

REQUEST FOR PROPOSALS

Washington County Transit Needs Study



Issue Date: August 19, 2016

Proposals Due: September 20, 2016 by 2:00 PM CST

Issued By:

Washington County

Request for Proposals

Washington County Transit Needs Study

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WASHINGTON COUNTY TRANSIT NEEDS STUDY

I. Project Information

1. Project Purpose and Overview

Washington County Transit Needs Study aims to evaluate the transportation needs of Washington County residents with focus on people with disabilities and seniors and other transit dependent populations. This study is the first step in understanding the transit needs of our community and the main objectives are:

- i. Evaluate the current state of transportation for transit-dependent individuals in Washington County;
- ii. Identify gaps and barriers to mobility;
- iii. Identify and quantify county resources being used to provide transportation services;
- iv. Identify future transportation needs; and
- v. Recommend strategies to address those needs.

2. Study Area

The study area is all of Washington County with focused attention to those areas not formally served by other transit services such as fixed routes and Metro Mobility.

3. Project Oversight

This study is commissioned and funded by Washington County. Washington County staff will serve as project management for the study and shall serve as sole point of contact for direction, deliverable review and approval, management of contract, and external communications. Washington County Community Services and Public Works will be leading this grant with support from other departments through their participation in a Technical Advisory Committee (TAC). Community Services will oversee stakeholder engagement building upon the department's established relationships with clients and community partners. These relationships will be important to our study as we evaluate gaps and needs in Washington County. Public Works will manage the grant contract and facilitate the Technical Advisory Committee.

The TAC will serve to assist in the development and execution of an assessment process, review of deliverables, and review of recommendations. A Community Advisory Committee (CAC) comprised of community members and other interested stakeholders will be convened for the purpose of this study. The CAC will help inform the Transit Needs Study from a community stakeholder perspective. Washington County staff will work with the contractor to ensure broad representation with respect to the types of organizations and their

geographic locations in the county. Both the TAC and CAC are expected to meet bimonthly throughout the study process.

4. Project Budget and Schedule

Washington County has budgeted \$159,500 for the Transit Needs Study. Washington County intends to have the study completed by July 31, 2017. Suggestions or recommendations for the project schedule and streamlining of efforts are strongly encouraged.

5. Project Funding

Minnesota Department of Transportation (MnDOT) and Washington County have funded this study. The FTA will be providing federal assistance for this project in an estimated expected amount of \$103,000; see the Catalog of Federal Domestic Assistance (CFDA) number is 20.513.

II. Proposal Process, Content, and Submission Requirements

1. Proposed Timeline

Request for Proposals (RFP) Released	August 19, 2016
Pre-Proposal Conference*	August 30, 2016
Written Questions Received (4:00 PM)	September 2, 2016
Response to Questions Released (4:00 PM)	September 6, 2016
Proposals Due (2:00 PM)	September 20, 2016
Oral Interviews (if necessary)	Week of October 3, 2016
Contract Negotiations	Interview to October 31, 2016
Washington County Board Approval	November 1, 2016

*A Pre-Proposal Conference will be held at Washington County Government Center 14949 62nd St. N., Stillwater, MN 55082 at 2:00 PM. Attendance at this conference is not mandatory.

2. Project Contact and Proposal Delivery Information

Washington County
Attn: Hally Turner
14949 62nd St. N.
Stillwater, MN 55082
Hally.Turner@co.washington.mn.us

Submit all questions related to specific project requirements in writing by 4:00 PM on September 2, 2016. All questions should be submitted via email to Hally.Turner@co.washington.mn.us.

All questions regarding this RFP are to be directed only to the RFP Administrator, Hally Turner. Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of Washington County other than the RFP Administrator during the proposal process.

Written responses to all questions received on time will be posted on September 6, 2016, at 4:00 PM on Washington County website at:
<http://www.co.washington.mn.us/bids.aspx>.

No oral questions will be entertained prior to or after the deadline for written questions specified above, except at the pre-proposal conference.

III. Proposal Submission Process

1. Notice to Proposer

- Upon submission, all proposals become the property of Washington County, which retains the right to use any concept or idea presented in any proposal submitted, whether or not that proposal is accepted.
- Washington County expressly reserves the right to amend or withdraw this RFP at any time and to reject any or all proposals.
- Proposers are not to collude with other proposers and competitors or take any other action, which will restrict competition. Evidence of such activity will result in rejection of the proposal.
- Washington County reserves the right to reject any and all proposals if such action is in the public interest.
- The Washington County Board of Commissioners reserves the right to select the most advantageous offer through an evaluation and comparing factors in addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price. A ‘premium’ is the difference between the price of the lowest priced proposal and the one that the recipient believes offers the best value.
- Because offers can at times be ambiguous, in its solicitation documents, Washington County reserves the right to request additional information before making an award. Washington County also reserves the right to seek clarification from any proposer about any statement in its proposal that the Recipient finds ambiguous.
- Washington County reserves the right to negotiate contract terms contemporaneously and /or subsequently with any number of proposers as Washington County deems to be in its best interest.
- Any exceptions to the requirements of this RFP must be included in the proposal submitted by the proposer. Identify the exceptions as a separate element of the proposal under the heading “Exceptions/Deviations.” Failure to note exceptions shall be deemed a waiver of objections. Proposer may not

request exceptions to the Contract Terms and Conditions listed in Appendix A.

- Washington County Reserves the right to include any clarifications/revisions to the RFP content in correlation with the question and response process.
- The successful proposer shall be required to enter into a contract with the Washington County on a form provided by the county. The contract shall consist of the Specifications and Attachments, the successful Proposal, and the Contract Form.

2. Joint Offers

Where two or more consultants desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. Washington County intends to contract with one single firm and not multiple firms doing business as a joint venture.

3. Proposal Format

Faxed proposals will not be accepted. Proposals received after the specified time and date shall not be considered.

The response must include one original and eight copies of the proposal and one digital pdf format. The first page of the original must have the original signature of the officer who will be accountable for all representations.

Proposals shall be prepared using 8 ½ x 11 double-sided paper with all text clear of bindings. Use of 11x17 fold-out sheets for large tables, charts, or diagrams is permissible, but should be limited. Index the proposal and sequentially number all pages throughout the section. Proposal narratives may not exceed 20 pages in length including the cover letter and Executive Summary. An appendix may be included that contains resumes and examples of relevant work experience. This appendix is not to exceed 10 pages. The proposal narrative and appendices should be bound together in a single submittal.

The proposal should be clear when reproduced in black and white. All proposal materials should be clearly marked “Washington County Transit Needs Study” as well as include the name and address of the proposer. The copies may be wrapped or boxed together.

Washington County shall not, in any event, be liable for any pre-contractual expenses incurred by the proposers in the preparation of their proposals. Proposers shall not include any such expenses as part of their proposals. Pre-contractual expenses are defined as expenses incurred by the Proposer in:

- Preparing its proposal in response to this RFP

- Submitting that proposal to Washington County
- Negotiating with Washington County any matter related to this proposal
- Any other expenses incurred by the Proposer prior to the date of execution of the proposed contract.

Failure to submit a proposal on time shall constitute grounds for the rejection of the proposal.

All information included in the submitted proposal will be classified in accordance with Section 13.591 of Minnesota statutes governing data practices.

4. Valid Proposal

In order to be considered valid, the proposal shall be in writing, submitted on time in sealed packages and be signed by an officer of the proposer who can be accountable for all representations.

The proposal must contain the following information, presented in the order shown:

1. **Cover Letter**
2. An **Executive Summary** of not more than three pages.
3. **Profile of Proposed Team** including the size and organizational structure, past history, and the status and outcome of any lawsuits brought against the proposer in the past five years.
4. **Description of Proposer's Overall Approach.**
5. **Base Work Plan** with a breakdown of project by phases or tasks. For each task listed, identify:
 - Specific staff to be involved, roles, and responsibilities.
 - Time commitment for each person in hours per task.
 - Schedule illustrating task relationships including anticipated meetings over the duration of the schedule.
6. **Description of Proposal Team's Past Experience** providing similar services, including:
 - Names, titles, and addresses of contact persons.
 - Description (history and experience) of proposal team member's role in each project.
 - Experience with similar type projects in scale and function.

- Experience working with diverse stakeholders, particularly individuals with disabilities and seniors.

7. Project Personnel Profile

- Resumes of key project personnel, including prior projects of similar size and scope for which the personnel played the same or a similar role as proposed for the project and the status and outcome of any lawsuits brought against team member firms in the last five years.
- Organizational chart of the proposer’s team identifying firm relationship and function of all key positions.
- Confirm that each team member will be fully engaged in the study as described for the duration of the contract.
- Description of the current assignment and time commitment to that assignment for all key personnel.

8. Budgets

- Hourly budget broken down by team member, by firm, and by task.
- Current hourly rates for staff.
- Current overhead rates for all team member firms.
- A schedule of reimbursable direct expenses by firm and expense type.
- A 10% contingency which shall be included in the Project Budget.

9. Suggested Modifications to Base Work Plan

- Suggested modifications to work plan and schedule.
- Description of additional work tasks including description of benefits to the design process.

10. Conflict of Interest

The proposer shall list past or present involvement of all projects and relationships that create or appear to create a conflict of interest. The list should indicate the name of the entity, the relationship, and a discussion of the conflict. Washington County reserves the right to exclude Proposers that have an organizational conflict of interest.

11. Required Certification Forms

The proposer shall submit certification forms included as attachments to this RFP.

IV. Scope of Services – General Information

The Transit Needs Study will be administrated by Washington County. The consultant will report to the project manager and coordinate with project committees and groups as appropriate.

The following section outlines tasks to be completed, key responsibilities, and key deliverables to be included in the study. The proposal work plan should demonstrate an understanding of study needs and propose an efficient study process, accounting for the inter-relationships among the task elements. Washington County is looking to proposers to make recommendations for how best to complete all project tasks by July 31, 2017. The consultant proposal work plan should aspire to provide the most effective process possible within the resource limits identified in this RFP.

1. Project Schedule

Washington County expects to complete the tasks described in Section V by July 31, 2017. Project schedules outlined in the base work plan are intended to be completed all tasks in the scope of work in the shortest amount of time that is feasible.

2. Project Status Communication

Communication notifying Washington County of project status will be required by the contractor for the following:

- Status and amount expended on each active task
- Status and expected completion date of draft and final deliverable on each active task
- Necessary or proposed change in schedule or budget of any individual task or subtask after finalization of schedule and budget. Any changes in scope, project timelines, or both will need to be documented through a project memorandum with sign-off by the contractor and Washington County staff.

3. Document Management and Control

The contractor is responsible for the management, maintenance, and delivery of all documents produced through the study. All documents produced in the development of any deliverable shall be preserved in their native file formats, and made available to Washington County staff within 15 days of creation. All intermediate draft versions of a deliverable will be preserved, with identification of the superseding version. All electronic and print versions of reports and documents produced by the contractor will become the property of Washington County. All versions of all deliverables produced by the contractor shall be turned over to Washington County throughout the contract period as noted above with a final digital version of all materials submitted at the conclusion of the contract.

4. Scope of Work Change

Washington County will consider modifications to the scope of work that will result in more effectively accomplish the objectives of the study. Any modification submitted should be clearly marked as such within the proposal and cost estimate, with an explanation of its expected added benefit and impact on other tasks within the scope of work.

V. Scope of Services – Required Tasks

1. Project Management

Management of the study will be the responsibility of Washington County staff. The contractor will report to Washington County staff and coordinate with community members and other stakeholders as necessary to produce the deliverables. To ensure the timely and proper execution of each task in the study, the contractor is required to meet at least monthly with Washington County staff to discuss the progress of each task and resolve issues as they occur in the study process.

As described in Section I, the Technical Advisory Committee and Community Advisory Committee will both play significant roles in many decision-making processes throughout the Study. These committees are anticipated to meet bimonthly throughout the course of the study. The contractor will attend each of the meetings at the discretion of Washington County staff.

Deliverables: Planning for and attendance at committee meetings including some documentation preparation. Document review and management processes.

2. Stakeholder Engagement

Opportunities for public comment and involvement will be included throughout this study to help guide the direction of the analysis and evaluate the findings and recommendations. These activities will be in addition to the committee work mentioned previously. Stakeholder engagement should include demographic and geographic diversity in assessing the needs of the community. Activities may include stakeholder input meetings and other forms of input. The contractor will be responsible for development of print and electronic materials for the engagement activities and public presentations.

Deliverables: The development of activity materials, meeting preparation, and communications. Summaries of stakeholder input.

3. Assessment

To better understand travel patterns and transit service needs within the study area, the contractor will evaluate and summarize existing and future

characteristics of the study area that affect transit service demand and potential improvements to service. Assessment should pay close attention to the following:

- The current state of transportation for transit-dependent individuals in Washington County;
- Barriers and gaps to mobility;
- County resources being used to provide transportation services;
- Identify future transportation needs.

Deliverable: A technical report including a summary of the analysis with documentation of user experiences and a list of providers and resources.

4. Recommended Strategies for Implementation

Based on the results of the assessment process, the contractor will develop a strategic blueprint for action with specific recommendations for Washington County. The plan should identify gaps in services and needs of transit-dependent individuals in the service area and strategies for addressing those gaps and needs for the target population.

Deliverable: A report including a summary of the strategies to be considered for implementation.

VI. Draft Work Plan

2016 3rd Quarter (November, December)				
Key Objectives: Establish committees, Release Request for Proposals, Contractor under contract				
Task	Responsible Party	Due Date	Completion Date	Comments
Contractor Under Contract	Public Works	Nov 2016		
Complete required monthly reporting	Public Works	Ongoing		
Schedule and hold first TAC Meeting	Public Works	Nov 2016		Adopt roles and responsibilities, Discuss scope of work for RFP
Hold stakeholder meetings to discuss CAC	Community Services	Nov 2016		Discuss purpose of project, invite to participate in CAC
Schedule and hold first CAC meeting	Community Services	Dec 2016		Adopt roles and responsibilities
Schedule and conduct interviews	Public Works/Technical Advisory Committee	Dec 2016		
2017 1st Quarter (January, February, March)				
Key Objectives: Regular meetings with TAC and CAC, Initiate study				
Complete required monthly reporting	Public Works	Ongoing		
Hold bimonthly TAC meetings	Public Works	Ongoing		Oversee contractor contract, guide scope of project
Hold bimonthly CAC meetings	Community Services	Ongoing		Provide input on project
Collaborate with TAC and CAC to conduct study	Public Works/Technical Advisory Committee/Contractor	Ongoing		Work conducted per the scope of work approved by TAC
Hold stakeholder engagement meetings	Contractor	Ongoing		Format to be determined

Preliminary Information Available	Contractor	Mar 2017		Information available for feedback from the TAC and CAC
2017 2nd Quarter (April, May, June)				
Key Objectives: Regular meetings with TAC and CAC, Draft report				
Complete required monthly reporting	Public Works	Ongoing		
Submit final report	Public Works	Jun 2017		
Hold bimonthly TAC meetings	Public Works	Ongoing		Oversee contractor contract, guide scope of project and final report
Hold bimonthly CAC meetings	Community Services	Ongoing		Provide input on project and final report
Hold stakeholder summit	Community Services	Jun 2017		Discuss recommendations and next steps
2017 3rd Quarter (July)				
Key Objectives: Finalize study				
Final Report	Contractor	Jul 2017		Provide final report after feedback from TAC and CAC

VII. Evaluation and Contract Award

1. Evaluation

Proposals submitted in response to this RFP will be evaluated and scored by the Evaluation Committee established by Washington County, in accordance with the criteria outlined below. To be considered a qualified proposal, responders will need to have completed a federal aid project in the State of Minnesota with a similar scope. The primary desire of Washington County for this procurement is to ensure an award will be made based on the highest quality of service that best matches the Washington County's requirements using the Federal Transit Administration's (FTA C 4220.1F) "Best Value" methodology. Per FTA's Third Party Contracting Guidance, "Best Value" is defined as follows:

"Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the procuring agency.

The Proposal Evaluation Team will be comprised of Washington County staff from multiple departments. Others may be added at the discretion of the project team.

- Washington County reserves the right to waive any minor irregularities in the proposal request process.
- Washington County reserves the right to interview any or all proposers at its discretion.
- A 100-point scale will be used to create the final evaluation recommendation. The criteria are weighted and the proposals will be judged as follows:

Criteria	Points
Expressed understanding of project objectives and technical design of the proposal, work plan, and project approach.	25
The experience, resources, and qualifications of the proposal team and individuals to be assigned to the project as key personnel	25
The availability of personnel and other resources to perform the work within the specified project schedule.	15
Proposed public involvement approach and project manager and proposal team's experience in conducting successful stakeholder engagement for similar projects.	25
The proposal team's background and experience with similar work,	10

including ability and experience in handling projects of similar nature.	
Highest Possible Score	100

The evaluation team may conduct oral interviews with selected proposal teams if necessary. Washington County will not be responsible for any costs incurred by a proposer in preparing for or making a presentation.

Washington County project manager will make a final recommendation based on the written proposals, the results of oral interviews, reference checks, and the recommendation of the Proposal Evaluation Team. That recommendation will be presented to Washington County Board of Commissioners for approval.

2. Proposal Protest Procedure

A formal letter of protest must be received by Washington County to the attention of Hally Turner, within ten (10) business days of the date of the award notification letter. The letter must state specifically the reason for the protest and include any documentation needed to substantiate the claim(s).

Washington County will have ten (10) business days from the date of receipt of the protest letter in which to make a written response. Washington County may extend the period for purposes of investigating the protest, if it is warranted, by notifying the complainant in writing of their intentions within the above mentioned response time.

If the complainant, after receiving the final written response from the Washington County, is not satisfied that the reason for protest has been sufficiently resolved, he/she may file a request for an appeal to be heard by the Washington County Board of Commissioners. Such request must be written and received within the (10) business days from the date of the Washington County response letter. The letter shall be made to the attention of Molly O'Rourke, Washington County Administrator, who will schedule the hearing for the next available Washington County Board meeting, and inform the complainant in writing of said date and time.

Washington County will not receive any service or product described in the proposal document from the successful Proposal until the protest has been resolved.

Washington County's address is as follows.

Washington County
[attn.]
14949 62nd St. N.

Stillwater, MN 55082

3. Contract

The contract shall be in effect from the contract start date November 1, 2016 to July 31, 2017. The agreement to be executed between the successful proposer and Washington County will include the General Terms and Conditions, which have been included in this RFP as Appendix A, and the provisions of the successful proposer's proposal.

The agreement will include the following payment provisions:

- Payments will be made upon achievement of agreed-upon project milestones.
- If reimbursement of expenses is included, Washington County will only reimburse at actual cost for out of pocket expenses. If reimbursement for travel is permitted, all airfare shall first be authorized by Washington County and will be reimbursed at the lowest cost fare. Food, ground transportation, and lodging expenses necessitated by the Agreement will be reimbursed according to the Internal Revenue Service ("IRS") Regular Per Diem Rate Method or actual cost, whichever is less. Mileage will be reimbursed at the IRS rate in effect at the time of travel.

VIII. Additional Information

All electronic and hard copy versions of reports and documents produced by the proposer will be the property of Washington County. All such documents shall be turned over to Washington County in their original format, including electronic format, at the end of the project conclusion.

APPENDIX A

REQUIRED CONTRACT TERMS AND CONDITIONS

A contract will be prepared by Washington County upon selection of a firm.

Appropriate language will be added to document the specific nature and scope of services, costs, responsibilities, and liabilities of each party. Additional areas of concern may be incorporated, subject to mutual agreement between parties. General conditions set forth in this section will be incorporated into the professional services agreement. The following provisions I through XVII must be included in any contract and are non-negotiable.

I. DOCUMENT FORMAT

All word processing documents shall be done and provided to Washington County in Microsoft Word format, and not converted from other formats. Data files shall be provided in Microsoft Excel format. CAD files shall be provided in AutoCAD or MicroStation format.

II. NONDISCRIMINATION

The Consultant agrees to comply with the nondiscrimination provision set forth in Minnesota Statute 181.59. The Consultant's failure to comply with section 181.59 may result in cancellation or termination of the agreement, and all money due or to become due under the contract may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

III. STANDARDS

The Consultant shall comply with all applicable Federal law, State statutes, Federal and State regulations, and local ordinances now in effect or hereafter adopted.

Failure to meet the requirements of the above shall be a substantial breach of the agreement and will be cause for cancellation of this contract.

IV. POSSESSION OF FIREARMS ON WASHINGTON COUNTY PREMISES

Unless specifically required by the terms of this contract, no provider of services pursuant to this contract, including but not limited to employees, agents or subcontractors of the (Vendor or Consultant, depending upon which term is used) shall carry or possess a firearm on Washington County premises or while acting on behalf of Washington County pursuant to the terms of this agreement. Violation of this provision shall be considered a substantial breach of the Agreement; and, in addition to any other remedy available to Washington County under law or equity. Violation of this provision is grounds for immediate suspension or termination of this contract.

V. SUBCONTRACTING AND ASSIGNMENT

The Consultant shall not enter into any subcontract for performance of any services contemplated under this agreement; nor novate or assign any interest in the agreement, without the prior written approval of Washington County. Any assignment or novation may be made subject to such conditions and provisions as Washington County may impose. If the Consultant subcontracts the obligations under this agreement, the Consultant shall be responsible for the performance of all obligations by the subcontractors.

VI. SUBCONTRACTOR PROMPT PAYMENT

Pursuant to Minnesota Statute §471.425 subd. 4a., Consultant shall pay any subcontractors within 10 days of the Consultant's receipt of payment from Washington County for undisputed services provided by the subcontractor. The Consultant shall pay interest of 1½ percent per month, or any part of a month, to the subcontractor on any disputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime Consultant shall pay the actual penalty due to the subcontractor. The subcontractor shall have third party rights under this agreement to enforce this provision.

VII. DATA PRACTICES

All data collected, created, maintained or disseminated for any purposes by the activities of the Consultant because of this agreement is governed by the Minnesota government Data Practices Act, Minnesota Statutes Chapter 13 (Act) as amended, and the Consultant shall comply with the requirements of the Act as if it were a government entity. The remedies in section 13.08 of the Act shall apply to the Consultant.

VIII. AUDITS, REPORTS, RECORDS AND MONITORING PROCEDURES/RECORDS AVAILABILITY & RETENTION

Pursuant to Minn. Stat. section 16C.05 subd. 5, the Consultant will:

Maintain records which reflect all revenues, costs incurred and services provided in the performance of this Agreement.

Agree that Washington County, the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices and involve transactions relating to this agreement. The Consultant agrees to maintain these records for a period of six (6) years from the date of the termination of this agreement.

IX. JURISDICTION & VENUE

This contract, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. All actions brought under this agreement shall be brought exclusively in Minnesota State Courts of competent jurisdiction with venue in Washington County.

X. CONTRACTOR DEBARMENT, SUSPENSION AND RESPONSIBILITY CERTIFICATION

Federal Regulation 45 CFR 92.35 prohibits Washington County from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minnesota Statutes, Section 16C.03, subdivision 2, provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with Washington County. Consultants may be suspended or debarred when it is determined through a duly authorized hearing process, that they have abused the public trust in a serious manner.

By signing this agreement, the Consultant certifies that it and its principals* and employees:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state, or local governmental department or agency; and
- B. Have not within a three year-period preceding this agreement: 1) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state, or local government) transaction or contract, 2) violated any federal or state antitrust statutes, or 3) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
- C. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - 1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state, or local government) transaction,
 - 2) violating any federal or state antitrust statutes, or
 - 3) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

- D. Are not aware of any information and possess no knowledge that any subcontractor(s), that will perform work pursuant to this agreement, are in violation of any of the certifications set forth above; and
- E. Shall immediately give written notice to the contract manager should the Consultant come under investigation for allegations of fraud or a criminal offense in connection with obtaining or performing a public (federal, state, or local government) transaction, violating any federal or state antitrust statute, or committing embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property.

*Principals, for the purpose of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary division or business segment, and similar positions).

XI. INDEMNIFICATION

The Consultant agrees it will defend, indemnify and hold harmless Washington County, its officers and employees against any and all liability, loss, costs, damages, and expenses which Washington County, its officers, or employees may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of the Consultant in the performance of this agreement.

XII. INSURANCE REQUIREMENTS

The Consultant agrees that in order to protect itself, as well as Washington County, under the indemnity provisions set forth above, it will at all times during the term of this Agreement, keep in force the following insurance protection in the limits specified:

- A. Commercial General Liability/Professional Liability with contractual liability coverage in the amount of Washington County's tort liability limits set forth in Minnesota Statute 466.04 and as amended from time to time.
- B. Automobile coverage in the amount of Washington County's tort liability limits set forth in Minnesota Statute 466.04 and as amended from time to time.
- C. Worker's Compensation in statutory amount. (if applicable)

Prior to the effective date of this Agreement, the Consultant will furnish Washington County with a current and valid proof of insurance certificate indicating insurance coverage in the amounts required by this agreement. This certificate of insurance shall be on file with Washington County throughout the term of the agreement. As a condition subsequent to this agreement, Consultant shall insure that the certificate of insurance provided to Washington County will at all times be current. The parties agree that failure by the Consultant to maintain a current certificate of insurance with Washington County shall be a substantial breach of the contract and payments on the contract shall be withheld by Washington County until a certificate of insurance showing

current insurance coverage in amounts required by the contract is provided to Washington County.

Any policy obtained and maintained under this clause shall provide that it shall not be cancelled, materially changed, or not renewed without thirty-day notice thereof to Washington County.

XIII. INDEPENDENT CONTRACTOR

It will be agreed that nothing within the contract is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting the Consultant as the agent, representative, or employee of Washington County for any purpose or in any manner whatsoever. The Consultant is to be and shall remain an independent consultant with respect to all services performed under this agreement.

The Consultant will secure, at its own expense, all personnel required in performing services under the agreement. Any and all personnel of the Consultant or other persons, while engaged in the performance of any work or services required by the Consultant under this agreement shall have no contractual relationship with Washington County and shall not be considered employees of Washington County.

XIV. MODIFICATIONS

Washington County may require the Proposer to modify their operations under the contract if such modifications do not impose any additional costs to the Contractor. Any material alteration, modification, or variation shall be reduced to writing as an amendment and signed by the parties. Any alterations, modifications, or variations deemed not to be material by agreement of Washington County and the Consultant shall not require written approval.

XV. MERGER

It is understood and agreed that the entire agreement of the parties is contained here and that this contract supersedes all oral agreements and negotiations between the parties relating to this subject matter. All items referred to in this contract are incorporated or attached and deemed to be part of the contract.

XVI. CANCELLATION

Washington County may cancel this Agreement at any time upon giving fifteen (15) days written notice sent to the Consultant at the address above. If the Contractor is (1) makes a general assignment for the benefit of creditors; (2) has a receiver on account of insolvency; (3) is guilty of substantial violation of any provision of the Contract; (4) fails to promptly pay employees or obligations incidental to proper performance of the Contract; or (5) persistently disregards or permits disregard by employees of laws, ordinances or instructions of the Washington County Board or its designated

representative, then Washington County may, at its opinion, terminate the Contract without further obligation on the part of the Washington County to the Contractor except for the expenses incurred prior to the termination. If Washington County or its designated representative believes any action or non-action of the Contractor represents an immediate threat to public safety, the Washington County may suspend service for so long a period as they deem necessary.

XVII. SERVICES BEYOND THE SCOPE OF THIS CONTRACT

Any additional tasks added to this project must be by written amendment to this Contract signed by both parties.

XVIII. AFFIDAVIT OF NONCOLLUSION

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

XIX. PROPOSAL CONTENTS CERTIFICATION

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

XX. DISPOSITION OF RESPONSES

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

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

- Clearly mark all trade secret materials in its proposal at the time the proposal is submitted;
- Include a statement with its proposal justifying the trade secret designation for each item; and
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the state, its agents and employees, from any judgments or damages awarded against the state in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives Washington County award of a contract. In submitting a proposal in response to this RFP, the proposer agrees that this indemnification survives as long as the trade secret materials are in possession of Washington

County. Washington County is required to keep all the basic documents related to its contracts, including responses to RFPs, for a minimum of seven years.

Washington County will not consider the prices submitted by the proposer to be proprietary or trade secret materials.

XXI. CONTINGENCY FEES PROHIBITED

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

XXII. CERTIFICATION REGARDING LOBBYING

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

XXIII. ORGANIZATIONAL CONFLICTS OF INTEREST

The proposer warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to Washington County, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The proposer agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division which must include a description of the action which the selected proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, Washington County may, at its discretion, cancel the contract. In the event the proposer was aware of an organizational conflict of interest prior to the award of the contract, and did not disclose the conflict to the contracting officer, Washington County may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

XXIV. SOLICITING RESPONSES FROM DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The MnDOT Office of Equal Employment Opportunity/Contract Management has assigned a **Race/Gender Neutral DBE goal** to this project. Proposers are directed to read the *Disadvantaged Business Enterprise (DBE) Special Provisions Race/Gender Neutral Goal* in Attachment 5.

The DBE Special Provisions explain how to comply with the DBE requirements. In particular, see pages 1 and 2 regarding documents that a proposer must submit with its bid proposal. The form required in the bid can be found on page 3 of the Special Provisions.

XXV. RESIDENT VENDOR FORM

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

APPENDIX B

FEDERAL CONTRACT CLAUSES

FEDERAL CONTRACT CLAUSES.

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

A. SCHOOL BUS REQUIREMENTS **49 U.S.C. 5323(F); 49 CFR Part 605**

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

B. ENERGY CONSERVATION REQUIREMENTS **42 U.S.C. 6321 et seq. ; 49 CFR Part 18**

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

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

C. CLEAN WATER REQUIREMENTS **33 U.S.C. 1251**

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

D. LOBBYING

31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20

Applicability to Contracts

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

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31

U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31

U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

F. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

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

Model Clause/Language

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

Federal Changes - Contractor 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.

G. CLEAN AIR

42 U.S.C. 7401 et seq; 40 CFR 15.61; 49 CFR Part 18

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

H. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

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

Model Clause/Language

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

No Obligation by the Federal Government.

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

I. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.; 49 CFR Part 31 18 U.S.C. 1001; 49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

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

Model Clause/Language

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

Program Fraud and False or Fraudulent Statements or Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 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 the penalties of the Program Fraud Civil

Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

J. TERMINATION

49 U.S.C. Part 18; FTA Circular 4220

Applicability to Contracts

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

Flow Down

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

Model Clause/Language

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

- a. Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) 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 only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.
If it is later determined by the (Recipient) 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 (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision)** The (Recipient) 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 (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) 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 (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient 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 Recipient 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 Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor 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 the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) 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 Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the 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 Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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 Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) 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 the (Recipient) 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 (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) 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 (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), 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 (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

K. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b).

This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

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

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

Clause Language

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

Suspension and Debarment

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

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

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

L. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

M. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332;

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

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

Model Clause/Language

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

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

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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.
 - (c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29

C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

N. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18; FTA Circular 4220

Applicability to Contracts

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

Flow Down

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

Model Clauses/Language

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

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure

to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

O. EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly

individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29

C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations **financed in whole or in part with Federal assistance provided by FTA.**

P. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

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

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

Clause Language

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

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is %. A separate contract goal **[of % DBE participation has] [has not]** been established for this procurement.
- b. The contractor 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 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Washington County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.
- [Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).
- {If no separate contract goal has been established, use the following}*** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- d. 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 from the Washington County. In addition, **[the contractor may not hold retainage from its subcontractors.] [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.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Washington County and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- e. The contractor must promptly notify Washington County, 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 Washington County.

Q. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms 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 Washington County requests which would cause Washington County to be in violation of the FTA terms and conditions.

S. SPECIAL NOTIFICATION REQUIREMENTS FOR STATES.

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

ATTACHMENT 1
CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract) _____ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment against them for 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; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are 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 enumerated in paragraph (2) or this certification; and
- 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation of this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ 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. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for _____

hereby certifies that _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

**ATTACHMENT 2
STATE OF MINNESOTA
NON-COLLUSION DECLARATION**

The following Non-Collusion Declaration shall be executed by the bidder:

Operation Of

State Of Minnesota

County Of

I, _____, do state under penalty
(name of person signing this declaration)

of perjury under 28 U.S.C. 1746 of the laws of the United States:

(1) that I am the authorized representative of _____

(name of person, partnership, or corporation submitting this proposal)

and that I have the authority to make this declaration for and on behalf of said bidder;

(2) that, in connection with this proposal, the said bidder has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding;

(3) that, to the best of my knowledge and belief, the contents of this proposal have not been communicated by the bidder or by any of his/her employees or agents to any person who is not an employee or agent of the bidder or of the surety on any bond furnished with the proposal and will not be

communicated to any person who is not an employee or agent of the bidder or of said surety prior to the official opening of the proposal, and

(4) that I have fully informed myself regarding the accuracy of the statements made in this declaration.

Signed: _____

(bidder or his authorized representative)

Dated: _____

ATTACHMENT 3
ORGANIZATIONAL CONFLICT OF INTEREST (SPECIFICATION PREPARATION)

- (a) This contract, in whole or in part, provides for the Contractor to draft and/or furnish specifications in support of _____ [*Contracting officer identify system or program*]. Further, this contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions in support of _____ [*Contracting officer identify program*]. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.505-2.
- (b) During the term of this contract and for a period of _____ [*Contracting officer insert period of time after contract completion that contractor will not be allowed to supply time*] after completion of this contract, the Contractor agrees that it will not supply as a prime contractor, subcontractor at any tier, or consultant to a supplier to the Department of Commerce, any product, item or major component of an item or product, which was the subject of the specifications and/or work statements furnished under this contract. The contractor shall, within 15 days after the effective date of this contract, provide, in writing, to the Contracting Officer, a representation that all employees, agents and subcontractors involved in the performance of this contract have been informed of the provisions of this clause. Any subcontractor that performs any work relative to this contract shall be subject to this clause. The Contractor agrees to place in each subcontract affected by these provisions the necessary language contained in this clause.
- (c) For the purposes of this clause, the term “contractor” means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, and entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.
- (d) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default under FAR 52.249-6. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Government in the event the Contractor breaches this or any other Organization Conflict of Interest clause.

Contracting System Name

Contractor Agency Name

Contracting System Representative

Contractor Representative

ATTACHMENT 4

CERTIFICATION REGARDING LOBBYING

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, *apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**ATTACHMENT 5
DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS
RACE/GENDER NEUTRAL GOAL**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SPECIAL PROVISIONS**

RACE/GENDER NEUTRAL GOAL

POLICY STATEMENT

It is the policy of the Minnesota Department of Transportation (Mn/DOT) that DBEs, as defined in 49 C.F.R. Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in parts with federal funds. Consistent with this policy and Title VI of 1964 Civil Rights Act, Mn/DOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT) assisted contract because of sex, race, color, or national origin. Mn/DOT has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the DOT, 49 C.F.R. Part 26 to implement this policy.

CONTRACT ASSURANCE

The Contractor, sub recipient 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 all the 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 Mn/DOT deems appropriate.

Furthermore, Title VI of the Civil Rights Act of 1964 assures that no person or group of persons may, on the grounds of race, color, national origin, sex, age, handicap or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs or activities administered by Mn/DOT. For further information regarding Title VI, please contact the Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, MN 55155-1899. Our telephone number is: (651) 366-3073.

The above information is applicable to every contractor including every tier of subcontractors, supplier or service providers on this project. It is the responsibility of the prime contractor, subcontractors, suppliers and service providers to ensure equal opportunity for all firms to participate on this project.

RACE/GENDER NEUTRAL GOAL

There is **no specific numerical DBE goal assigned** to this project. While no numeric DBE goal is assigned to this contract, the Contractor, sub-recipient or subcontractor **should** make every reasonable effort to solicit DBE firms to participate as subcontractors, service providers and suppliers on this project.

ADDITIONAL SUBCONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Whenever an additional subcontractor, supplier or service provider is selected, and this information has not been previously reported to the Mn/DOT Office of Civil Rights, the Contractor or its designated OCR Officer shall promptly provide Mn/DOT OCR with the following information regarding the subcontract:

- a) The name of the subcontractor; supplier or service provider;
- b) The total dollar amount of the subcontract;
- c) The specific work items covered by the subcontract;
- d) Estimated quantities of each work item; and
- e) Individual unit prices (if applicable).

SUBMITTAL OF DOCUMENTATION

Upon award of the contract, the Contractor shall submit on the attached Bidders List, a complete list of all subcontractors, service providers, suppliers and consultants that submitted bids, and shall indicate the successful quotes that will be used on the contract.

Additionally, during the life of the contract, the Contractor shall submit progress payment reports on the attached Contractor Payment Form regarding the payments made to its subcontractors, suppliers, service providers and sub-consultants. In accordance with federal regulations and Minnesota's Prompt Payment law, Contractors are required to pay their subcontractors within ten (10) days of receiving progress payments from Mn/DOT. Contractors are also required to submit to the Project Engineer and the Mn/DOT OCR the Contractor Payment Forms no later than ten (10) days after receiving payment from Mn/DOT.

PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The prime contractor agrees further to return retainage payments to each subcontractor within ten days after the subcontractor's work is satisfactorily completed. This clause applies to both DBE and non-DBE subcontractors. Any contractor making payments to subcontractors must complete and submit the attached Contractor Payment form.

FINAL PAYMENT AFFIDAVIT

Pursuant to Mn/DOT Standard Specifications for Construction Sec. 1908, "Unless a Contractor has presented an Affidavit showing the total dollar amounts of works performed by disadvantaged business enterprise (DBE), final payment may be withheld." The DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work has been performed by DBE(s) on the project.

This Race/Gender Neutral Goal Language is an addendum to the Mn/DOT DBE Special Provisions.



Bidders List

State Project Number _____
 Project Name _____
 Contact Name _____

Date: _____
 Eng. Est. _____ Goal _____ %
 Contact # _____

List all comparative quotes or proposals received from Prime Contractors bidding or proposing on the project above.

Contractor Information				Check (✓) Firms That Will Be Used	Description of Work	Dollar Amount Of Bid/Proposal.
1.	Contractor Name			<input type="checkbox"/>		
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				
2.	Contractor Name			<input type="checkbox"/>		
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax				
3.	Contractor Name			<input type="checkbox"/>		
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax				
4.	Contractor Name			<input type="checkbox"/>		
	Contact Name					
	Address:					
	Federal Tax #	E-mail				
	Phone	Fax				
5.	Contractor Name			<input type="checkbox"/>		
	Contact Name					
	Address:					
	Federal Tax #	E-mail				
	Phone	Fax				

Contractor Payment Form

1st Tier Sub-Contractor: _____

State Project Number _____

Prime Contractor: _____

Payment Reporting Period: From: _____ To: _____



Instructions: All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the Mn/DOT Office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the Mn/DOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from Mn/DOT.

Contractor Information		Original Contract Amount	Committed DBE %	Actual DBE % to Date
Name:				
Address:				
Phone:				
Name of Subcontractor/Supplier	DBE? (Check if Yes)	Description of Work	Subcontract Amount	
1.	<input type="checkbox"/>	1.	1.	
2.	<input type="checkbox"/>	2.	2.	
3.	<input type="checkbox"/>	3.	3.	
4.	<input type="checkbox"/>	4.	4.	
5.	<input type="checkbox"/>	5.	5.	
6.	<input type="checkbox"/>	6.	6.	
Amount of Current Payment	Total Sub-Contractor Payment-To-Date	% Paid to date	Final Payment? Yes/No	
1.	1.	1.	1.	
2.	2.	2.	2.	
3.	3.	3.	3.	
4.	4.	4.	4.	
5.	5.	5.	5.	
6.	6.	6.	6.	
Company Officials Signature & Title		Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)	
Title:		Title:		
Phone:	Fax:	Phone:	Fax:	

Contractor Payment Form Instructions

All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the Mn/DOT Office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the Mn/DOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from Mn/DOT.

State Project Number: As identified by Mn/DOT

Prime Contractor: The contractor who was awarded the project.

1st Tier Sub-Contractor: If there is an instance of a sub who has a subcontractor, list the 1st tier sub here and then list all of the 2nd tier Subcontractor(s) in the Name of Subcontractor/Supplier area. *All areas should be filled in regarding the prime as well.*

Payment Reporting Period: This should reflect the current payment period.

Contractor Information: Contractor's information who is making the payments. Should be filled out completely.

Original Contract Amount: Prime contractor's contract dollar amount.

Committed DBE%: The DBE requirement as certified by the prime in the proposal that is the minimum percentage to be met.

Actual DBE % to Date: The percent met to date.

Name of Subcontractor/Supplier: Company who is working for the prime contractor on this project.
(If a sub was contracted for more than one contract, list each contract separately.)

DBE?: Check this box if the subcontractor is a certified DBE in Minnesota. You can find a listing of the DBE firms certified in Minnesota at <http://www.dot.state.mn.us/eocm/ucpdirectory.html> .

Description of Work: The type of work the subcontractor was contracted for.

Subcontract Amount: The dollar amount the subcontractor was contracted for.

Amount of Current Payment: The current dollar amount being paid to the sub.

Total Sub-Contractor Payment-to-Date: Total dollar amount paid to the sub including the current payment.

% Paid to Date: Percentage of total payments made in comparison to the prime's award amount.

Final Payment?: Indicate weather this is the final payment being made to the sub.

Company Officials Signature & Title: Self explanatory

Name & Title of Individual Completing Report: Self explanatory

If you have questions on completing the form, call the Office of Civil Rights at (651) 366-3073.

DBE Total Payment Affidavit

Pursuant to Mn/DOT Standard Specifications for Construction, Section 1908, the following DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work has been performed by a DBE on this project. If the dollar value of the DBE firm's total work is less than the DBE's original subcontract, please explain. Attach additional sheets if necessary.

State Project Number: _____

STATE OF MINNESOTA
COUNTY OF _____

I, _____, being first duly sworn, do depose and say that:

1. I am the authorized representative of _____
(Name of Individual, Company, Partnership or Corporation)
and I have the authority to make this Affidavit for and on behalf of said Prime Contractor.

2. The following DBE Subcontractors/Suppliers/Service Providers/Sub-Consultants have performed work on this contract/project with a total dollar value of:

	Name of DBE Firm	Dollar Amount of Subcontract	Total Dollar Amount
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

3. I have fully informed myself regarding the accuracy of the statements made in this Affidavit.

Signed: _____
(Prime Contractor or Authorized Representative)

Subscribed and sworn to before me
This _____ day of _____, 20____

(Notary Public)

My commission expires _____, 20____

Prepare Affidavit in duplicate. Submit one original to the Project Engineer, and one original to:
Mn/DOT's Office of Civil Rights
395 John Ireland Blvd., MS 170
St. Paul, MN 55155

No. 1908 – Standard Specifications for Construction
Unless the Contractor has presented an Affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBE), final payment may be withheld.