

**ST. CLOUD METROPOLITAN TRANSIT COMMISSION  
(Metro Bus)  
REQUEST FOR PROPOSAL**

**Insurance: Property, Casualty, Auto, Liability, Cyber Security, Workers  
Compensation**

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

**Primary Contact:**

Gary Korneck, Procurement Manager

Phone: 320-529-4488

Email: [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)

**RFP Issue Date:** Friday, June 20, 2025

**Questions Due:** Monday, June 30, 2025

**Response to Questions:** Wednesday, July 2, 2025

**Proposal Due Date:** Wednesday, July 9, 2025, 12:00 p.m. CT

**Proposals Review/Reference Checks:** July 10 to July 14, 2025

**Board of Commissioners Approval:** Tuesday, July 15, 2025

**Proposal Award:** Wednesday, July 16, 2025

**Signed Contract:** Friday, July 25, 2025

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**I. AGENCY BACKGROUND**

The St. Cloud Metropolitan Transit Commission (DBA – Metro Bus) was created by the Minnesota Legislature in 1969 to operate as an independent Political Subdivision of the State of MN. 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. Metro Bus also operates a Park n’ Ride commuter bus service from East St. Cloud directly to the Northstar Commuter Rail Line station in Big Lake, MN. From there, commuters can ride the rail from Big Lake to downtown Minneapolis.

Metro Bus has a current total staff of roughly 140 full-time and 3 part-time employees and has an annual operating budget of approximately 20 million in FY2025. Metro Bus is primarily funded by an 80% Federal and State grant appropriation with a 20% local contribution consisting of a tax levy and bus fares.

**II. STATEMENT OF INTENT**

Metro Bus is requesting proposals from qualified insurance brokerage firms with experience in furnishing property, casualty, auto, liability, cyber security, and workers compensation insurance coverages, claims processing, and comparable extended services.

Vendors shall be duly licensed by, and in good standing with the State of Minnesota and have a minimum of five (5) years of experience in their respective field. Vendors must have experience in delivering services for governmental organizations. Vendors must describe in detail and reference their expertise and experience in supplying insurance for each type of the specified coverages.

**III. PROPOSAL INSTRUCTIONS**

**1. Primary Contact**

All questions, requests 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)

**2. Proposal Submission Requirements**

Proposals must be received by Metro Bus on: **Wednesday, July 9, 2025, 12:00 p.m. CT.**

All proposal documents may be submitted via email, hand delivered, or via certified mail in a sealed envelope clearly marked:

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

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

**3. Late Proposals**

Late proposals will not be accepted and will be left unopened.

**4. Written Questions**

All questions in relation to the project must be submitted in writing to **Gary Korneck, Procurement Manager**, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com) by **Monday, June 30, 2025**. No guarantee of response by Metro Bus can be made upon late receipt. Written responses will be provided by Metro Bus via email to all known proposers with an electronic copy posted on the Metro Bus website at: <https://www.ridemetrobus.com/business-metro-bus/>

**5. 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 **Monday, June 30, 2025**. Any written addendum to this RFP will be collectively transmitted electronically to all known proposers by **Wednesday, July 2, 2025**. A copy of each addendum will 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.

## **6. 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 vendor 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 to any verbal or oral modifications to, or deviations from, the requirements set forth within this RFP. When provided by written request, vendors may amend or withdraw their proposal prior to the RFP due date and time.
- e. Vendors 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.
- f. Metro Bus will not be liable in any event for any pre-contractual expenses incurred by the vendor in preparation of responding to this RFP. The vendor shall not include any such expenses as part of its proposal.

## **7. Agreement of Terms**

By submitting a proposal, the vendor agrees to all the terms and conditions set forth within this RFP. Vendors must not alter any portion of the RFP document with the exception of adding information as requested.

## **8. Modification of Terms**

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

**9. Liability of Information**

Metro Bus has placed considerable effort to ensure the accuracy of the data provided within this proposal and all attachments.

**10. Tax Exemption**

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

**11. 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.

**12. Metro Bus Obligations**

Provide a list of all pertinent data or documentation to be presented by Metro Bus that will assist you in completing the scope of services and program requirements.

**13. Governing Law**

Unless otherwise specified, this Contract shall be governed by the applicable laws of the City of St. Cloud and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located in Benton County, Minnesota. However, litigation in Federal Courts involving the Parties shall be in the appropriate federal court in the State of Minnesota.

**IV. GENERAL CONDITIONS**

**I. 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 city working days.

Parties not satisfied by the CEO's decision regarding either type of protest described above, may, within five city 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 of Metro Bus. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.
- c. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged

- failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- d. Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:  
Office of Program Oversight  
Federal Transit Administration  
200 West Adams Street, Suite 320  
Chicago, IL 60606

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.

## **II. Indemnification**

The vendor agrees to indemnify, hold harmless, Metro Bus, its officers, agents and employees from any and all liability including claims, demands, losses, costs, expenses and damages of every kind arising out of or in connection with services provided pursuant to this contract where such liability is founded upon or grows out of acts or omissions of any agents or employees of the Vendor.

## **III. 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.



## V. EVALUATION AND SELECTION

### 1. Oral Interviews/Presentations

The Metro Bus project team will evaluate all proposals submitted and will select the proposal or proposals that best demonstrate the experience and capability to perform the scope of work that meets the service deliverables that will ensure a good faith performance.

2. Metro Bus may choose to narrow the number of proposals for further consideration. Selected vendors will be contacted for an oral presentation to Metro Bus. Oral presentations/interviews will be completed either in person or via web conference to the project team.

### 3. Evaluation Criteria

Evaluation Elements	Max Score
<b>Qualifications of the Vendor</b> The vendor has the established competency, experience and financial means to provide the identified client services based upon relevance to the identified references. Vendor displays a strong knowledge of how to provide, position, and structure government entity insurance coverages and risk management services.	20
<b>Experience/Expertise of Personnel</b> Vendor demonstrates the knowledge, skill, ability and team structure to successfully deliver the requested services. Key personnel have related experience with providing the scope of services and program requirements for similar clients.	20
<b>Responsiveness to RFP and Requested Scope</b> Vendor was thorough and clearly responsive to the instructions as set forth in the RFP including all required documentation. Vendor has displayed a clear understanding of the entire scope of services and program requirements.	15
<b>Management and Processing Plan</b> Vendor illustrated the established means, methods and approach with systems in place to deliver the requested services.	10
<b>Cost</b> Proposed pricing and payment terms were clearly identified and itemized. The vendor demonstrated a proven ability and creative approach to cost control by structuring and obtaining the best rates from the insurance market.	25
<b>References</b> Three (3) client references of similar type and scope of service were clearly identified reflecting examples of successfully providing similar services to other government entities.	10
<b>TOTAL POINTS</b>	<b>100</b>

**4. Basis for Award**

The final evaluation for an extension of an award will consist of:

- a. Vendor's proposal & Metro Bus Evaluation Criteria
- b. References
- c. Final cost proposal

**VI. CONTRACT**

**1. Contract Negotiations and Award**

- a. Metro Bus reserves the right to negotiate the final terms and conditions, including the final contract amount, with the selected vendor. Metro Bus may permit revisions to the successful vendor's proposal prior to a contract award, for the purpose of obtaining the best and final offer (BAFO).
- b. In the event Metro Bus and the selected vendor are unable to reach an agreement on a contract, Metro Bus reserves the right to discontinue negotiations and select another vendor or reject all of the proposals.
- c. The successful vendor shall execute a contract within ten (10) business days after receipt of an award.

**2. Board of Commissioners Approval**

The Metro Bus project team will make a recommendation to the Metro Bus Board of Commissioners for awarding a contract. The Board of Commissioners will have the final decision.

**3. Contract Term**

Any agreement arising from this RFP will be offered for a maximum of five (5) years beginning from the date of contract signature as agreed upon by both parties with a Metro Bus option to renew after the initial five (5) year period under the terms of the original agreement. Any option to extend must be agreed to in writing by both parties. The vendor shall not in any way assign or transfer its rights or interests under this agreement in any way whatsoever without prior written consent and final approval by Metro Bus.

#### **4. Termination of Service**

Metro Bus may terminate this contract, in whole or in part, at any time by thirty (30) days prior written notice to the successful vendor. In the event of termination, all property and finished or unfinished documents and other writings prepared by the vendor shall become the property of Metro Bus. The vendor shall be entitled to compensation for services properly performed up to the date of notice of termination of this agreement including all reimbursable expenses.

### **VII. VENDOR OBLIGATIONS**

#### **1. Company Information**

- a. Official company name
- b. Company address
- c. Primary account contact(s) name, title, phone number, email
- d. List of all pertinent support personnel including name, title, phone number, email, etc.

#### **2. Statement of Qualifications**

- a. Describe the company's prior experience providing similar services as described in this RFP.
- b. Include an overview of the company's approach to providing the services and accomplishing the required tasks.

#### **3. References**

- a. Provide at least three (3) references for public entities where similar services were recently provided.
- b. Include the reference business name and address, date and term of the contract, primary point of contact's name, title, email and phone number and a brief summary of the provided services.

#### **4. Proposal Detail**

- a. It will be the responsibility of the vendor to examine the entire RFP packet thoroughly and to seek clarification of any item or requirement prior to submitting a proposal.
- b. Do not include any promotional material.

## 5. Confidential Material

All materials submitted in response to this RFP ultimately become public record, subject to inspection after the contract award. Unrestricted disclosure of proprietary information places it in the public domain. Information clearly defined with the words "Confidential Disclosure" and placed in a separate envelope marked as such shall be considered to qualify as Trade Secret Data under the Minnesota Government Data Practices Act (MGDPA). Any material to be treated as Trade Secret Data must include a justification for the request. The request will be reviewed and either approved or denied by Metro Bus. If denied, the vendor shall have the opportunity to withdraw their entire proposal or to remove the confidential or proprietary restrictions. Neither cost nor pricing information, nor the total proposal, be considered confidential or proprietary. Any costs to preserve the Trade Secret Data designation under the MGDPA shall be the responsibility of the Vendor.

## VIII. SUMMARY OF CURRENT SERVICES

1. Property (Location coverage)	Replacement Cost
a. Loc. 0 – Blanket Coverage	Agreed Value
b. Loc. 1, Main Office, Building	Agreed Value
c. Loc. 1, Main Office, Personal Property	Agreed Value
d. Loc. 2, Transit Center, Property	Agreed Value
e. Loc. 2, Transit Center, Personal Property	Agreed Value
f. Loc. 3, Training Center, Building	Agreed Value
g. Loc. 3, Training Center, Personal Property	Agreed Value
h. Loc. 4, CNG Fuel Islands (2) Building	Agreed Value
i. Loc. 6, Storage, Building	Agreed Value
j. Loc. 6, Storage, Personal Property	Agreed Value
2. Additional Coverages	Limit
a. Employee Theft Blanket	\$10,000
b. Money and Securities (inside)	\$10,000
c. Money and Securities (outside)	\$10,000
d. Equipment Breakdown (Spoilage)	\$25,000
e. Valuable Papers per Location (1M coverage)	\$50,000
f. Computer Hardware	\$50,000

g. Computer Data/Media	\$18,000
h. Accounts Receivable (1M coverage)	\$50,000
<b>3. General Liability</b>	
a. Each Occurrence	\$1,500,000
b. Personal and Advertising Injury	\$1,500,000
c. General Aggregate	\$3,000,000
d. Products/Completed Operations Aggregate	\$3,000,000
e. Fire Damage (any one fire)	\$300,000
f. Medical Expense (any one person)	\$0.00
<b>4. Employee Benefits Liability</b>	
a. Each Claim	\$1,000,000
b. Aggregate	\$3,000,000
<b>5. Commercial Inland Marine</b>	
a. Valuation	Cash Value
b. Unscheduled Equipment	\$10,000
<b>6. Commercial Auto</b>	
a. Bodily Injury/Property Damage Liability Limit	\$1,500,000
b. Uninsured/Underinsured Motorist Limit	\$50,000
<b>7. Directors and Officers Liability</b>	
a. Each Claim/Occurrence Liability	\$1,000,000
b. Aggregate Limit	\$1,000,000
c. Retention A	\$10,000
<b>8. Employment Practices Liability (EPL)</b>	
a. Each Claim/Occurrence Limit	\$500,000
b. Aggregate Limit	\$500,000
c. Retention A	\$15,000
<b>9. Workers Compensation</b>	
a. Employers Liability, Each Accident	\$1,000,000
b. Employers Liability, Disease, Policy Limit	\$1,000,000
c. Employers Liability, Disease, Each Employee	\$1,000,000
d. Workers Compensation, Statutory Benefit	Included

## **IX. SCOPE OF SERVICES**

### **1. Vendors will be required to provide, but will not be limited to, the following services:**

- a. A dedicated general liability insurance services team
- b. A dedicated team of experts that cover all areas of the workers compensation process
- c. Dedicated claims specialist
- d. Provide support for general liability and workers compensation claims investigation, payment, reporting, negotiation and reconciliation of claims
- e. Mid-term policy meetings
- f. Pre-renewal strategy
- g. Renewal of coverages and marketing to insurance carriers
- h. Issuing of certificates of insurance
- i. Assemble and complete workers compensation audits
- j. Address all audit questions
- k. Risk identification and analysis
- l. Policy review and analysis
- m. Review of all COL's obtained by Metro Bus
- n. Special event coverage (e.g. – State Bus Roadeo)
- o. Loss prevention services
- p. Claims management and advocacy
- q. Litigation administration and advocacy
- r. Facilitate buildings and content appraisals as needed
- s. Compliance support
- t. Training and webinar resources
- u. Metro Bus safety committee participation
- v. Quarterly open claims and workers compensation review meetings
- w. Coordinate insurance carrier resources
- x. Two (2) year Retention Option for Workers Compensation
- y. Cyber Security Options

### **2. Ancillary Benefits**

- a. Life, STD, LTD, Critical Illness, Accident (w/Principal)
- b. Flexible Spending Account (w/HealthEquity)
- c. Paid Family & Medical Leave (PMFL) Private Plan Quotes

**X. PROPOSAL/PROGRAM REQUIREMENTS**

1. Vendors shall provide services as set forth by the requirements of state and federal law in regard to property, liability and excess worker's compensation insurance, along with any additional requirements as set forth by any other applicable laws and regulations.
2. Vendors are required to be an acknowledged, licensed insurance broker in the state of Minnesota.
3. Vendors must have the ability to provide 24/7 claims reporting services using email, phone, or some form of online web-based system.
4. The vendor shall actively manage and process claims, including timely payment of claims and pursuit of reimbursements as appropriate.
5. Proposals shall include a brief overview of the vendor's claims department and program along with a summary of how a typical claim from Metro Bus will be managed and processed.
6. Vendors shall have the ability to break down premiums based upon the current services listed above. Vendors will be expected to calculate the workers compensation modification rating.
7. The Vendor will provide (at the vendor's expense) an annual actuary report to Metro Bus for management and audit use. The report shall include a precise list of known claims, unpaid claims, incurred losses, and claims incurred by not yet reported.
8. Vendors shall outline the carrier selection process along with a list of approved carriers and the role Metro Bus plays in that selection process.
9. Vendors will be required to assist individual Metro Bus departments in the following manner as requested:
  - a. **Finance:** Premium summaries, audits, loss fund analysis, and documentation regarding workers compensation open claims.
  - b. **Safety-Training:** Liability claims management, litigation management, case and risk management, claims resolution and settlement, compliance support, policy reviews, etc.
  - c. **Human Resources:** Workers compensation claims management, litigation management, case and risk

management, claims resolution and settlement, compliance support, policy reviews, etc.

**d. Procurement:** Review and offer recommendations for all insurance requirements regarding RFP's and vendor contracts, review all submitted certificates of insurance.

**e. Technology:** Facilitate onsite training as requested for cyber issues.

10. Vendors may briefly describe any additional resources their firm can provide that may bring value to Metro Bus.

## **XI. REQUIRED CERTIFICATION DOCUMENTS**

### **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. New restrictions on Lobbying
- b. Integrity Certification\_Debarment-Suspension
- c. Contractors Schedule of DBE Participation
- d. Certification of Compliance with DBE Requirements
- e. Intent to Perform as a Subcontractor
- f. Responsible Contract Verification Form
- g. State of Minnesota Affirmative Action Verification over \$100,000
- h. State of Minnesota Resident Vendor Form

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

## **XII. EXHIBIT A (attachment)**

1. List of facilities, fleet, miscellaneous equipment, work comp coverages.

## **XIII. CONTRACTING ETHICS**

### **1. 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.

**2. 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.

**3. 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.

**4. 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.

**5. 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.

## **6. Specification Documents**

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

## **XIV. 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).

### **No Federal 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.

### **False Statements or Claims**

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.

### **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 [ridemetrobus.com](http://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).

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

### **Small Business Administration (SBA)**

**The United States Small Business Administration (SBA)** defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, listed below, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. The general size standards for small businesses to be applied to this Program are:

- a. Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured;
- b. Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided;
- c. Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided;
- d. Retailing: Annual receipts may not exceed \$5.0 to \$21.0 million, depending on the particular product being provided;
- e. General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction;
- f. Special Trade Construction: Annual receipts may not exceed \$7 million;

### **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.

### **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.

### **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.