

# **ST. CLOUD METROPOLITAN TRANSIT COMMISSION**

## **REQUEST FOR PROPOSAL**

### **CNG FUELING OPERATIONS UPGRADE**

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

#### **PRIMARY CONTACT:**

**Gary Korneck  
Procurement Manager  
[gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)  
Ph: 320-529-4488**

## 1. INTRODUCTION

### 1.1 Project Overview

The St. Cloud Metropolitan Transit Commission (DBA - Metro Bus) is soliciting proposals from qualified engineering firms to provide turn-key engineering and construction management services for a Compressed Natural Gas (CNG) fueling station upgrade.

This Request for Proposal will be directed in accordance with all applicable federal, state, and local laws, rules and regulations including:

- a. Minnesota Statutes, Section 174.21 to 174.24
- b. Minnesota Rules, Chapter 8835
- c. FTA Circular 4220.1F
- d. Federal Regulations and Policies 2 CFR Part 200

### 1.2 Project Schedule

The proposed schedule for the RFP process is as follows:

- a. RFP Publication Date: **Monday, April 8, 2024**
- b. Pre-Proposal Meeting and Site Tour: **Thursday, May 23, 2024, 9:00 a.m. to 12:00 p.m. CT**
- c. Deadline to receive written inquiries: **Friday, June 7, 2024, 5:00 p.m. CT**
- d. Response to written inquiries: **Friday, June 14, 2024, 5:00 p.m. CT**
- e. Proposals Due: **Friday, June 21, 2024, 12:00 p.m. CT**
- f. Oral presentations (if required): **Will be scheduled week of July 8, 2024, (Day and Time TBD)**
- g. Project Award: **Tuesday, July 16, 2024, 5:00 p.m. CT**
- h. Project Cost Negotiations: **Completed by Tuesday, July 30, 2024, 5:00 p.m. CT**
- i. Contract Award: **Wednesday, July 31, 2024, 5:00 p.m. CT**
- j. Notice to Proceed: **TBD**

### 1.3 Agency Background

The St. Cloud Metropolitan Transit Commission (Metro Bus) was created by the Minnesota Legislature in 1969 to operate as a independent Transit Authority. Metro Bus is located in St. Cloud, MN about 70 miles northwest of Minneapolis-St. Paul and provides fixed route and paratransit bus service to the cities of St. Cloud, Sauk Rapids, Waite Park, and Sartell in a radius that covers 36 square miles in central Minnesota.

Metro Bus is primarily funded by an 80% Federal and State grant appropriation with a 20% local contribution consisting of tax levy and bus fares.

#### **1.4 Primary Work Site**

**Operations Center:** Located at **665 Franklin Avenue, N.E. in St. Cloud, MN 56304** this is the primary location of the administrative offices, paratransit call center, maintenance shop, vehicle storage and CNG fueling operations. This facility was initially constructed in 1985 and has undergone several additions to the existing structure with the most recent in 2017.

## **2. PROPOSAL INSTRUCTIONS**

### **2.1 Primary Contact**

All questions, request for clarifications, or comments related to this RFP must be submitted via email to: **Gary Korneck, Procurement Manager,** [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com) no later than: **Friday, June 7, 2024, 5:00 p.m. CT.** No guarantee of response by Metro Bus can be made upon late receipt.

### **2.2 Proposal Submission Requirements**

Proposals must be received by Metro Bus by: **Friday, Jun 21, 2024, 12:00 p.m. CT.**

All proposals and related documentation may be submitted via email, hand-delivered, or by certified mail in a sealed envelope clearly marked "**Metro Bus CNG Fueling Operations Upgrade**" and delivered to:

**Attn: Gary Korneck**  
**Metro Bus**  
**665 Franklin Ave. N.E.**  
**St. Cloud, MN 56304**

It will be the responsibility of each Proposer to ensure proposals arrive before the deadline.

### **2.3 Pre-Proposal Meeting / Onsite Tour**

A pre-proposal meeting and project site tour for all interested proposers will be held at Metro Bus Operations, **665 Franklin Avenue, N.E., St. Cloud, MN 56304** on **Thursday, May 23, 2024, from 9:00 a.m. to 12:00 p.m. CT.** Pertinent information related to the project scope will be presented and discussed during

this meeting. Proposers will have the opportunity to tour the project site personally and ask any related questions. Proposers are strongly encouraged to have a qualified representative of their firm attend this meeting.

#### **2.4 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 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 Proposer responding to this RFP.
- c. Metro Bus reserves the right to postpone or delay proposal openings or award for its own convenience.
- d. Metro Bus will not be bound to any verbal or oral modifications to, or deviations from, the requirements set forth in this RFP.
- e. Metro Bus will not, in any event, be liable for any pre-contractual expenses incurred by the Proposer in preparation of responding to this RFP. The Proposer shall not include any such expenses as part of its proposal.

#### **2.5 Late Proposals**

- a. Any proposal received by Metro Bus after the specified date and time will not be considered and the Proposer will be informed of their omission.
- b. A proposal may be withdrawn if made by written request of their authorized representative but only if the withdrawal is made prior to the exact time set for receipt of proposals.

#### **2.6 Addendums**

Any Metro Bus changes or revisions, or any Proposer requests for clarification/revision to the RFP requirements must be communicated by written correspondence. Any written addendum's issued pertaining to the RFP will be collectively transmitted electronically to all known Proposer's, and a copy of each Addendum will be placed on Metro Bus's website where the RFP has been advertised. All changes/revisions or accepted Proposer requests for clarification/revision will be incorporated into the terms and conditions of any resulting Agreement. The final response date to all Addendum items will be: **Friday, June 14, 2024, 5:00 p.m. CT.**

## **2.7 Modification of Terms**

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

## **2.8 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.

## **2.9 Proprietary Information**

Any information contained in a proposal that the Proposer 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.

## **2.10 Tax Exemption**

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

## **2.11 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.

## **2.12 Governing Law**

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

## **3. PROPOSER REQUIREMENTS**

All information requested in this section must be addressed within each proposal by each Proposer:

### **3.1 Firm Background**

- a. Firm name, address and contact information including all contact information for the principal in charge.

- b. Brief history of the firm.
- c. Organizational structure.

### **3.2 Project Team**

- a. Provide a list of names and resume experience of personnel who will be assigned to the project.
- b. Resumes shall include qualifications, experience and role in previous similar projects.

### **3.3 Consultants**

List and describe other consultants that may be required for the project such as; structural, civil, mechanical or other engineering disciplines.

### **3.4 Experience/References**

- a. Provide a list and description of previous work experience in the last five (5) years directly related to this type of project and scope of work.
- b. Provide names and all pertinent contact information for at least three (3) directly related projects that have been completed within the last three (3) years.

### **3.5 Project Approach**

Provide a detailed as possible approach as to how you foresee this project developing including expected outcomes.

### **3.6 Project Schedule**

A detailed project schedule for completing the work specified in this RFP including a progress reporting strategy shall be provided with each proposal.

### **3.7 Unique Qualifications**

Provide a brief summary of any additional information that may be helpful as part of our proposal review process.

### **3.8 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.

### **3.9 Oral Presentations**

An oral presentation by a respondent to clarify a proposal may be required at the sole discretion of Metro Bus. However, Metro Bus may make an award based on the initial proposals received without discussion with any of the respondents. If oral presentations are required, they will be scheduled after the submission of the proposals. Oral presentations will be made at the respondent's expense.

### **3.10 Clarifications or Revisions to the Specifications and Requirements**

Proposers may raise any concerns they may have regarding any ambiguity, errors, conflict, discrepancy, or any other perceived deficiency within this RFP as part of the proposed deadline for receipt of written inquiries. Any request for revisions to the original RFP acknowledged by Metro Bus will be communicated in writing as an Addendum to the original RFP to all interested parties and a copy of each Addendum will be placed on Metro Bus's website where the RFP has been advertised.

## **4.0 SCOPE OF WORK**

Proposers must address each of the following project components separately. Metro Bus will determine if all components will be addressed for the project, or only a limited selection, based upon the specified recommendations and solutions provided for each with each vendor proposal.

### **4.1 Addition of 3<sup>rd</sup> Compressor and Additional Storage Tanks to CNG Compressor Compound**

- a. Current compressor system: ANGI (will consider equivalent type of system).
- b. Gas stub is already in place.
- c. Motor starter location is in place.
- d. Underground conduit for motor starter is in place.
- e. Area is prepped for future additional storage tanks.

### **4.2 Addition of Indoor CNG Fuel Dispenser**

- a. Examine feasibility of adding an indoor CNG dispenser.
- b. Right and Left Slave fueling pedestal (with automated fueling option).
- c. Determine necessary building modifications, International Fire Code and National Fire Protection Association standards.
- d. Trenching for new supply lines from existing fuel island.

#### **4.3 Addition of Heat Source in Outdoor CNG Fueling Island**

- a. Examine feasibility of adding a heat source.
- b. Determine necessary International Fire Codes and National Fire Protection Association standards.
- c. Provide potential options.

#### **4.4 Addition of Backup Electrical Source for CNG Fueling Operations**

- a. Evaluate, design and installation of a backup electrical source that would allow for uninterrupted fueling operations in the event of an electrical outage. (i.e. – standalone or portable generator, or potential linkup with Metro Bus’s existing backup generator).

### **5. BASIS FOR AWARD**

#### **5.1 Qualifications Based Selection**

Proposals will be evaluated and firms will be ranked based upon their qualifications with considerations of the proposals that are most advantageous to Metro Bus. Price **will not** be considered during the evaluation and ranking process.

#### **5.2 Negotiations**

Upon completion of the evaluation and ranking process, Metro Bus will begin discussions with the most qualified firm. Negotiations will include discussions refining the scope of work, schedule, deliverables, terms and price. In the event Metro Bus cannot reach a contractual agreement with its highest ranking firm, Metro Bus will begin negotiations with the next highest ranking firm and will continue through all ranked firms until a contract agreement is reached, or the process is terminated.



Evaluation Elements	Max Score
<p><b>Proposed Solution</b>  Proposer has provided a solution compliant with the project scope. Proposer has demonstrated it has the available resources and qualifications as a project consultant to fulfill the expectations of Metro Bus and to perform within the specified time limits.</p>	35
<p><b>Project Knowledge</b>  Proposer has demonstrated that they are qualified and experienced with CNG station design, bid specifications and bidding, construction and construction management requirements for making a CNG fueling station operable. Proposer has demonstrated knowledge of working with projects requiring compliance with applicable National Electric Code (NEC) considerations for natural gas operations.</p>	35
<p><b>Experience</b>  Proposer demonstrates experience, proficiency, and technical aptitude of compliance with applicable International Fire Code (IFC) and National Fire Protection Association (NFPA) standards. Proposer has experience working with USDOT and Federal Transit Administration (FTA) funded projects and all requirements. Proposer has experience as a project team overseeing construction managers, contractors and other construction consultants.</p>	30
<b>TOTAL POINTS</b>	<b>100</b>

## 6. GENERAL CONDITIONS

### 6.1 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.

### 6.2 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.

### **6.3 Insurance Requirements**

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

#### **2. Commercial Auto Coverage:**

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

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

**7.0 REQUIRED CERTIFICATION DOCUMENTS**

**7.1 Certifications and Affidavits Required**

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

- a. Integrity Certification-Debarment-Suspension
- 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

Failure by the Proposer to provide these executed documents with their proposal will deem their proposal non-responsive and will not be considered.

**8.0 FEDERAL PROVISIONS**

**8.1 FTA Third Party Contract 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**

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 Vendor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor 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 Vendor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Vendor 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 [ridemetrobust.com](http://ridemetrobust.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)].

**DBE Goal:** There is no DBE goal assigned for this project.

### **Prompt Payment**

1. The Vendor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than five (5) 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**

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.

### **Seismic Safety**

The Vendor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The Vendor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

### **Government-Wide Debarment and Suspension**

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.

### **Lobbying Restrictions**

The Vendor certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the Vendor for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Vendor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which Metro Bus has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By its signature on this Contract, the Vendor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this certification and disclosure, if any.

### **National Intelligent Transportation Systems (ITS) Architecture and Standards**

To the extent applicable, the Vendor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23U.S.C. §section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

### **Telecommunications Certification**

The Vendor certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the Vendor does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The Vendor will include this certification as a flow down clause in any subcontract related to this Contract.

### **No Government Obligation to Third Parties**

The Recipient 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**

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**

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.

**Termination for Default (Construction)**

If the Vendor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Vendor fails to



comply with any other provision of this contract, Metro Bus may terminate this contract for default. Metro Bus shall terminate by delivering to the Vendor a thirty (30) day Notice of Termination specifying the nature of the default. In this event, Metro Bus may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Vendor and its sureties shall be liable for any damage to Metro Bus resulting from the Vendor's refusal or failure to complete the work within specified time, whether or not the Vendor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Metro Bus in completing the work.

The Vendor's right to proceed shall not be terminated nor shall the Vendor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Vendor. Examples of such causes include acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with Metro Bus, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The Vendor, within [10] days from the beginning of any delay, notifies Metro Bus in writing of the causes of delay. If, in the judgment of Metro Bus, the delay is excusable, the time for completing the work shall be extended. The judgment of Metro Bus shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Vendor's right to proceed, it is determined that the Vendor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Metro Bus.

**Termination for Convenience or Default (Architect and Engineering)**

Metro Bus may terminate this contract in whole or in part, for Metro Bus's convenience or because of the failure of the Vendor to fulfill the contract obligations. Metro Bus shall terminate by delivering to the Vendor a thirty (30) day Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Vendor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Metro Bus's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Metro Bus has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use all



such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of Metro Bus, Metro Bus's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Vendor to fulfill the contract obligations, Metro Bus may complete the work by contract or otherwise and the Vendor shall be liable for any additional cost incurred by Metro Bus.

If, after termination for failure to fulfill contract obligations, it is determined that the Vendor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Metro Bus.

## **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.