated herein, Metro Bus will provide the Vendor with sixty (60) days written notice that Metro Bus considers that such a breach has

occurred and will provide the Vendor thirty (30) days to respond and to take necessary corrective action.

Rights and Remedies of Metro Bus

Metro Bus shall have the following rights in the event that Metro Bus deems the Vendor is guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Vendor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include, but not be limited to, failure to proceed with work, failure to perform, failure to supervise, failure to comply with Metro Bus written directives in accordance with the contract.

Rights and Remedies of the Contractor

Inasmuch as the Vendor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Metro Bus, the Vendor expressly agrees that no default, act or omission of Metro Bus shall constitute a material breach of this Contract, entitling Vendor to cancel or rescind the Contract (unless Metro Bus directs Vendor to do so) or to suspend or abandon performance.

DISPUTES

Metro Bus and the Vendor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within Metro Bus and the Vendor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious, or grossly erroneous manner.

Performance during Dispute

Unless otherwise directed by Metro Bus, the Vendor shall continue performance under this Contract while matters in dispute are being resolved.

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 of any of its employees, agents, or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within ten (10) days after the first observance of such injury or damage. In addition, the vendor agrees to notify Metro Bus's project manager within 24 hours either verbally or in writing of any injury or damage that occurs relating to the project.

INCORPORATION OF STANDARD 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 Vendor shall not perform an act, fail to perform an 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.