



**ST. CLOUD METROPOLITAN TRANSIT COMMISSION  
(METRO BUS)  
REQUEST FOR PROPOSAL  
JOB CLASSIFICATION AND COMPENSATION STUDY**

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

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

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**PROJECT SCHEDULE:**

**Date Issued:** Friday, November 5, 2021

**Pre-Proposal Interviews:** Monday, November 22 through Wednesday, November 24, and Monday, November 29, 2021. (One hour interviews can be scheduled on any of these days between the hours of 9:00 a.m. and 3:00 p.m.)

**Written Addenda Requests Due:** Monday, December 13, 2021, 12:00 p.m. CST.

**Proposals Due:** Monday, December 20, 2021, 12:00 p.m. CST.

**Proposal Review Period:** Tuesday, December 21 through Thursday, December 30, 2021.

**Proposal Award:** Tuesday, January 4, 2022, 5:00 p.m. CST.

**Board of Commissioners Approval:** Tuesday, January 18, 2022, 5:00 p.m. CST.

**Signed Contract:** Tuesday, January 25, 2022, 5:00 p.m. CST.

**Project Kickoff Meeting:** Wednesday, January 26, 2022. (Time TBD).

**Notice to Proceed Letter:** Thursday, January 27, 2022, 5:00 p.m. CST.

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## 1. STATEMENT OF INTENT

**1.1** Metro Bus is seeking proposals for a classification, compensation, and market salary survey from compensation consultant firms skilled in analyzing compensation systems and practices as well as employment markets within the public transportation and/or public sector of the State of Minnesota. Metro Bus intends to maintain a job classification and compensation system, that meets the following objectives:

- a. Complies with Minnesota Statutes 471.991-471.999 and maintains pay equity compliance
- b. Ensures fair and equitable compensation within the organization
- c. Conducts a full market analysis of current pay ranges/compensation package
- d. Reflects relevant market conditions outside the organization
- e. Ensures competitiveness with the external market
- f. Is maintained, post-implementation, in a manner that preserves and enhances the integrity of the system and in accordance with best business practices
- g. Enables simple upkeep post implementation.

**1.2** Metro Bus has job descriptions for each position (**Exhibit A**). In preparation for this study, Metro Bus has reviewed and updated all job descriptions. Metro Bus will provide any additional information that may be required by the consultant for evaluation.

## 2. AGENCY BACKGROUND

**2.1** The St. Cloud Metropolitan Transit Commission (Metro Bus) was created by the Minnesota Legislature in 1969 to operate as a Transit Authority. Metro Bus is located in St. Cloud, MN about 70 miles northwest of Minneapolis-St. Paul and provides fixed route and paratransit bus service to the cities of St. Cloud, Sauk Rapids, Waite Park, and Sartell in a radius that covers 36 square miles in central Minnesota. Metro Bus also operates a Park n' Ride commuter bus service from East St. Cloud directly to the Northstar Commuter Rail Line station in Big Lake, MN. From there, commuters can ride the rail from Big Lake to downtown Minneapolis.

**2.2** Metro Bus has a current total staff of roughly 140 full-time and 16 part-time employees and has an annual operating budget of approximately \$15 million in

FY2021. Metro Bus is primarily funded by an 80% Federal and State grant appropriation with a 20% local contribution consisting of tax levy and bus fares.

**2.3** Metro Bus is separated into two divisions as follows:

**2.3.1 Operations:**

- a. Fixed Route Operations
- b. Dial-a-Ride Operations
- c. Maintenance and Facilities
- d. Planning

**2.3.2 Administration:**

- a. Finance
- b. Human Resources
- c. Information Technology and Security
- d. Marketing and Communications
- e. Procurement
- f. Training and Safety
- g. Travel Training and Community Outreach

A complete organizational chart has been provided within **(Exhibit B)**.

**3. PROPOSAL INSTRUCTIONS**

**3.1 Primary Contact**

Any immediate questions, requests for clarifications, or comments related to this RFP must be submitted via email to: **Gary Korneck, Procurement Manager, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)**

**3.2 Submission Requirements**

Proposals must be received by Metro Bus on: **Monday, December 20, 2021, 12:00 p.m. CST.**

Three (3) unbound hard copies and one (1) digital copy of the consultant's proposal must be provided. All proposal documents shall be one-sided and in standard 8 ½ x 11 format whenever necessary. Digital proposals and related documentation may be submitted via email and hard copy via certified mail in a sealed envelope clearly marked:

**Metro Bus Job Classification and Compensation Study**

**Attn: Gary Korneck**

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

It will be the responsibility of each consultant to ensure their proposal arrives before the deadline. A digital copy of the proposal will be accepted via email ahead of the scheduled deadline providing all supporting documentation is included.

### **3.3 Late Proposals**

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

### **3.4 Pre-Proposal Interviews**

Each interested consultant will be required to schedule a one (1) hour interview with the Metro Bus project team prior to submitting their proposal. Interviews can be scheduled at the dates and times listed on Page 1 under "PROJECT SCHEDULE". Pre-Proposal interviews will be completed either in-person or via remote conference with the Metro Bus project team. Consultants are asked to contact **Gary Korneck, Procurement Manager: Phone – 320.529.4488, [gkorneck@stcloudmtc.com](mailto:gkorneck@stcloudmtc.com)** to schedule their interview.

### **3.5 Addendums**

Any Metro Bus changes or revisions, or any consultant requests for clarification/revision to the RFP requirements must be communicated by written correspondence by: **Monday, December 13, 2021, 12:00 p.m. CST**. Any written addendum to this RFP will be collectively transmitted electronically to all known proposers. A copy of each addendum will also be placed on Metro Bus's website:

<https://www.ridemetrobus.com/business-metro-bus/> where the RFP has been advertised. All changes/revisions or accepted consultant requests for clarification/revision will be incorporated into the terms and conditions of any resulting agreement.

### **3.6 Acceptance of Proposals**

- a. Metro Bus reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in a proposal.
- b. Metro Bus reserves the right to withdraw this RFP at any time without prior notice and makes no representations that any contract or agreement will be awarded to any consultant responding to this RFP

- c. Metro Bus reserves the right to postpone or delay proposal openings or contract award for its own convenience.
- d. Metro Bus will not be bound to any verbal or oral modifications to, or deviations from, the requirements set forth within this RFP. When provided by written request, consultants may amend or withdraw their proposal prior to the RFP due date and time. Consultants may not change the wording of their proposal after the RFP closing date and time and no words or comments may be added unless requested in writing by Metro Bus for purposes of clarification. Metro Bus will be under no obligation to receive further information, whether written or oral, after the RFP due date.
- e. Metro Bus will not be liable in any event for any pre-contractual expenses incurred by the consultant in preparation of responding to this RFP. The consultant shall not include any such expenses as part of its proposal.

**3.7 Agreement of Terms**

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

**3.8 Modification of Terms**

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

**3.9 Liability of Information**

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

**3.10 Tax Exemption**

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

**3.11 Proprietary Information**

Any information contained in a proposal that the consultant considers proprietary must be clearly identified as such. Metro Bus will respect

requests for non-disclosure of proprietary information to the extent that restricted information conforms to the Freedom of Information Act and any court rulings.

**3.12 Metro Bus Obligations**

Provide a list of all items to be provided by Metro Bus to assist you in completing the requested project work. This should include any data or documentation, along with a strategy for project management indicating the process to be used to coordinate any proposed collaboration with Metro Bus staff.

**3.13 Governing Law**

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

**4. GENERAL CONDITIONS**

**4.1 Bid Bond Guarantee**

Each proposal shall be accompanied by a certified check, cashier's check, or proposer's bond of a surety company duly authorized to do business in Minnesota drawn payable to the St. Cloud Metropolitan Transit Commission in an amount equal to five (5) percent of the proposal total cost, which shall be forfeited as liquidated damages by the consultant to whom the contract is awarded, if said consultant fails or refuses to properly execute the contract and furnish the bid/performance bonds prescribed herein within fifteen (15) days after the date of being notified of the contract award.

**4.2 Performance Bond**

The consultant who is awarded the project shall provide Metro Bus, at its own expense, a performance bond equal to one-hundred (100) percent of the total contract amount within fifteen (15) days of notification of an award unless both parties mutually agree upon a later date. The performance bond shall remain in effect thirty (30) days beyond the date final payment is made.

Attorney's-in-fact who sign bonds must file with each bond a certified and effective date of their power of attorney. An "Irrevocable Letter Of Credit" to remain in force as above will also be accepted.

#### **4.3 Protest Procedures**

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

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

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

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

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

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



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

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

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

Proposers are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to assessment of Metro Bus's cost and legal fees in responding to the protest. Proposers must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the Proposer agrees to be bound by these guidelines.

#### **4.2 Force Majeure**

To the extent that either party is not able to perform an obligation under this Agreement due to fire, flood, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, acts of terrorism, epidemics, pandemics, any federal or state coronavirus mandates or protocols, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from

such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of nonperformance and continues performance whenever and to the extent such causes are removed.

**5. DISADVANTAGED BUSINESS ENTERPRISE**

It is the policy of Metro Bus that disadvantaged business enterprises as defined in 49 CFR, Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with funds under this agreement. Consequently the DBE requirements of 40 CFR, Part 23 apply to this agreement. The Consultant agrees to ensure that disadvantaged business enterprises as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this agreement. In this regard all respondents shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to insure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Respondents shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

**The DBE Goal for this project is three (3) percent**

**6. LIABILITY INSURANCE REQUIREMENTS**

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

1. Workers' Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer's Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Consultants negligence.

2. Commercial Auto Coverage:

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

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Consultants negligence.

3. Commercial General Liability:

Each Occurrence Limit \$1,000,000

Personal Injury/Advertising Injury Limit \$1,000,000

General Aggregate Limit \$2,000,000

(Other than Products/Completed Operations)

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Consultants negligence.

**7. EVALUATION AND SELECTION**

**7.1** The Metro Bus project team will evaluate all proposals submitted and will select the proposal that best demonstrates the experience and capability to perform the scope of work defined in this RFP. Consultants may partner to achieve the total solution requested, however, only one consultant may be identified as the primary proposer.

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

**7.3 Basis for Award**

Evaluation Elements	Max Score
<b>Company Qualifications &amp; Experience</b>	30
<b>Project and Implementation Plan</b>	15
<b>Proposal Format</b>	15
<b>Project Timeline</b>	10

<b>Price Proposal</b>	25
<b>References</b>	5
<b>TOTAL POINTS</b>	<b>100</b>

The quality level will be based on the following scoring method:

<b>Quality Level</b>	<b>Points</b>	<b>Description</b>
Excellent	86-100	Meets all requirements; reflects significant proficiency or strengths as compared to minimum levels of acceptability; no offsetting weaknesses.
Very Good	76-85	Meets all requirements; reflects some proficiency and strengths; few if any offsetting weaknesses.
Good	66-75	Meets all requirements; strengths and weaknesses tend to offset each other equally.
Fair	36-50	May contain significant weaknesses; meets all minimum requirements but some areas of doubt exist.
Poor	35-1	Serious doubt exists regarding the ability to meet even minimum requirements; significant weakness without any offsetting strengths.
Deficient	0%	Does not meet any requirements of the project.

#### **7.4 Board of Commissioners Approval**

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

### **8. CONSULTANT OBLIGATIONS**

#### **8.1 Company Information**

- a. Official company name
- b. Corporate company address
- c. Affiliate company address
- d. Primary contact name, title, phone number, email
- e. Project team list including name, title, phone number, email

- f. Subcontractor name and contact list (if any)

## **8.2 Statement of Qualifications**

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

## **8.3 References**

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

## **8.4 Proposal Detail**

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

## **8.5 Confidential Material**

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

## 9. SCOPE OF SERVICES

### 9.1 **The proposal must meet the following objectives and services:**

- a. Meet with the Metro Bus Project Team to explain the planned study, describe the process and potential outcomes. Secure agreement on study parameters, procedures, methods and timelines including identification of appropriate comparable market organizations and identification of benchmark positions to use for market analysis. This may involve up to two planning meetings with the project team. During the course of the study, meet at agreed upon benchmarks to update the project team on progress.
- b. Provide a detailed description of the procedure and associated methodology that will be followed to develop a classification and compensation structure.
- c. Review current job descriptions and position evaluation system and recommend revisions that ensure compliance with federal and state requirements.
- d. Analyze existing compensation, identify recommendations for review and propose implementation methods to address issues/concerns.
- e. Provide methods to address internal inequities, pay compression, retention, hard-to-fill critical positions and market adjustments.
- f. Evaluate exempt and nonexempt status for each position and provide recommended changes along with written documentation and rationale used to make that determination.
- g. Review responsibilities, duties, qualifications, working conditions, physical requirements and all other considerations for each position to determine its job value and make recommendations for revisions to ensure compliance with the Americans with Disabilities Act and other federal and state requirements.
- h. Recommend placement of current employees upon implementation within the appropriate classifications, including addressing any salary equity concerns that may arise.
- i. Identify comparable organizations and competitive labor market comparisons for position classifications.
- j. Provide compensation analysis using data from similar transit agencies and municipalities agreed upon between the consultant and project team.

- k. Provide options and recommendations for a classification and compensation plan, including feasibility and implementation that takes into consideration Metro Bus budget constraints.

## **10. PROJECT DELIVERABLES**

### **10.1 Job Classification and Compensation Plan**

- a. Detail the appropriate number of pay steps and ranges and the weight given to internal equity and external market comparisons.
- b. Recommend step adjustments and/or reassignment of positions to appropriate pay steps as necessary.
- c. Test and verify ranking structure of all positions.
- d. Integrate job evaluation rankings and market comparisons into the recommended pay levels.
- e. Integrate employees' perceived value and monetary value of employee benefits into the overall design of the compensation plan.

### **10.2 Presentation of Findings and Communications Plan**

- a. Present findings and recommendations to project team and other staff as designated.
- b. Detail a launch plan to include, at a minimum, a kick-off meeting and communications with employees during the study and implementation.
- c. Submit a final report with an executive summary of the project results and the approved recommendations by the project team. This report will be used to make recommendations to the Board of Commissioners.

### **10.3 Implementation and Sustainability**

- a. Recommend the best approach to coordinate the recommended pay plan with the current pay plan, including an implementation timeline that considers any Metro Bus budget constraints.
- b. Recommend policies, guidelines and procedures for administration of the plan including how employees advance through the salary step ranges.
- c. Provide training, resources and documentation that will allow Metro Bus to be able to maintain the system independently post-implementation.
- d. Determine the validity for requests for reclassification and/or compensation changes outside of the standard review process.

#### **10.4 Pay Equity Summary**

The Consultant will provide a summarized, but detailed, explanation of the new compensation system and methodology and how that plan satisfies pay equity compliance according to Minnesota Management and Budget.

#### **10.5 Project Plan**

- a. Outline the process that will be used to gather information and how the consultant will ensure objectivity and impartiality in the process.
- b. Describe how a full and complete review and understanding of Metro Bus's positions will be ensured.
- c. Identify how current and accurate market data will be gathered and how an adequate sample size to provide meaningful market comparisons will be determined.
- d. Define how this data will be presented.
- e. Illustrate the approach to conducting internal and external position comparisons and how market comparisons with pay equity will be integrated into the proposed evaluation method.
- f. Identify the types of written materials (i.e. - descriptive materials, job descriptions, policies and procedures, questionnaires, etc.) that will be used. Provide examples.
- g. Describe how the recommended method is tested for equity and fairness.
- h. Describe your approach for ensuring a comprehensive review of all positions on a "moving forward" basis.
- i. Provide recommendations for an appeals process for employees who believe their positions were incorrectly classified.
- j. Detail any proposed optional services and the associated costs.

#### **10.6 Project Timeline**

Identify a tangible and realistic timeline for the completion of each component in the process including, kick-off meeting, internal data gathering, external data and market research, research findings, initial program draft, etc., as well as important meetings and contact with key personnel and other employees throughout the entire project.



Desired timeline includes completion of study and project deliverables by May/June 2022 for consideration during Fiscal Year 2023 budget process.

## **10.7 Cost Proposal**

- a. Provide a comprehensive, detailed cost proposal that covers all costs associated with the successful implementation of the system and services required of this RFP.
- b. Provide an itemized list and total for each service and deliverable.
- c. The cost proposal shall clearly define any optional services or reimbursable costs (i.e. – travel, lodging, meals, mileage, administrative work, document creation, etc.) that are not included as part of the basic fees.
- d. Proposals shall include an identification of the proposed project milestones. Payment will be made by Metro Bus at the agreed upon milestones and identified in the contract and project timeline.
- e. Payment will be made by Metro Bus Net 30 upon receipt of each milestone payment invoice.

## **11. REQUIRED CERTIFICATION DOCUMENTS**

### **11.1 Certifications and Affidavits Required**

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

- a. New restrictions on Lobbying
- b. Integrity Certification/Debarment-Suspension
- c. Non-Collusion Declaration
- d. Organizational Conflict of Interest
- e. Contractors Schedule of DBE Participation
- f. Certification of Compliance with DBE Requirements
- g. Intent to Perform as a Subcontractor
- h. State of Minnesota Resident Vendor Form

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

## **12. CONTRACTING ETHICS**

### **12.1 Gratuities**

It is a breach of contracting ethics for any person to offer, give, or agree to give any Metro Bus employee or former employee, or for any Metro Bus employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

### **12.2 Kickbacks**

It is a breach of contracting ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

### **12.3 Contingent Fees**

It is a breach of contracting ethics for a person to be retained, or to retain a person, to solicit or secure a Metro Bus contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

### **12.4 Collusion**

It is a breach of contracting ethics for a person to collude, conspire, or agree with other persons, firms or corporations to submit a sham proposal, to refrain from proposal, to fix prices, costs, or profits, or to secure any other advantage against Metro Bus.

### **12.5 Certification**

When signing the Proposal Quotation Form, Vendors are cognizant of these requirements and thereby certify that it has not breached any of the

foregoing contracting ethics. No Vendor shall sign the proposal without reviewing all material facts. False or fraudulent certifications shall subject the Vendor to all penalties and remedies provided by law, and to liability for Metro Bus costs and fees, including attorney's fees, in enforcing this provision.

#### **12.6 Specification Documents**

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

#### **12.7 STANDARD DOT CONDITIONS**

The FTA Standard DOT Conditions are incorporated as a required component of this Request for Proposal document. A copy of the Standard DOT Conditions can be accessed at the following web address:

<https://www.ridemetrobus.com/business-metro-bus/>

### **13. FTA THIRD PARTY CLAUSES**

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

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

#### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **Access to Records and Reports**

**a. Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

**b. Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

**c. Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

**d. Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### **Federal Charges**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Metro Bus and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **Civil Rights and Equal Opportunity**

Metro Bus is an Equal Opportunity Employer. As such, Metro Bus agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Metro Bus agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal

Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

### **Incorporation of FTA Terms**

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

refuse to comply with any Metro Bus requests which would cause Metro Bus to be in violation of the FTA terms and conditions.

**21. METRIC REQUIREMENTS 15 U.S.C. §§205 2007-Pub. L. 110-69** As required by U.S. DOT or FTA, Metro Bus agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Metro Bus agrees to accept products and services with dimensions expressed in the metric system of measurement.

**22. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS 23 U.S.C. Section 517(d) 23 U.S.C. §502** Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

**23. CORRIDOR PRESERVATION 49 U.S.C. 5323(q)** The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

**24. VETERANS EMPLOYMENT 49 U.S.C. 5325 (k)** Veterans Employment. As provided by 49 U.S.C. § 5325(k): a. To the extent practicable, Contractor agrees that it: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and b. Contractor also assures that its sub-recipients will: 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49



U.S.C. chapter 53, to the extent practicable, and 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Energy Conservation**

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

### **Termination for Convenience**

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Metro Bus may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Metro Bus that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Metro Bus, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **Opportunity to Cure**



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

If Contractor fails to remedy to Metro Bus's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [30 days] after receipt of written notice from Metro Bus setting forth the nature of said breach or default, Metro Bus shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Metro Bus from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### **DBE**

The contractor, subrecipients or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or

material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

**The DBE participation goal for this Contract is set at three (3) %.** This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than % of the total Contract price.

**Recycled Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.