

***Request for Proposals  
for  
Sioux Area Metro Site Selection Study  
June 24, 2022  
City of Sioux Falls, South Dakota  
Proposal Request No. 22-0125***



PUBLISH: June 24 and July 1, 2022

REQUEST NO. 22-0125

## REQUEST FOR PROPOSALS

The City of Sioux Falls, SD, Requests Proposals for  
Sioux Area Metro Site Selection Study

Proposals shall be received on ground floor, City Hall, 224 West Ninth Street, P.O. Box 7402, Sioux Falls, SD 57117-7402, not later than 2 p.m. on Thursday, July 28, 2022. **Proposals shall be publicly opened in City Hall, 1st Floor, at 3 p.m.**

The RFP is available online at <http://siouxfalls.org> or from Purchasing at the above address. Cite Bid Request No. 22-0125.

The City of Sioux Falls reserves the right to reject any or all bids, waive technicalities, and make award(s) as deemed to be in the best interest of Sioux Falls, SD.

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# **Request for Proposals for the Sioux Area Metro Site Selection Study**

## **Section 1—Introduction and Instructions**

### **1.01 Purpose of the RFP**

This Request for Proposal (RFP) is issued by the City of Sioux Falls (hereinafter referred to as the “City”). The purpose of this RFP is to establish a contract with a qualified firm to perform a Site Selection Study for Sioux Area Metro (SAM).

### **1.02 Contact Person, Telephone, Fax Number, and Email**

Scott Rust, Purchasing Manager, Finance Department, is the point of contact for this RFP. Unauthorized contact regarding the RFP with other City employees may result in the vendor being disqualified.

Scott Rust, Purchasing Manager, Finance Department

Phone: 605-367-8836

Fax: 605-367-8016

Email: [srust@siouxfalls.org](mailto:srust@siouxfalls.org)

### **1.03 RFP Schedule of Events**

This schedule of events represents the City’s best estimate of the schedule that will be followed for this RFP. If a component of this schedule such as the deadline for receipt of proposals is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: June 24, 2022.
- Deadline for Questions: July 21, 2022.
- Proposals Due: July 28, 2022.
- Review of Proposals: August 1–5, 2022.
- Presentations: August 15–19, 2022.
- Intent to Award Issued: August 30, 2022.
- Execute Contract: November 30, 2022.



#### **1.04 Return Mailing Address and Deadline for Receipt of Proposals**

Firms must submit one (1) original hard copy (marked "Original") and four (4) hard copies of the proposal in a sealed envelope or package.

**One Cost Proposal is to be submitted in a separate sealed envelope or package, clearly labeled "Cost Proposal."**

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the City before the deadline for receipt. Envelopes or packages must be addressed as follows:

City of Sioux Falls Purchasing Office  
Attention: Scott Rust  
Sioux Area Metro Site Selection Study  
RFP No. 22-0125  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402

Proposals must be received by the Purchasing Office at the location specified no later than **2 p.m., Central Standard Time, on Thursday, July 28, 2022**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication, or electronic means.

Firms assume the risk of the method of dispatch chosen. The City of Sioux Falls ("City") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the City. A Firm's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

#### **1.05 Questions and Addenda**

Questions regarding this RFP shall be submitted in writing to Scott Rust, Purchasing Manager, at [srust@siouxfalls.org](mailto:srust@siouxfalls.org). Answers to questions will be posted to the City's website. The deadline for questions is 2 p.m. Central Standard Time, **Thursday, July 21, 2022**.

If deemed necessary, addenda to the RFP will be issued and will be emailed to the proposers. No addenda will be issued after 5 p.m., **Monday, July 25, 2022**.

Responding Firms are prohibited from communicating in any other manner about this project with any other City employee from the date of issuance of this proposal until the final selection, unless otherwise directed by the Purchasing Manager. Other means of communications or contact may disqualify the submitting Firm.

## **Section 2—Scope of Services**

### **2.01 Introduction**

The City of Sioux Falls is requesting transit planning consultant services to complete a site selection analysis of four to five sites and planning-level cost estimate for a new transit office and garage facility. The new facility would need to be at least the same size of the current facility plus accommodate additional space needs. It is estimated that approximately an additional 5,000 square feet facility would be needed for additional office, meeting, and customer services that is currently located at 500 East Sixth Street based upon a preliminary design plan (link available in Section 2.05).

The site selection analysis should take into consideration if the site will work adequately for a transit office and garage site including its proximity to the Transit Depot in downtown Sioux Falls. Also, the site selection analysis should rank each of the sites based on meeting the overall needs of the transit system and operations. Adapting the current site should be included as an option and included in the ranking of sites. It should be stressed that this site selection analysis is intended to help the City of Sioux Falls and Sioux Area Metro with their analysis for reaching a decision on which site to locate a new transit office and garage facility.

### **2.02 General Information**

Sioux Falls is located in the far southeast corner of South Dakota. It is the largest city in the state with a current population of 202,000 people. The City's economic base is diverse but a majority is health care, banking, education, and light industrial. Sioux Area Metro is the only public transit system within the city of Sioux Falls. The Sioux Area Metro facilities and buses are owned by the City of Sioux Falls. First Transit, Inc. is currently under contract to manage the operations of the system. All personnel are employees of SuTran Inc., a subcorporation of First Transit (doing business as Sioux Area Metro). With 26 buses, Sioux Area Metro provides fixed-route service to an area of approximately 52 square miles. There are 12 regular routes. Service is Monday through Friday beginning at 5:45 a.m. with the last pullout of the day at 6:45 p.m. for seven of the routes and 8:45 p.m. for five of the routes. Saturday service begins at 7:45 a.m. until the last pullout of the day at 6:45 p.m. Current peak operations call for a maximum of 17 buses. Routes connect residential areas with places of employment, shopping malls, other retail outlets, medical facilities, schools, and local points of interest.

Sioux Area Metro provides paratransit service currently using 21 minibuses. There is a defined paratransit service area that covers a majority of the city. Paratransit (applicants) interviews are conducted at Sioux Area Metro Offices, for the purpose to approve (qualify) conditional/ nonconditional passengers for service. Paratransit service hours are Monday through Friday from 5:15 a.m. until 10 p.m. and Saturdays from 7:30 a.m. until 7 p.m.

## 2.03 Project Background

The City of Sioux Falls and Sioux Area Metro are in the process of completing a Transit Development Program (TDP). The TDP will include a major update of the route structure and operations of transit in Sioux Falls. It is anticipated that the plan will include a restructure of fixed-route services to focus on high ridership corridors and include more frequency on those corridors. Low ridership fixed-route areas will be converted to on-demand service areas and new areas of the city will be prioritized for expanded service in new on-demand services. With those route and operational changes will also come changes to the bus fleet. It is anticipated at this time that the future bus garage will need to be at least the same size of the current facility. However, the site analysis will also be used to assist in determining if the projected fleet bus numbers and sizes will create additional needs for garage storage facilities.

The Sioux Area Metro (SAM) offices and bus barn are located at the east edge of downtown Sioux Falls at 500 East Sixth Street. All administrative, dispatch, supervisor, and maintenance activities occur at this location. The current facilities include approximately 40,900 square feet of enclosed space, that is functionally distributed as follows:

- Administration: 1,905 square feet (4.7 percent of the total).
- Operations/Building Support: 3,111 square feet (7.6 percent of the total).
- Fleet maintenance/Service: 12,868 square feet (31.5 percent of the total).
- Vehicle storage (interior): 23,000 square feet (56.2 percent of the total).

Bus storage facilities for SAM transit operations currently accommodate 26 fixed-route buses and 21 paratransit buses. The SAM offices and bus barn were first constructed in 1982 with minor renovations in 1992 and 1999. The offices are in need of updates to improve the efficiency and safety for operations, improved meeting facilities, ADA updates, and a more flexible office design. The bus barn facility is in need of updates to security for the parts room that currently is dangerously accessible to someone walking into the facility. The project would also create significant benefits for employee health and safety with updates to the breakroom and also provide a design that will improve customer service. Lastly, updated infrastructure should be included into the design of the facility including electric bus charging stations.

The City is interested in analyzing the potential of relocating the transit bus garage and office facility outside the downtown area. The current site could be utilized for new vertical mixed-use business, retail, and residential uses. Therefore, the consultant will be asked to identify, review, analyze, and recommend the best site for a new bus office and garage facility and also complete environmental and Title VI site analyses. Conceptual design and cost estimates are also requested with this study. The conceptual design will be needed to complete NEPA analysis.

The City of Sioux Falls intends to in part utilize an FTA 5339(b) grant to help pay for the cost of the transit bus garage and office facility. Because federal funds will be used to implement the project, NEPA analysis (likely in the form of a documented Categorical Exclusion) and a Title VI Site Equity Analysis will be required. These activities must be completed prior to proceeding with land purchase and any construction or renovation activities.

## **2.04 Project Objectives**

- Assist in site analysis and selection process.
- Develop preliminary site plan and building layout for each facility that will be sufficient for NEPA and Title VI/environmental justice documents.
- Provide a completed NEPA study for both transit hub and maintenance and operation facilities.
- Provide a completed Title VI/environmental justice study for both transit hub and maintenance and operation facilities.
- Develop preliminary cost estimates that include project site conditions.
- Conduct site survey that looks at building details including geotechnical, utility, and traffic requirements.

In addition, consulting services may be requested to assist with the following activities:

- Provide support to the City's efforts to apply for grant funding.
- Provide transit consulting services that will aid in the effective operation at final design.

## **2.05 Previous Transit Studies**

The following transit-related studies have been completed in the past and are requested to be reviewed for background information.

- Sioux Area Metro Expansion Study (2019)—*conceptual design and cost estimates for expansion and remodel of the current bus garage and offices* (EAPC Architects and Engineers).
- Remaking Transit in Sioux Falls—City Council Information.

These studies and more are available at <https://siouxfalls.org/mayor/boards-commissions/public-transit-advisory-bd>

## **2.06 General Information**

The City of Sioux Falls is soliciting proposals from interested and qualified consultants to provide professional engineering services for the Site Analysis and Selection, Conceptual Design and NEPA, and Title VI Site Equity Analysis efforts. The City of Sioux Falls is moving forward to analyze new sites for a new replacement bus garage and office facility and/or to renovate the existing facility on the existing site. Four to five new land sites plus the existing site are to be analyzed and ranked based on the following standards:

1. Distance to SAM Depot (located at 500 East Sixth Street).
2. Location to arterial street system.
3. Compatible land uses.
4. Adequate size and orientation of lot for facility required and available for purchase.
5. Adequate public and private utilities.
6. Cost of site development and building.

The four or five sites will be selected as a part of the project scoping meeting between the City and the consultant. The City will have some potential sites available for review at that scoping meeting. The goal is to determine the best and most cost effective site for a new transit garage and office facility.

This project will be the first phase of planning and design phase of a new transit garage and office facility. The City intends to award a single services contract for professional engineering services for the NEPA and Title VI/Environmental Justice Study for the transit bus garage and office facility. Technical areas of expertise associated with this project are anticipated to include: survey/geomatics; geotechnical engineering; transit design, environmental analyst, Title VI/environmental justice analyst; civil/site engineering; utility coordination; drainage design; and cost estimating.

## **2.07 Scope of Services**

The following scope of services provides a general outline of anticipated services and processes/approach for project design development. Elements of the services provided herein are not intended to represent a comprehensive list of necessary services, or best approach to the design. The selected consultant utilizing their experience and expertise in the design of similar projects will develop or recommend changes to the scope of services and approach to design development as appropriate for the project.

1. Data Collection and Analysis
  - a. Conduct a real estate site analysis review with SAM and City staff.
  - b. Collection and review of available project data (right-of-way mapping, utility information, as-built/record drawing information, economic data, etc.).
2. Concept Design
  - a. The Concept Design shall address additional or key project areas including but not limited to the following:
  - b. Right-of-way (existing, new, easements and temporary construction easements, etc.);
  - c. Site road layout with all transit-related elements and traffic data.
  - d. Utility relocations and impacts, solar and water use.
  - e. Drainage/Storm Water Management.
  - f. Needs and assessments from other elements of scope.
  - g. Provide a concept cost estimate for concept design.
3. Prepare a final version of the Concept Design based upon input from City staff, stakeholders, use needs, and NEPA environmental requirements.
4. NEPA Analysis and Documentation—From FTA initial feedback, it is anticipated that this project may be cleared as a documented Categorical Exclusion. This will require completing the FTA Categorical Exclusion Worksheet and associated activities including Section 106 consultation. NEPA documentation must be approved by FTA before the project may proceed, including property acquisition, final design and construction activities.
5. Title VI/Environmental Justice Study - Collect data and perform analysis to satisfy federal requirements for Title VI.
6. Geotechnical Site Investigations - Conduct geotechnical site investigations in support of design (including preliminary pavement design and facility foundation) and as appropriate for construction information.
7. Preliminary Transit Analysis - Conduct preliminary transit analysis for the scope and need relevant to the City of Sioux Falls that would result in appropriate concept design.
8. Coordination of FTA Requirements—Consultant shall support the City of Sioux Falls to ensure the site and new or renovated facility is eligible for FTA funding.

The selected Consultant will be expected to attend a scoping meeting, or meetings, as needed, to develop a project scope of work that is within the budget and satisfies the project objectives. The selected Consultant as part of the work will be expected to visit the project site with City staff to gain familiarity of general site features, traffic and pedestrian issues; critical/key transportation facilities, and general condition of infrastructure within the roadway corridor.

## Section 3—Proposal Format and Content

### 3.01 Submittal Requirements

Elaborate format and binding are neither necessary nor desirable. The format for the proposal is as follows:

1. **Cover Letter.** Shall include the official name of the Firm submitting the proposal, mailing address, email address, telephone number, and contact name. Acknowledge receipt of any addenda if applicable. Summarize your understanding of the project. Provide a statement indicating your ability to provide to meet the requirements of the scope of services. Include a statement that the proposal is firm for ninety (90) days. The letter must be signed by an official authorized to bid the firm contractually.
2. **Project Summary.** Provide a summary of your firm's ability to accomplish all items in the scope of work and the benefits you believe the City would receive from selecting your Firm.
3. **Project Team Experience Qualifications.** Provide résumés or a listing of information for each person in your Firm participating in this project. State the educational background of each individual, years of experience, length of employment with your Firm, and experience providing Site Selection Consulting Services.
4. **References.** Firm shall provide a list with contact information of agencies that have requested your services within the past five (5) years.
5. **Experiences.** Each Firm shall supply recent examples of similar projects that the Firm was involved with.
6. **Proposed Fee.** Fee structure shall be comprehensive, itemized, and include all items listed in the RFP Scope of Work.

## Section 4—Review of Proposals and Selection of Finalists for Interviews

### 4.01 Selection Criteria

Upon receipt of the proposals, an evaluation team will determine the best proposal deemed most qualified based on the following criteria:

The evaluation team will rely on the qualitative information contained and presented in the proposals, the reference checks made, and the ability to work well with other project team members in making the decision to select the most qualified Firm to provide services for the City. Selection criteria will be based on:

## **Evaluation Criteria (100 Point Potential Score)**

- Thoroughness of the proposal and clarity of services to be provided. **10 points**  
  
Ability, capacity and skill best demonstrated by the Proposing Firm to perform the services requested. **20 points**
- Qualifications and experience of the individuals who would or might be assigned to the services described herein. **20 points**
- Demonstrated experience of providing Site selections services for Federally Funded Transit agencies. **10 points**
- Cost Proposal. **20 points**

Upon review of the proposals, the City will score the proposals and may short list and interview the highest ranking Firms. Upon completion of the interviews, the highest ranking Firm may be asked to enter into contract negotiations with the City of Sioux Falls. If an agreement cannot be reached with the highest ranked Firm, the City may move to the next highest ranked Firm. The same process will be repeated with the other ranked Firms if no such agreement can be reached. The City reserves the right to not select a Firm as part of this process if an agreement cannot be reached or for any other reason.

### **4.02 Contract Award**

It is the City's intent to enter into a contract with a Firm who best demonstrates the ability to provide Sioux Area Metro Site Selection Study. After review of the proposals, if the City decides to not enter into contract, the City will notify all Firms.

### **4.03 Special Conditions**

Excluding proprietary information, the successful Firm's proposal and contract are deemed public records and shall be available to the public upon request. In addition, the City shall maintain a "Register of Proposals for this Contract," that shall contain the names of companies who submitted a proposal and the name of the company who was awarded the contract; however, the proposals of the submitting Firms not awarded the contract are nonpublic records and will remain confidential.

## **Section 5—Standard Proposal Information**

### **5.01 Authorized Signature**

An individual authorized to bind the Firm to the provisions of the RFP must sign all proposals.



## **5.02 City Not Responsible for Preparation Costs**

The City will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

## **5.03 Conflict of Interest**

Firms must disclose any instances where the Firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g., employed by the City of Sioux Falls). The City reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Firm's proposal. The City's determination regarding any questions of conflict of interest is final.

## **5.04 Firm's Certification**

By signature on the proposal, the Firm certifies that it complies with:

- The laws of the state of South Dakota.
- All applicable local, state, and federal laws, codes, and regulations.
- All terms, conditions, and requirements set forth in this RFP.
- A condition that the proposal submitted was independently arrived at without collusion.
- A condition that the offer will remain open and valid for the period indicated in this solicitation and any condition that the Firm and/or any individuals working on the contract do not have a possible conflict of interest (e.g., employed by the City of Sioux Falls).

If any Firm fails to comply with the provisions stated in this paragraph, the City reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

## **5.05 No Contact Policy**

Any contact with any City representatives, related officials, or representatives other than those outlined in the RFP is prohibited. Such unauthorized contact may disqualify your Firm from this procurement.

## **5.06 Indemnification**

To the fullest extent permitted by law, the provider, its subcontractors, agents, servants, officers, or employees shall indemnify and hold harmless the City of Sioux Falls, including but not limited to, its elected and appointed officials, officers, employees, and agents, from any and all claims brought by any person or entity whatsoever, arising

from any act, error, or omission of the provider during the Firm's performance of the Agreement or any other agreements of the Firm, entered into by reason thereof. The Firm shall indemnify and defend the City of Sioux Falls, including, but not limited to its elected and appointed officials, officers, employees and agents, with respect to any claim arising, or alleged to have arisen from negligence, and/or willful, wanton or reckless acts or omissions of the Firm, its subcontractor, agents, servants, officers, or employees and any and all losses or liabilities resulting from any such claims, including but not limited to, damaged awards, costs and reasonable attorney's fees. The indemnification shall not be affected by any other portions of the Agreement relating to insurance requirements. The Firm agrees that it will procure and keep in force at all times at its own expense insurance in accordance with these specifications.

## **5.07 Insurance Requirements**

The Firm shall secure the insurance specified below. All insurance secured by the Firm under the provisions of this section shall be issued by insurance companies acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of this agreement.

1. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
2. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury and a property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after completion of this agreement.
3. Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
4. Professional liability insurance providing occurrence basis coverage for the claims that arise from the errors of the Firm or its consultants, omissions of Firm or its consultants, failure to render a service by the Firm or its consultants, or the negligent rendering of the service by the Firm or its consultants in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. If occurrence form insurance is not available, claims made coverage shall be maintained for two years after final completion of the services. The City does not represent that the above coverages and limits are adequate to protect the Firm or its consultant's interest and assumes no responsibility therefor.

5. Loss or breach of data liability coverage/cyber liability insurance covering third-party (including City employees) privacy liability claims resulting from theft, loss, or unauthorized display/use of confidential information, such as confidential third-party corporate and/or personally identifiable information in its care, custody, or control (electronically, on paper, or on a laptop). Such insurance must include coverage for a Firm's employee causing the loss or breach. Coverage shall also be provided for liability arising from any confidential information that will be transferred or any transactions that will occur over the Internet (including breach of confidentiality or credit injury to any City customer or vendor arising out of these Internet activities). The aggregate limit shall be \$1,000,000. If coverage is written on a claims-made basis, Firm warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this agreement; and that continuous coverage will be maintained or an extended discovery period will be purchased for a period of one (1) year beginning when the services under the contract are completed. The City shall be named as an additional insured.

The Firm will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Firm agrees to hold the City harmless from any liability, including additional premium due, because of the Firm's failure to maintain the coverage limits required.

The City's approval or acceptance of certificates of insurance does not constitute the City's assumption of responsibility for the validity of any insurance policies, nor does the City represent that the above coverages are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefor.

The Firm will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Firm agrees to hold the City harmless from any liability, including additional premium due because of the Firm's failure to maintain the coverage limits required.

The City's approval or acceptance of certificates of insurance does not constitute the City's assumption of responsibility for the validity of any insurance policies nor does the City represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore.

## **5.08 Civil Rights**

The Firm shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD. It is declared to be discrimination for the Firm, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If the Firm is guilty of discrimination, this Agreement may be terminated in whole or in part by the City and the Firm shall be liable for any costs or expense incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the Agreement so terminated or canceled.

Should the Sioux Falls Human Relations Commission in a proceeding brought as provided by the Code of Ordinances of Sioux Falls, SD, find that the Firm has engaged in discrimination in connection with this Agreement and issue a cease and desist order with respect thereto, the City shall withhold up to 15 percent of the contract price until such time as the Commission's order has been complied with or the Firm has been adjudicated not guilty of such discrimination.

The Firm will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

## **5.09 Special Conditions**

The City of Sioux Falls reserves the right to reject any and all proposals, to waive formalities, and to select the proposal and developer(s) that, in the City's sole discretion, are in the best interests of the City of Sioux Falls, South Dakota.

The City reserves the right to:

- a) Amend, modify, or withdraw this RFP.
- b) Revise any requirements under this RFP.
- c) Require supplemental statements of information from any responding party.
- d) Extend the deadline for submission of responses hereto.
- e) Negotiate or hold discussions with any bidder to correct insufficient responses that do not completely conform to the instructions contained herein.
- f) Waive any nonconformity with this RFP.
- g) Cancel, in whole or in part, this RFP if the City deems it is in its best interest to do so.
- h) Request additional information or clarification of information provided in the response without changing the terms of the RFP.

- i) Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked Firm.
- j) Not award a contract as a part of, or result of, this RFP process.

The City may exercise the foregoing rights at any time without notice and without liability to any bidder, or any other party, for expenses incurred in the preparation of responses hereto or otherwise.

## Federal Clauses

### 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-Contracts, leases, subcontracts, arrangements, other third party Contracts 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.

### AMERICANS WITH DISABILITIES ACT(ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. 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 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency."

### CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

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

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency 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 Contract, 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.

**5.Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### Federal Water Pollution Control Act

- (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 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **DEBARMENT AND SUSPENSION**

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.



(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, 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. pt. 180, subpart C and 2 C.F.R. pt. 3000, 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."

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The contractor 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 Agency 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).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency 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 Agency's written consent; and that, unless the Agency'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).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

## **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.

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race,

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color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## FEDERAL CHANGES

49 CFR Part 18 Federal Changes - 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 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 shall constitute a material breach of this contract.

## FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the

Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within 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 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Agency 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 Agency, 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.

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or

has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PATENT RIGHTS AND RIGHTS IN DATA**

### Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that users covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

## **PROMPT PAYMENT**



The 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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 the Agency.

## **SEISMIC SAFETY**

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

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

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

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **TERMINATION**

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency'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 Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

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, the Agency 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 the Agency 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, the Agency, 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 (General Provision)

The Agency, 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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, the Agency may terminate this contract for default. The Agency shall 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 shall be the same as if the termination had been issued for the convenience of the Agency.

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, the Agency may terminate this contract for default. The Agency shall 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 Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall 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 shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

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

time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency 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 shall be liable for any damage to the Agency 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 the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. 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 Agency.

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

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall 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 shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. 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 shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency 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 shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall 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, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.



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## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspended,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a -- 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,,
2. Is for audit services, or,
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:

- a. Debarred from participation in its federally funded Project,
- b. Suspended from participation in its federally funded Project,

- c. Proposed for debarment from participation in its federally funded Project,
- d. Declared ineligible to participate in its federally funded Project,
- e. Voluntarily excluded from participation in its federally funded Project, or
- f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

**Certification**

Contractor:

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name and Title of Contractor's Authorized Official:

\_\_\_\_\_

## Federal Certifications

### CERTIFICATION AND RESTRICTIONS ON LOBBYING

I,

hereby certify

(Name and title of official)

On behalf of

that:

(Name of Bidder/Company Name)

- 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall 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 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name:

Type or print name:

Signature of authorized representative:

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Signature of notary and SEAL:

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