

REQUEST FOR PROPOSALS (RFP)

DRB Consulting

Rural Transit Assistance Program (RTAP) Leadership Training Program (LTP)

DRB Consulting (DRB) is a consultant working with MnDOT. They are soliciting this RFP on its own behalf for work ordered under contract with the Minnesota Department of Transportation (MnDOT). The selected vendor will be a subconsultant to DRB and all communication and coordination with MnDOT will go through DRB.

This RFP does not obligate DRB to award a contract or complete the project. All work performed by the selected vendor is contingent on DRB's contract with MnDOT, and DRB reserves the right to cancel the RFP if it is in its best interest.

Responses to this RFP will be public information under the Minnesota Data Practices Act, Minnesota Statutes Chapter 13.

PROJECT SPECIFIC INFORMATION

Project Overview

MnDOT's Rural Transit Assistance Program (RTAP) Leadership Training Program (LTP) is a training program designed for team members within Minnesota Public Transit Organizations. This training program will enhance leadership skills and competencies to advance leadership and management within their organization.

Under 49 Code of Federal Regulations (CFR) 5311 (b)(3), the Federal Transit Administration (FTA) allocates RTAP funds to states to provide technical assistance, training, research, and related support activities for rural providers of public transportation, with an emphasis on delivering technical assistance and training. MnDOT RTAP's Leadership Training Program will aid the delivery of transportation training to transit systems statewide by increasing access to training and professional development activities for rural transportation providers throughout Minnesota.

DRB Consulting requests responses for a leadership training program for four levels of leadership within Greater Minnesota transit organizations.

Project Goals

The goals of this project are to:

- Enable transit professionals to develop self-confidence as leaders while enhancing their leadership and management skills within their organizations.
- Aid in succession planning by equipping staff to lead at every level and create career pathways for transit professionals.
- Encourage relationship-building and create peer networks that will continue beyond the duration of the program.

Project Location

The six training sessions will be held around the state at host transit agencies or at nearby MnDOT offices or training centers if no host is available. Hosts will be solicited from the graduates of the 2020-2021 program to allow for their participation and mentorship of the new program participants. Mileage for the vendor from their business location in the state of Minnesota to the training facility will be reimbursed at the federal mileage reimbursement rate at the time of the training. Per the terms of the prime consultant's contract under MnDOT's travel reimbursement rates, the maximum hotel reimbursement per night is \$150 and can only be reimbursed if the training is more than 35 miles from the vendor's home station.

Design Skills/Qualifications

Demonstration of the following qualifications will be taken into consideration when rating the company and personnel background and experience:

- Responders should demonstrate direct knowledge of or experience working with rural public transit systems.
- Responders should demonstrate experience in adult learning principles.
- Responders should demonstrate their experience training the topics identified below in the 3 levels outlined.
- Responders will have a working knowledge of how to use common meeting technology and audiovisual equipment.
- Responders should demonstrate how they will promote an open and cooperative learning environment where participants are free to ask questions and discuss the answers in a mutually respectful environment.
- Responders should demonstrate knowledge regarding all aspects of the Americans with Disabilities Act (ADA) as it relates to the provision of transportation services.

- A background in individual and/or organizational psychology is helpful, but not required.

Scope of Work and Deliverables

Under this contract, the successful responder will:

1. Adapt the existing curriculum for each leadership training program for the first three levels of leadership in the program (Supervisor, Manager, and Executive) within Minnesota transit systems.
2. Provide training and administer a program to last one year in length, starting each training level parallel to the other.
3. Engage participants' supervisors in the process through progress updates, possible shared coaching sessions, and joint goal setting.
4. Provide periodic reporting and evaluation to DRB Consulting, MnDOT, and the LTP Advisory Group on the program's progress.

4 Levels of the Leadership Training Program:

1st Level: Supervisors/Lead Drivers

- **Position Description:** This position may have limited or no discipline authority; They may be responsible for on the job/street/in the moment decision making. This position is usually out on the road for problems/accidents, makes road condition decisions, and is the operator/dispatcher resource and liaison between front line operators and middle management. This position usually doesn't deal with HR, but may have authority to write citations for behavior, etc. and recommendations (supervisory reports). They may be the follow up/first responder to customer complaints. This position usually moves from being an operator to a supervisor or lead driver.
- **Position Titles:** Lead Driver, Front/First Line Supervisor, Transportation Supervisor, Compliance Manager, Trainer, Maintenance Supervisor.
- **Topics will include, but are not limited to:** Ethics, Strengths, Managing Your Peers, Effective Communication, Time Management, Work/Life Balance, Conflict Resolution, Managing Previous Coworkers, Personal Action Planning, and other related topics.
- **Session Duration:** 1.5-day sessions every other month; coaching and peer group in the off-month. An evening session the day before the main training day and one full day of training.
- **Delivery:** in-person training sessions with virtual/phone call coaching.

2nd Level: Managers

- **Position Description:** Direct supervisor of operators and dispatchers. Makes day-to-day on-the-ground decisions about staffing and troubleshoots issues as they arise; Personnel decisions at a low level (review disciplinary actions or if a street complaint gets escalated, legal issues, etc.). They may oversee safety concerns and violations and handle citations, accidents, complaints, drug and alcohol, and post-accident reports. They assist with committee coordination/involvement and joint powers meetings, team building, networking and outreach organizing and community involvement. Represents the organization at certain meetings.
- **Position Titles:** Operations Manager, IT Manager, Street Supervisor, Transportation Manager, Transit Planner, Marketing Specialist, Transportation Supervisor, Maintenance Manager, Volunteer Driver Coordinator, Transit Coordinator, Planning Manager, Compliance and Safety Manager, Driver Development and Safety Coordinator, Community Outreach Manager, Training and Safety Manager.
- **Topics will include, but are not limited to:** Ethics, Strengths, Managing Employees, Effective Communication, Delegating and Leading Through Change, Managing External Stakeholders, Managing a Diverse Workforce, Conflict Resolution, Work/Life Balance, Asset Management, Managing Policy, Middle Managing, Labor Relations, Personal Action Planning, and other related topics.
- **Session Duration:** 2 full-day sessions every other month; coaching and peer group in the off-month.
- **Delivery:** in-person training sessions with virtual/phone call coaching.

3rd Level: Executives

- **Position Description:** Final decision maker; Handles employee-related issues for final decisions; High level community involvement; Legislative involvement; Responsible for funding decisions, organizational/structure design, and overall agency guidance. Agency liaison to local government, their CAP agency (if applicable), MnDOT, and others.
- **Position Titles:** Transit Director, Transportation Programs Director, Director, CEO, Director of HR, CFO, COO, General Manager, VP, Training and Safety Manager.
- **Topics will include, but are not limited to:** Ethics, Strengths, Executive Leadership Principles, Labor Relations, Effective Communication, Time Management, Policy Management, Delegating and Leading Through Change, Work/Life Balance, Conflict Resolution, Asset Management, Managing Stakeholders, Personal Action Planning, and other related topics.

- **Session Duration:** 2 full-day sessions every other month; coaching and peer group in the off-month.
- **Delivery:** in-person training sessions with virtual/phone call coaching

4th Level: LTP Graduate Support

- This program also minimally supports graduates of the 2020–2021 Leadership Training Program. The selected vendor will engage this group as subject matter experts and peers who can mentor and welcome new participants into the larger LTP peer group.
- Graduate representatives from each level will participate in the first and last meetings of each level and may join other sessions as needed and determined by the LTP Advisory Group.
- Graduates from each level will meet independently of the trainers throughout the year and at the conclusion of the 2023-2024 LTP, new graduates will be invited in to join this group.

Project Deliverables

- **LTP Advisory Group:** Before the program start, the selected vendor will meet with a select group of graduates of the 2020–2021 program to present their plan to adapt the curriculum for the 2023-2024 LTP. The responder will work with the graduates to bring them in to designated sessions as peer mentors/subject matter experts. This group will also serve as program review in addition to the MnDOT and RTAP program managers.
- **Adapted Curriculum and 18 Training Sessions:** Responders will adapt the curriculum developed for the 2020–2021 Leadership Training Program to facilitate six (6) 2-day training sessions for both the manager and executive levels and six (6) 1.5-day training sessions for the supervisor level. Each level will require a minimum of 10-12 participants enrolled to take place. Enrollment is based on transit agency interest and availability, but the goal will be to have each level contain no more than 25 participants for optimal learning. New participants can only join for the first two sessions, after which time the group will be closed to new participants to ensure learning and group bonding outcomes are met.
- **Individual Coaching:** Provide six (6) total one-on-one coaching sessions per participant to take place in the alternating months between training sessions.
- **Peer Network:** Vendor will be responsible for encouraging peer networking and socializing outside of the designated training time. This might include organizing teambuilding activities or suggesting activities that the group can pick from/opt into. Successful responders will also coordinate peer groups of no more than 10 people (larger levels may have multiple groups) to meet independently of the trainers on the off months in a virtual peer meeting. The responder would be responsible for assembling these groups, providing them with contact information, and light direction.
- **Reports & Evaluation:** After each set of training sessions, the successful responder will submit a progress report and invoice for review and approval. The successful responder will be required to write a training summary for each class, along with an attendee sign-in form. The successful responder will also complete a brief description of discussion points, comments, questions, and progress for each training class. A description of the attendee’s backgrounds and positions will be documented by the successful responder for reference for MnDOT records.

Responder is **not** responsible for curriculum development, enrollment, or marketing the program. The selected responder **is** responsible for adapting the existing curriculum, as they see fit.

Phase 1

Orientation to RTAP and Stakeholders; Curriculum Review and Pre-Work

- Orientation and kick off meeting with key stakeholders and LTP Advisory Group
- Orientation to the curriculum, first year of the program, history, and vision for this project, and what other models may exist at the local, state, or national level supplement existing curriculum.
 - any adjustments required to the overall design or content of the program.
 - timelines
 - reporting deadlines and responsibilities
 - how information will be communicated, maintained, and shared
- Possible visit to delivery facilities as needed to assist layout, test technology, and assist with final planning.
- Develop pre-training and post-training assessment of leadership skills and learning goals at the start and end of the program.
- Develop plan for personality testing. The testing will provide all trainees with job relevant feedback and feedback specific to a representative job description. Personality testing must include the Myers-Briggs Type Indicator, and may additionally include

the FIRO-B, Thomas Kilmann Conflict Mode Instrument, Strong Interest and Skills Confidence Inventory, Emotional Quotient Inventory (EQ-I 2.0), the California Psychological Inventory, 360 reviews, or other tools at the vendor's discretion and recommendation. The responder is responsible for including the cost of any tools they wish to use in their bid.

Phase 2

Program Delivery

- Three parallel training programs delivered for the first three levels of the program (Supervisor, Manager, and Executive) including some or all the following:
 - Lectures
 - Discussions
 - Case Studies
 - Class Projects
 - Journaling
 - Real World Applications
 - Small Group Activities
- Training Pre-Work
 - Reading assignments
 - Journaling
 - Self-assessment
 - Surveys

Phase 3

Ongoing Evaluations

- Meeting roles used in training sessions to assign participants monitor the progress of the class with respect to process and learning.
- Class encouraged to share what has gone well and what could be improved about the training.
- Participants complete an anonymous evaluation form to provide feedback on each session, which is shared with the LTP Advisory Group.

Phase 4

Final Evaluation and Report

- Surveys and/or focus groups conducted with participants on the overall program as well as performance-related information.
- Final meeting with the LTP advisory group to debrief the program.

Project Timeline

This program is anticipated to run no later than September 2023–August 2024, depending on the contract negotiation timeline and responder availability. The contract NTP would precede the LTP program start date by 1–2 months to accommodate planning time.

Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

QUESTIONS

Responders who have any questions regarding this RFP must submit questions, by email only, to:

Mariah Kathan, DRB Consulting, MnRTAP Contract Project Manager

mariah.kathan@drbteam.com

All questions and answers will be posted on DRB Consulting's website at drbteam.com/rfp. All prospective responders will be responsible for checking the web page for any addendums to this RFP and any questions that have been answered. **Note that questions will be posted verbatim, as submitted.**

Questions regarding this RFP must be received by Mariah Kathan no later than 2:00 p.m. Central Daylight Time (CDT) on **June 20, 2023**.

DRB anticipates posting answers to such questions no later than 2:00 p.m. Central Daylight Time (CDT) on **June 21, 2023**.

No other DRB and/or MnDOT personnel are permitted to discuss this RFP with potential vendors before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above may result in disqualification.

PROPOSAL CONTENT

The following will be considered **minimum** contents of the proposal, and must be submitted in the order listed:

1. Contact Information:

Responders must clearly identify the company's full legal name, business address, contact person's name, telephone number, and email address (as available).

2. Project Understanding:

The purpose of this section is for the responders to detail their understanding of the project. Responders must clearly state their understanding of the project objectives, goals, and tasks to demonstrate their view of the nature of the project.

Responders should demonstrate their understanding by using their own words rather than simply repeating what is listed in the RFP.

3. Responder Experience & Qualifications (Company & Key Personnel):

The purpose of this section is for responders to provide information detailing the background and experience of the company, and the project personnel. To do this, responders must:

- Provide an outline of their background and experience, with examples of similar work done.
- List the personnel who will be working on this project, specifically detailing their training and work experience.

If subconsultants are to be used on this project, responders must also outline their background and experience, including examples of similar work done by each subconsultant. Responders must also provide a list of the subconsultants' personnel who will perform work on the project, detailing their training and work experience.

Note that no change in personnel assigned to the project will be permitted without the written approval of MnDOT's Project Manager. Responders must be sure to specifically address required and/or desired skills and qualifications listed above, if applicable.

Qualification and experience of the firm should be demonstrated by the experience of the personnel proposed.

4. Work Plan – Project Approach:

The purpose of this section is for responders to present their work plan. Responders must provide a detailed work plan, which must identify the major tasks to be accomplished. Responders must be sure to not only describe what will be done but explain **how** each task will be accomplished. These tasks will be used as a scheduling and management tool, as well as the basis for invoicing. The detailed work plan must present:

- The Overall Project Approach
- A Breakdown of the Project Tasks, detailing the tasks, and how they will be completed
- Deliverable Due Dates and an Overall Project Schedule
- A List of Personnel Working on the Project, including details of each person's role, by task

5. Deliverables:

Responders must provide a clear and detailed description, format, and schedule of the deliverables to be provided in order to meet the needs of the project.

6. Forms, Documents and Certifications:

Responders must complete and submit all required forms, documents, and certifications, required under any other section of this RFP. These forms, documents and certifications will NOT be included in any page limit set for this RFP, as applicable.

- a. **Required Forms and Documents:** Responders must complete and submit the forms and documents required under any other section of this RFP.

7. Cost Proposal:

Responders must provide one copy of the cost proposal, clearly marked on the outside "Cost Proposal", along with the responders' official business name and address **in a separate email attachment.**

For purposes of completing the cost proposal, DRB Consulting does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished. Terms of the proposal as stated must be valid for the length of the project. Whether proposing a cost plus fixed fee (profit), hourly rate, unit rate or lump sum budget, responders must include a breakdown (labor, overhead, profit and expenses) showing how the rate was derived. Additionally, if proposing a cost-plus fixed fee (profit) budget, responder's must utilize their current MnDOT approved overhead rate, but it may not exceed 160%. For the purposes of this cost proposal, responders should utilize a fixed fee (profit) of 10%. Actual

fixed fee (profit) will be determined/calculated by DRB Consulting upon selection. The responder must include a total project cost along with the following:

- A breakout of the hours by task for each employee.
- Identification of anticipated direct expenses.
- Identification of any assumptions made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks. This should be included in the cost proposal but clearly identify it as additional costs and not made part of the total project cost.

Responders must have the cost proposal signed by authorized member of the firm. Responders must not include any cost information within the body of the technical proposal.

PROPOSAL SUBMITTAL INSTRUCTIONS

All proposals must be emailed to:

Mariah Kathan, MnRTAP Contract Manager
mariah.kathan@drbteam.com

SUBJECT LINE ON THE EMAIL SHALL NOTE – PROPOSAL RTAP LTP 2023

All proposals must be received no later 2:00 p.m. Central Daylight Time on **June 29, 2023.**

Late proposals will not be considered. Faxed or printed proposals will not be accepted or considered. All costs incurred in responding to this RFP will be borne by the responder.

PROPOSAL EVALUATION

Representatives of DRB Consulting and MnDOT will evaluate all proposals received by the deadline. In some instances, an interview may be part of the evaluation process. DRB Consulting reserves the right, based on scores of the proposals, to create a short-list of responders to interview. A 100-point scale will be used to create the final evaluation recommendation. The factors and weighting on which proposals will be judged are broken down in the following table:

Rating Factor	Weighting Percentage
Project Understanding	10%
Responder Experience and Qualifications (Company & Key Personnel)	25%
Work Plan – Project Approach	5%
Deliverables	30%
Cost Detail	30%

Proposals will be evaluated on a “best value” basis with 70% qualifications and 30% cost considerations. The review committee will not open the cost proposals until after the qualifications points are awarded.

GENERAL REQUIREMENTS

Responders must adhere to all terms, clauses, and requirements outlined in this RFP. The following outlines some of those requirements:

Affidavit of Noncollusion

Responders must complete the attached “Affidavit of Noncollusion” form and submit it as part of their proposal.

Conflicts of Interest

Responders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFP. This list should indicate the name of the entity, the relationship and a discussion of the conflict. Responders must complete the attached “Disclosure of Potential Conflict of Interest” form and submit it as part of their proposal.

Proposal Contents Certification

By submitting a proposal, responders warrant that the information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from contract award and may subject the responder to suspension or debarment proceedings, as well as other remedies available to DRB, by law.

Disposition of Responses

All materials submitted in response to this RFP will become property of DRB Consulting and MnDOT and will become public record, in accordance with Minnesota Statutes §13.591, after the evaluation process is completed. Pursuant to the Statute, completion of the evaluation process occurs when DRB Consulting has completed negotiating the contract with the successful responder.

If a responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the responder must:

- Clearly mark all trade secret materials in its proposal at the time the proposal is submitted;
- Include a statement with its proposal justifying the trade secret designation for each item; and
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the state, its agents and employees, from any judgments or damages awarded against the state in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives DRB Consulting’s award of a contract. In submitting a proposal in response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of DRB Consulting and MnDOT. MnDOT is required to keep all the basic documents related to its contracts, including responses to RFPs, for a minimum of seven years.

DRB Consulting will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Contingency Fees Prohibited

Pursuant to Minnesota Statutes §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

Travel Reimbursements

Reimbursements for travel and subsistence expenses actually and necessarily incurred by the successful responder, as a result of the contract, will not exceed the amounts provided in the current MnDOT Travel Regulations. Reimbursements will not be allowed for travel and subsistence expenses incurred outside of Minnesota, unless the successful responder has received DRB Consulting’s written approval for out-of-state travel. Minnesota will be considered the home base for determining whether travel is out-of-state.

Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to DRB Consulting, or the vendor’s objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Minnesota RTAP Coordinator at the MnDOT Office of Transit and Active Transportation which must include a description of the action which the selected responder has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, DRB may, at its discretion, cancel the contract. In the event the responder was aware of an organizational

conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, DRB may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the State’s rights.

Pre-Award Audit Requirement

The successful responder will be required to submit pre-award audit information and comply with audit standards. Failure to do so may result in disqualification.

Soliciting Responses from Disadvantaged Business Enterprises (DBE)

The MnDOT Office of Civil Rights has assigned a race/gender neutral goal to this project. Responders are directed to read the DBE Special Provisions, posted along with this RFP. The DBE Special Provisions explains how to comply with the DBE requirements. In particular, see pages one and two regarding documents that a responder must submit with its proposal. The form required in the proposal can be found on Page 3 of the Special Provisions. To view a listing of certified DBE’s, please contact the MnDOT Office of Civil Rights at 651-366-3073, TTY 651-282-5799, or visit: www.dot.state.mn.us/eocm.

Work Force Certification

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached “Work Force Certification” form and submit it as part of their proposal. As required by Minnesota Rule 5000.3600, “It is hereby agreed between the parties that Minnesota Statute §363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute §363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from MnDOT.”

Certification Regarding Lobbying

Federal money will be used (or may potentially be used) to pay for all or part of the work under the contract; therefore, responders must complete the attached “Certification Regarding Lobbying” form and submit it as part of their proposal.

Certification Regarding Debarment and Suspension

Federal money will be used to pay for all or part of the work under the contract; therefore, this contract is a covered transaction for purposes of 49 Code of Federal Regulations (“CFR”) Part 29. As such, the successful responder is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The successful responder will be required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, the responder certifies as follows:

The certification in this clause is a material representation of fact relied upon by MnDOT. If it is later determined that the responder knowingly rendered an erroneous certification, in addition to remedies available to the MnDOT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The responder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The responder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Insurance Requirements

A responder’s proposal must clearly note any exceptions desired to insurance requirements, or the responder will be deemed to have accepted such requirements and waived any request for exception.

1. **Insurance Certificates and Continuity of Coverage Required.** The successful responder must provide a certificate of insurance showing that they have each type of insurance coverage and limits required herein. The certificate must be filed with DRB’s Authorized Representative within 15 days of execution of the contract, and prior to commencing work under the contract. The successful responder must maintain such insurance in full force and effect throughout the term of the contract.
2. **Required Insurance.** The successful responder will be required to maintain the furnish satisfactory evidence of the following insurance policies:
 - a. **Workers’ Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers’ Compensation insurance in accordance with the statutory requirements of the state of Minnesota, including Coverage B, Employer’s Liability. Insurance **minimum** limits are as follows:
 - \$100,000 – Bodily Injury by Disease per employee
 - \$500,000 – Bodily Injury by Disease aggregate

- \$100,000 – Bodily Injury by Accident

If Minnesota Statutes §176.041 exempts the successful responder from Workers' Compensation insurance requirements, or if such responder has no employees in the state of Minnesota, the successful responder will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the successful responder from the Minnesota Workers' Compensation requirements. If, during the course of the contract, the successful responder becomes subject to the Workers' Compensation Insurance requirements, the successful responder then must comply with such requirements and must provide MnDOT with a Certificate of Insurance evidencing such coverage.

- b. **Commercial General Liability Insurance:** The successful responder will be required to maintain insurance protecting the successful responder from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the contract whether the operations are by the successful responder or by a subcontractor or by anyone directly or indirectly employed by the successful responder pursuant to the contract. Insurance **minimum** limits are as follows:
- \$2,000,000 – per occurrence
 - \$2,000,000 – annual aggregate
 - \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law

- c. **Commercial Automobile Liability Insurance:** The successful responder will be required to maintain insurance protecting the successful responder from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under the contract, and in case any work is subcontracted the successful responder must require the subcontractor to provide Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:
- \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages must be included:

- Owned, Hired and Non-owned Automobile

- d. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.** The successful responder will be required provide coverage for all claims the successful responder may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the successful responders professional services performed under the contract. Unless otherwise specified within this RFP, the successful responder will be required to carry the following **minimum** limits:
- \$2,000,000 – per claim
 - \$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the successful responder and may not exceed \$50,000 with the written approval of DRB. If the successful responder desires authority from DRB to have a deductible in a higher amount, the successful responder will be required to make such request in writing, specifying the amount of the desired deductible and providing financial documentation, acceptable to DRB, so that DRB can ascertain the ability of the successful responder to cover the deductible from its own resources. DRB will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act.

The retroactive or prior acts date of coverage must not be after the effective date of the contract and the successful responder must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be obtained by the successful responder to fulfill this requirement.

- e. **Additional Insurance Conditions:**
- The successful responder's policy(ies) will be primary insurance to any other valid and collectible insurance available to DRB with respect to any claim arising out of the successful responder performance under this contract;
 - If the successful responder receives a cancellation notice from an insurance carrier affording coverage herein, the

successful responder agrees to notify the state of Minnesota within five business days with a copy of the cancellation notice, unless the successful responder's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the state of Minnesota.

- The successful responder is responsible for payment of contract related insurance premiums and deductibles;
- If the successful responder is self-insured, a Certificate of Self-Insurance must be provided to DRB;
- The successful responder's policy(ies) must include legal defense fees in addition to its liability policy limits, with the exception of part d above;
- The successful responder must obtain insurance policies from insurance companies having an "AM BEST" rating of "A minus", a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota.
- An Umbrella or Excess Liability insurance policy may be used to supplement the successful responder's policy limits to satisfy the full policy limits required by the contract.

3. **Right to Terminate.** DRB reserves the right to immediately terminate the contract if the successful responder is not in compliance with the insurance requirements, and DRB retains all rights to pursue any legal remedies against the successful responder. All insurance policies must be open to inspection by DRB and copies of policies must be submitted to DRB's Contract Administrator upon written request.
4. **Insurance Certificates.** The successful responder will be required to submit Certificate(s) of Insurance, acceptable to DRB, as evidence of meeting the insurance requirements, prior to commencing work under the contract.

E-Verify Certification (In accordance with Minnesota Statutes §16C.075)

By submission of a proposal for services in excess of \$50,000, responders certify that as of the date of services performed on behalf of MnDOT, they, and all of their proposed subcontractors, will have implemented, or be in the process of implementing, the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of MnDOT. In the event of contract award, the successful responder will be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with the successful responder and made available to MnDOT upon request.

Resident Vendor Form

If a responder wishes to claim resident vendor status, it must complete the "Resident Vendor" form and submit it as part of their proposal.

Plain Language and Accessibility Standards

1. **Plain Language.** Except for designs, plans, layouts, maps and similar documents, the successful responder must provide all deliverables in "Plain Language". Executive Order 14-07 requires the Office of the Governor and all Executive Branch agencies to communicate with Minnesotans using Plain Language. As defined in Executive Order 14-07, Plain Language is a communication which an audience can understand the first time they read or hear it. To achieve that, the successful responder will take the following steps in the deliverables:
 - Use language commonly understood by the public;
 - Write in short and complete sentences;
 - Present information in a format that is easy-to-find and easy-to-understand; and
 - Clearly state directions and deadlines to the audience.
2. **Accessibility Standards.** Except for designs, plans, layouts, maps and similar documents, the successful responder agrees to comply with the State of Minnesota's Accessibility Standard (https://mn.gov/mnit/assets/Std_State_Accessibility_tcm38-61585.pdf) for all deliverables under this contract. The State of Minnesota's Accessibility Standards entail, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA — Level AAA compliance is encouraged — and Section 508 of the Rehabilitation Act, as amended. The successful responder's compliance with the State of Minnesota's Accessibility Standard includes, but is not limited to, the specific requirements as follows:
 - All videos must include closed captions, audio descriptions, and a link to a complete transcript;
 - All documents, presentations, spreadsheets, and other material must be provided in an accessible format. In addition, the successful responder will provide native files in an editable format. Acceptable formats include InDesign, Word, and Excel; and
 - All materials intended for downloading and printing such as promotional brochures, must be labeled as such and the content must additionally be provided in an accessible format.

Certification of Nondiscrimination (In accordance with Minnesota Statutes §16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Responders must certify that they do not engage in and have no present plans to engage in discrimination against Israel, or against persons or

entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes, but is not limited to, engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Protest Procedures and Appeal Process

1. **Written Protest Only:** All protests must be in writing, including pre-award, award, and post-award phases of the procurement process. Protests must be submitted to the Protest Official, or designee, identified below. Any protest not set forth in writing within the time limits specified in these procedures is null and void and will not be considered.
2. **Protest Contents:** All protests must include:
 - a. The name and address of the protester;
 - b. The MnDOT Contract Number and/or Project Title; and
 - c. A detailed statement of the nature of the protest and the grounds on which the protest is made.

The protester must demonstrate or establish a clear violation of a specific law or regulation, e.g. a violation of the prohibition against unduly protest and restrictive specifications or a violation of the Buy America requirements. DRB will not be obligated to postpone the proposal due date or Contract award in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation. All costs of a protest will be the responsibility of the protestor and undertaken at the protestor's expense.

3. **Protest Prior to Proposal Due Date:**
 - a. All protests relating to terms and conditions of this RFP, including protests based on alleged restrictive specifications or alleged improprieties in this RFP, must be filed with the Protest Official no less than seven calendar days prior to the Proposal Due Date;
 - b. The Protest Official, will promptly make a determination, in writing, regarding the validity of the protest and whether or not the proposal process should be delayed beyond the scheduled Proposal Due Date;
 - c. If the Protest Official determines that the scheduled Proposal Due Date should be delayed, all Responders will be notified by a written Amendment to this RFP of the delay and the reason thereof; and
 - d. If the protest is determined to be valid, the Protest Official will respond, in writing, to each material issue raised in the protest in a timely manner prior to proceeding further with the RFP.
 - e. The Protest Official will not accept any protest relating to the establishment of a DBE goal for the project.
5. **Protest Prior to Award of a Contract:** When a protest or appeal has been timely filed with the Protest Official prior to award of a Contract, the Protest Official will:
 - a. Not make award, except in the case of emergency, until after the resolution of the protest or appeal; or
 - b. If a protest has been filed in writing during the pendency of an appeal, DRB will not make an award prior to seven calendar days after the protest has been filed, unless the Protest Official determined, in writing, that:
 - i. The items to be procured are urgently required or that an emergency exists;
 - ii. The delivery or performance will be unduly delayed by failure to make an award promptly; or
 - iii. Failure to make a prompt award will otherwise cause undue harm to MnDOT.
6. **Protest Regarding the Award of a Contract:** If an award of a Contract is being protested, the protester will protest, in writing, to the Protest Official as soon as practical, but no later than 10 calendar days after the Contract Award date. The Protest Official for this RFP will be:
Mariah Kathan
mariah.kathan@drbteam.com

The Protest Official will not accept any protest relating to compliance with DBE program requirements. The DBE Special Provisions exclusively govern a Proposer's rights concerning such determinations.

If the protest has been filed in a timely manner, the Protest Official will promptly make a determination in writing regarding the validity of the protest and whether or not the procurement should be delayed, or the award considered for revision.

If the procurement is delayed, all responders will be notified of the delay. The Protest Official will respond, in writing, to each material issue raised in the protest in a timely manner prior to proceeding further with the procurement.

DRB will not proceed with the procurement for seven calendar days after the decision is rendered by the Protest Official,

unless the protester waives, in writing, its right to appeal.

Should a protester wish to appeal the decision of the Protest Official concerning any award of a Contract, the protester must follow the procedures as outlined in the following section.

7. **Right of Appeal:** In the event that a protester received an unfavorable decision from the Protest Official to its protest, the protester will have the right to appeal the decision of the Protest Official by submitting a written appeal to DRB Consulting's president Debra Brisk, within five calendar days after receipt of the decision of the Protest Official. Debra Brisk will appoint a Protest Committee of at least three members to review the protest and the decision of the Protest Official.

The Protest Committee will notify the protester, in writing, in a prompt manner of its decision regarding the protest and the appeal. DRB will not make an award for seven calendar days after the decision of the Protest Committee, unless the conditions in the section entitled "Protest Prior to Award of a Contract" are determined to exist.

If the matter is not resolved after the appeal, the protester may continue the protest only by appeal to judicial authority, but not to the Federal Transit Administration (FTA). In accordance with FTA policy, FTA Circular 4220.1F Chapter VII, or as amended, a protester must first protest to DRB, then to MnDOT and may appeal to FTA only where the protester claim that MnDOT has failed to follow these written protest procedures.

FTA is not a party to its recipients' third party contracts and does not have any obligation to any participant in its recipients' third party contracts. In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern.

Any appeal to the FTA alleging that MnDOT has failed to follow these procedures must be filed with the FTA no later than five federal government working days after the second (final) decision is rendered by the appointed Protest Committee.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five working days of the date when the protester has received actual or constructive notice of the recipient's final decision.

Federal Procurement Requirements

1. For all procurements of goods and services supported in whole, or in part, with federal funds, the successful responder agrees to comply with Federal Transit Administration (FTA) Circular 4220.1F *Third Party Contracting Guidance*, at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf> and 2 *Code of Federal Regulations 200* <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>
2. Prior to their execution, DRB will review all third party contracts. DRB reserves the right to not approve a third party contract.
3. All contracts between the successful responder and third party contracts must contain all applicable provisions of the contract, including applicable federal contract clauses.
4. Before execution by the successful responder of a third-party contract supported with federal funds, MnDOT must review the contract to ensure inclusion of appropriate federal contract clauses.
5. Before entering into a third party contract, or subcontract, the successful responder agrees to check the *System for Award Management (SAM)* at <http://www.sam.gov/> to ensure the selected vendor or contractor has not been excluded from doing business with the federal government or its grantees. The successful responder must provide MnDOT with evidence that the Excluded Parties List System has been checked.
6. The successful responder agrees to abide by the FTA requirements in 49 Code of Federal Regulations (CFR) Part 26 relating to participation by DBEs on federally funded transportation projects. This means that if the successful responder plans to issue solicitation documents (e.g. a Request for Proposals, specifications, etc.) to procure goods or services using funds provided from this contract, the successful responder must first submit information to MnDOT before issuing any solicitation document to enable MnDOT to assign an appropriate goal for DBE participation on the project. This information must include a scope of work, a detailed budget with estimated total costs of goods and services, and the percentage of the total contract amount that will be supported with federal funds. After assignment of a DBE goal, the successful responder's solicitation documents must announce the goal and must include the appropriate version of MnDOT's DBE Special Provisions for perspective bidders to complete.

Special Notification Requirements for States

According to the FTA Circular 4220.1F *Third Party Contracting Guidance*, page III-5, MnDOT and its subrecipients and third party contractors must include, in any Request for Proposals, solicitation, federal assistance application, forms, notifications, press releases or other publications involving FTA assistance, a notice stating that FTA is or will be providing federal assistance for the project, the amount provided or expected to be provided by the FTA, and the Catalog of Federal Domestic Assistance (CFDA)

number of the program authorizing the federal assistance.

- The FTA will be providing federal assistance for this project.
- The FTA's anticipated participation in this contract is 100%.
- The CFDA number of the federal assistance program for this contract is 20.505.

Access to Third Party Contract Records.

The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
2. That the attached proposal submitted in response to the _____ RFP has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other responder of materials, supplies, equipment or services described in the RFP, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the responder, or its employees or agents, to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature:

Responder's Firm Name: _____

Print Authorized Representative Name: _____ Title: _____

Authorized Signature: _____ Date: _____

Notary Public

Subscribed and sworn to before me this:

_____ day of _____, _____

Notary Public Signature

Commission Expires

CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

Purpose of this Checklist: This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted to MnDOT, however, the “Disclosure of Potential Conflict of Interest” form must be submitted with your proposal.

Definition of “Proposer”: As used herein, the word “proposer” includes both the prime contractor and all proposed subcontractors.

Checklist is not Exclusive: Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form: Proposers must complete the attached disclosure and submit it with their proposal (or separately, as directed by MnDOT, for projects not awarded through a competitive solicitation). If the proposer determines a potential conflict of interest exists, it must disclose the potential conflict to MnDOT; however, such a disclosure will not necessarily disqualify a proposer from being awarded a contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. MnDOT’s Contract Management personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the contract notwithstanding the potential conflict. MnDOT’s Contract Management personnel may consult with MnDOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues are ultimately at the sole discretion of the Commissioner of Administration.

Material Representation: Proposers are required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the disclosure. Information provided on the form will constitute a material representation as to the award of this contract. MnDOT reserves the right to cancel or amend the resulting contract if the proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

Approach to Reviewing Potential Conflicts: MnDOT recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. MnDOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not MnDOT’s intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer’s ability to provide objective advice to MnDOT. MnDOT would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, MnDOT must follow statutory guidance on organizational conflicts of interest.

Statutory Guidance: Minnesota Statutes §16C.02, subdivision 10(a) places limits on state agencies ability to contract with entities having an “organizational conflict of interest”. For purposes of this checklist and disclosure requirement, the term “vendor” includes “proposer” as defined above. Pursuant to such statute, “organizational conflict of interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

Additional Guidance for Professionals Licensed by the Minnesota Board of Engineering: The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules Part 1805.0300). Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment, the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

An organizational conflict of interest may exist in any of the following cases:

- The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this contract.

- ❑ The proposer, or its principals, in previous work for the state has provided the final design or related services that are directly related to performance of work required under this contract. **Comment:** this provision will, for example, disqualify a proposer who performed final design for MnDOT and now seeks to provide construction administration services for that same project. MnDOT believes this is necessary because the firm that prepared the plans may be unable to objectively determine plan errors and omissions. This may cause a situation where: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; and (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired.
- ❑ The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity’s interests are, or may be, adverse to the state’s interests with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a MnDOT project if a local government has also retained the proposer for the purpose of persuading MnDOT to stop or alter the project plans.
- ❑ This contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to this contract.
- ❑ The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this contract, when the value or potential uses of such property may be affected by the proposer’s performance of work pursuant to this contract. “Property affected by the project” includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity’s property may be affected by the proposer’s work pursuant to the contract when such work involves providing recommendations for right-of-way acquisition, access control and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume proposers know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.
- ❑ The proposer has a business arrangement with a current MnDOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this contract. This item does not apply to pre-existing employment of current or former MnDOT employees, or their immediate family members. **Comment:** this provision is not intended to supersede any MnDOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to “inside” information.
- ❑ The proposer has, in previous work for the state, been given access to “data” relevant to this procurement or this project that is classified as “private” or “nonpublic” under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an “unfair advantage” when such information cannot be provided to other potential proposers. Definitions of “government data”, “public data”, “non-public data” and “private data” can be found in Minnesota Statutes Chapter 13.
- ❑ The proposer has, in previous work for the state, helped create the “ground rules” for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- ❑ The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

- Determined that no potential organizational conflict of interest exists.
- Determined that a potential organizational conflict of interest exists, as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature

Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with MnDOT contract personnel.

Name

Phone

STATE OF MINNESOTA – WORK FORCE CERTIFICATE INFORMATION

This form is required by state law for all proposals that could exceed \$100,000.00. Complete this form and return it with your proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minnesota Statutes §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements. Upon notification of contract award, you must send your federal or municipal certificate to MDHR at compliance.MDHR@state.mn.us. If you are unable to send either certificate, MDHR may contact you to request evidence of federal compliance. The inability to provide sufficient documentation may prohibit contract execution.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- We attest that we are exempt. If our company is awarded a contract, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of your company.

Name of Company: _____ Date _____
Authorized Signature: _____ Telephone number: _____
Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web: <http://mn.gov/mdhr/>

TC Metro: 651-539-1095

Toll Free: 800-657-3704

Email: compliance.mdhr@state.mn.us

TTY: 651-296-1283

CERTIFICATION REGARDING LOBBYING
For State of Minnesota Contracts and Grants over \$100,000

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned will 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 will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

**STATE OF MINNESOTA
RESIDENT VENDOR FORM**

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minnesota Statutes §16C.02, subdivision 13, a “Resident Vendor” means a person, firm, or corporation that:

1. is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
2. has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the proposal for which any preference is sought;
3. has a business address in the state; and
4. has affirmatively claimed that status in the proposal submission.

To receive recognition as a Minnesota Resident Vendor (“Resident Vendor”), your company must meet each element of the statutory definition above by the Request for Proposals (RFP) opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the state of Minnesota on the date an RFP for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*
 Yes **No (must check yes or no)**
2. Has paid unemployment taxes or income taxes in the state of Minnesota during the 12 calendar months immediately preceding submission of the response for which any preference is sought.
 Yes **No (must check yes or no)**
3. Has a business address in the state of Minnesota.
 Yes **No (must check yes or no)**
4. Agrees to submit documentation, if requested, as part of the proposal process, to verify compliance with the above statutory requirements.
 Yes **No (must check yes or no)**

BY SIGNING BELOW, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your proposal submission.

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone: _____
Printed Name: _____ Title: _____

IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR PROPOSAL SUBMISSION.

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor 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 Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180.

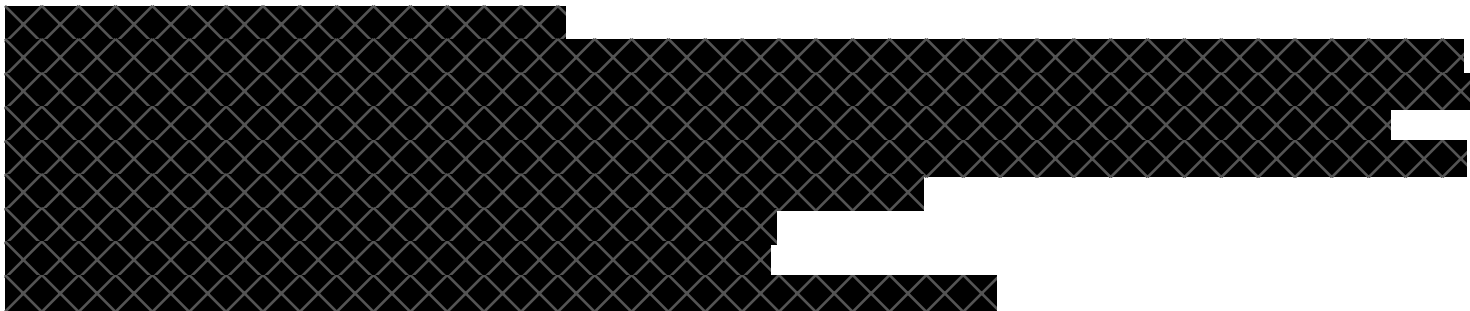
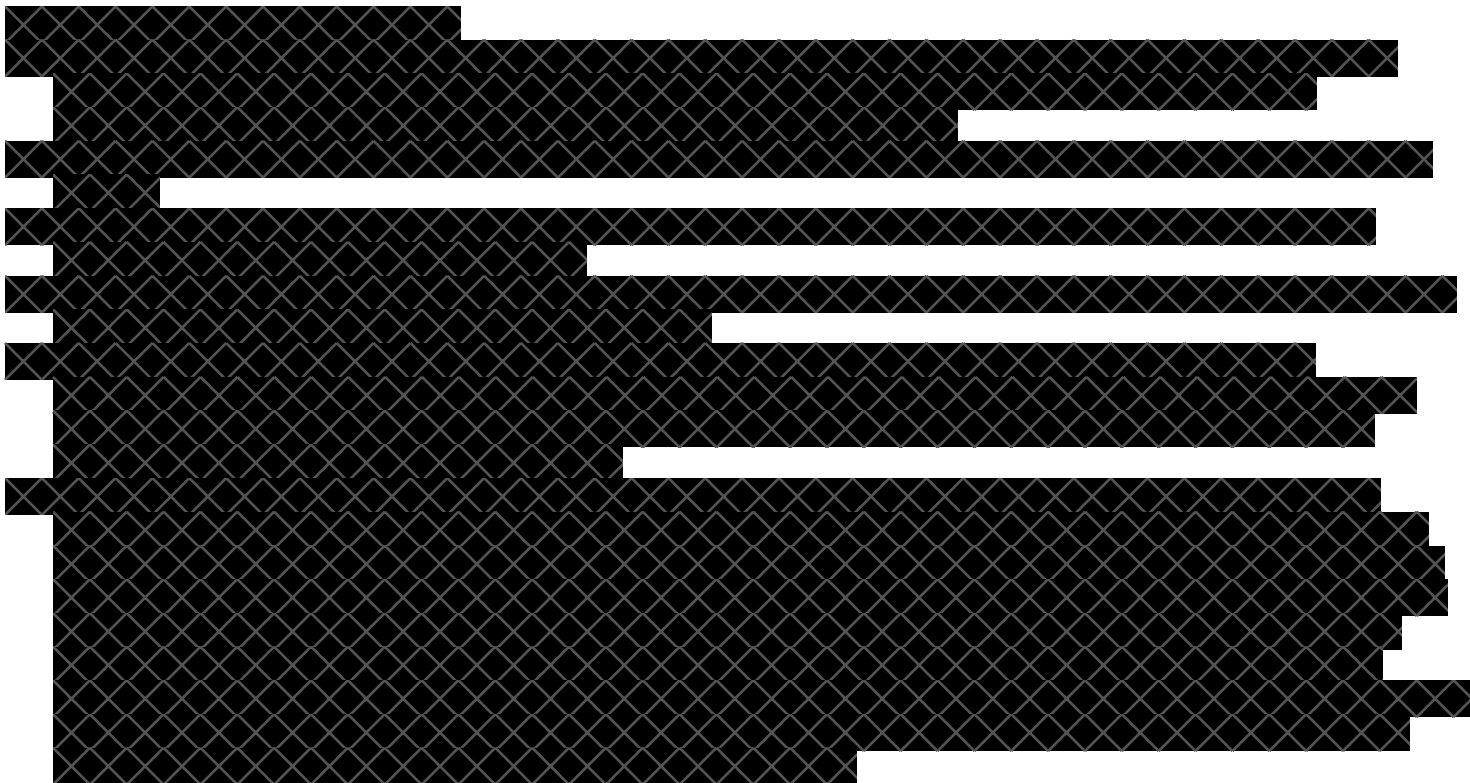
These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor 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 DRB Consulting, LLC. If it is later determined by DRB Consulting, LLC that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to DRB Consulting, LLC, 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 and 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.

Signature and Title of Authorized Official



FTA Clauses for Professional/Technical Contracts greater than \$100,000.00

State agrees to abide by the following federal requirements and agrees to bind third party contractors and subcontractors to the same, as applicable.

- 1. Energy Conservation Requirements**
42 United States Code (USC) 6321 et seq.
49 Code of Federal Regulations (CFR) Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro- purchases.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by the Federal Transit Administration (FTA).

Energy Conservation

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

2. Clean Water Requirements
33 USC 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

3. Lobbying
31 USC 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 USC §1352(b)(5) and 49 CFR Part 19, Appendix A, Section 7.

Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC § 1601, *et seq.*]
- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 USC 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.
- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et seq.]

Contractors who apply or bid for an award of \$100,000 or more will file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier will also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the State.

4. Access to Records and Reports

49 USC 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts".

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language. The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, the Contractor will make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
6. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>	None					
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	Unless 1 Non competitive award		Yes, if non competitive award or if funded thru 2 5307/5309/ 5311	None unless Non competitive award	None unless Non competitive award	None unless Non competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

5. Federal Changes 49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor will 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 Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply will constitute a material breach of this contract.

6. CLEAN AIR 42 USC 7401 et seq 40 CFR 15.61 49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7. Recycled Products 42 USC 6962 40 CFR Part 247 Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective

May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro- purchases.

Flow Down

These requirements flow down to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

8. No Government Obligation to Third Parties

Applicability to Contracts

Applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro- purchases.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and will not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause will not be modified, except to identify the subcontractor who will be subject to its provisions.

9. Program Fraud and False or Fraudulent Statements and Related Acts

31 USC 3801 et seq.

49 CFR Part 31 18 USC 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §3801 *et seq.* and United States Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC §5307, the Government reserves the right to impose the penalties of 18 USC §1001 and 49 USC §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses will not be modified, except to identify the subcontractor who will be subject to the provisions.

10. Termination**49 USC Part 18****[FTA Circular 4220.1E](#)****Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 will contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts will describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. **Termination for Convenience (General Provision)** State may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor will be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to State to be paid the Contractor. If the Contractor has any property in its

possession belonging to State, the Contractor will account for the same, and dispose of it in the manner the State directs.

- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, State may terminate this contract for default. Termination will be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid 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 State that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, State, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. **Opportunity to Cure (General Provision)** State, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor 10 business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to State's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within 10 business days after receipt by Contractor of written notice from State setting forth the nature of said breach or default, State will have the right to terminate the contract without any further obligation to Contractor. Any such termination for default will not in any way operate to preclude State from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. **Waiver of Remedies for any Breach** In the event that State elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by State will not limit State's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** State, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, State will be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, State may terminate this contract for default. State will terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the State.
- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, State may terminate this contract for default. State will terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of State's goods, the Contractor will, upon direction of State, protect and preserve the goods until surrendered to State or its agent. The Contractor and State will agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the State.
- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, State may terminate this contract for default. State will terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the State 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 Contractor and its sureties will be liable for any damage to the State resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by State in completing the work.

The Contractor's right to proceed will not be terminated nor the Contractor charged with damages under this clause if-

- the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with State, epidemics, quarantine restrictions, strikes, freight embargoes; and
- the Contractor, within 10 business days from the beginning of any delay, notifies State, in writing, of the causes of delay. If in the judgment of State, the delay is excusable, the time for completing the work will be extended. The judgment of State will be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor 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 State.

- i. **Termination for Convenience or Default (Architect and Engineering)** State may terminate this contract in whole or in part, for State's convenience or because of the failure of the Contractor to fulfill the contract obligations. State will terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor will (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of State, the Contracting Officer will make an equitable adjustment in the contract price but will allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, State may complete the work by contract or otherwise and the Contractor will be liable for any additional cost incurred by State. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of State.
- j. **Termination for Convenience of Default (Cost-Type Contracts)** State may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice will state whether the termination is for convenience of State or for the default of the Contractor. If the termination is for default, the notice will state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor will account for any property in its possession paid for from funds received from State, or property supplied to the Contractor by the State. If the termination is for default, State may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor will promptly submit its termination claim to State and the parties will negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of State, the Contractor will be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, State determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, State, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

11. Government-Wide Debarment and Suspension (Nonprocurement)
49 CFR Part 29
Executive Order 12549

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549,

Debarment and Suspension, Executive Order 12689, *Debarment and Suspension*, and 31 USC 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 State. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to State, 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 49 CFR 29, Subpart C while this offer is valid and 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.

12. Civil Rights Requirements
29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

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

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC §6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC §12132, and Federal transit law at 49 USC §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
 - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC §2000e, and Federal transit laws at 49 USC §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of United States Department of Labor (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §623 and Federal transit law at 49 USC §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC §12112, the Contractor agrees that it will comply with the requirements of United States Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - d. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13. Breaches and Dispute Resolution

49 CFR Part 18

[FTA Circular 4220.1E](#)

Applicability to Contracts

All contracts in excess of \$100,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this contract which are not resolved by agreement of the parties will be decided in writing by the authorized representative of State. This decision will be final and conclusive unless within 10 business days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to State. In connection with any such appeal, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the State will be binding upon the Contractor and the Contractor will abide by the decision.

Performance During Dispute - Unless otherwise directed by State, Contractor will 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 his employees, agents or others for whose acts he is legally liable, a claim for damages therefor will be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the State and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the State is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder will 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 the State, (Architect) or Contractor will constitute a waiver of any right or duty afforded any of them under the Contract, nor will 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.

14. DBE 49 CFR Part 26

Background and Applicability

The newest version on the DOT's DBE program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors.

Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of DBEs is 10%. The agency's overall goal for DBE participation is 11.7%. A separate contract goal of Race Gender Neutral has been established for this procurement.
- b. Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as State deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from State. In addition, the Contractor may not hold retainage from its subcontractors. The Contractor must promptly notify State whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of State.

15. Incorporation of FTA Terms**[FTA Circular 4220.1E](#)****Applicability to Contracts**

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of FTA Terms – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms will be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor will not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.