

REQUEST FOR PROPOSALS FOR TRANSPORTATION MODEL NETWORK REBUILD

Contract Number: 18P064

Issue Date: August 20, 2018

Proposals Due: September 18, 2018 at 5:00pm CST

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INSTRUCTIONS FOR PREPARATION OF PROPOSALS

1. REQUEST FOR PROPOSALS

In this Request for Proposals (RFP), the Metropolitan Council (Council) is soliciting proposals for the following services: Consultant to review existing highway and transit network, create procedure for managing and updating both current and future year highway, transit and non-motorized networks.

The specific services requested in this RFP are detailed in *Attachment to the Proposal Instructions: Scope of Work*.

Failure to follow these instructions and requirements may result in the rejection or disrating of your proposal. The Council is not responsible for any costs incurred by prospective proposers (Proposers) in the preparation and presentation of their proposals.

2. COUNCIL RIGHTS

The Council reserves the right to cancel this RFP in writing or postpone the date and time for submitting proposals at any time prior to the proposal due date. No Proposer shall have a right to make a claim against the Council in the event the Council accepts a proposal or does not accept any or all proposals. The Council by this RFP does not promise to accept the lowest cost or any other proposal and specifically reserves the right to reject any or all proposals, to waive any or all informalities or irregularities in the proposals received, to investigate the qualifications and experience of any Proposer, to reject any provisions in any proposal, to modify RFP contents, to obtain new proposals, to negotiate the requested services and contract terms with any Proposer, or to proceed to do the work otherwise.

The Council will evaluate Proposers for responsibility. The responsibility evaluation will be based on the criteria listed below (a – i). By submitting a proposal, the Proposer agrees to provide additional information, upon request, with respect to the listed criteria. If the proposer refuses to provide the information upon request, it may be disqualified from further consideration:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them;
- (b) Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- (f) Compliance with applicable licensing and tax laws and regulations;
- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

- (h) Compliance with Affirmative Action and Disadvantaged Business Program requirements; and
- (i) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.
- (j) Disclosure of all actual, potential, and perceived conflicts of interest and adequate mitigation if applicable; and”

3. PROJECT TIME FRAME

Project Milestone	Tentative Completion Date
Issue Date	August 20, 2018
Pre-Proposal Meeting	August 27, 2018
Questions Due	August 31, 2018
Proposal Due Date	September 18 at 5:00pm CST
Award Date	October

A pre-proposal meeting will be held on August 27, 2018 at 1:00pm CST, at the 390 Robert Street, St. Paul, MN, 55101. Meet in the lobby.

Completion dates for the project milestones in this section are tentative only and are subject to modification by the Council.

4. BACKGROUND

The Metropolitan Council is the regional agency of government for the Twin Cities metropolitan area. Centered on the cities of Minneapolis and Saint Paul, the area is made up of the seven counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington.

The metro area is home to 3 million people in 7 counties and 186 cities and townships, encompassing nearly 3,000 square miles.

Created by the Minnesota Legislature in 1967, the Council fosters efficient and economic growth for a prosperous metropolitan region. The Council partners with local governments to coordinate the orderly development of the metro area, and provides innovative, efficient regional services that benefit from economies of scale.

The Council's governing board has 17 members, appointed by the governor. Sixteen members represent geographic districts of roughly equal population across the region. The Council chair, the 17th member, serves at large.

The Council's planning, investments, and services help provide the foundations for regional economic vitality. Guiding this work is the Council's regional development guide, called *Thrive MSP 2040*. *Thrive* is a policy plan that state law requires the Council to prepare at least every 10 years as a framework for the metropolitan area's "orderly and economical" development.

Thrive identifies five regional outcomes to achieve:

- Stewardship – responsibly managing the region’s natural and financial resources
- Prosperity – fostering investments in infrastructure and amenities that strengthen the region’s economic competitiveness
- Equity – connecting all residents to opportunity and creates viable housing, transportation, and recreation options for people of all races, ethnicities, incomes, and abilities
- Livability – creating the places and infrastructure that enhance the quality of life of the region’s residents
- Sustainability – preserving the region’s capacity to maintain and support its well-being and productivity for generations to come

Thrive serves as a foundation for coordinated and consistent planning between regional and local governments. This coordination, in turn, helps achieve the regional outcomes that *Thrive* affirms.

From *Thrive*’s overall policy direction, the Council develops plans for regional transportation, wastewater, and park systems that provide the framework for the comprehensive land use plans of local governments.

The Council makes strategic investments in a growing network of bus and rail transitways, and awards grants to support transit-oriented development to increase transportation choices, expand housing and living options, and foster economic activity. The Council also plans and funds acquisition and development of a world-class system of regional parks and trails.

Metro Transit, an operating division of the Council, carries more than 84 million bus and rail passengers each year, and wins awards for innovation and energy efficiency.

The Council collects and treats wastewater at rates 40% lower than those charged by peer regions, and regularly wins state and national awards for environmental achievements.

Through its Metropolitan Housing and Redevelopment Authority, the Council provides affordable housing opportunities for low- and moderate-income individuals and families.

The work of the Council is organized into four major units:

- Metro Transit – Bus, light rail, and commuter rail development and operations.
- Metropolitan Transportation Services – Regional transportation planning, Metro Mobility services, dial-a-ride transit, and contracted transit services.
- Environmental Services – Wastewater treatment, water supply and water quality.
- Community Development - Regional parks and natural resources, research and regional policy, local planning assistance, Livable Communities grant program, and Metropolitan Housing and Redevelopment Authority.

This RFP is being issued for the Metro Transit Division of the Metropolitan Council. The Metropolitan Council is the contracting body.

5. RFP ADMINISTRATOR; PROPOSAL QUESTIONS; ADDENDA

The RFP Administrator for this Request for Proposals is:

Name: Brian Cihacek
Phone: (651) 602-1038
Fax: (651) 602-1083
E-mail: brian.cihacek@metc.state.mn.us
TTY: (651) 229-3760

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

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the Scope of Work, or other RFP documents, or finds discrepancies in or omissions from the specifications, the person may submit to the RFP Administrator a written request for an interpretation or correction by **August 31, 2018. Only written requests will be accepted.** The person submitting the request will be responsible for its prompt delivery. Legible fax transmissions of written requests and e-mailed questions are acceptable. If the RFP Administrator elects to answer any questions, all RFP recipients will receive a written response.

Any corrections or changes to this RFP will be made by written addendum only and will be distributed to all known recipients of the RFP document at the address provided by the recipient.

6. PROPOSAL FORMAT

- A. Proposals must be submitted on 8-1/2" x 11" size paper and should be typed. **One (1) unbound original and 5 photocopies of the proposal are required.** The Council encourages the use of recycled paper for proposals.
- B. All proposals must be clearly marked "" as well as include the name and address of the Proposer.

Acknowledgment of receipt, by number, of each RFP addendum, if any, must be included with the proposal.

7. SUBMISSIONS OF PROPOSALS

All proposals must be addressed as follows:

Brian Cihacek
Metropolitan Council
Proposal for "Transportation Network Model Rebuild" enclosed
390 N Robert St
St Paul, MN 55101

Proposals must be **physically delivered** to the offices of the Council, at the above address by the date and time indicated in section 3. Proposals received after the specified time and date may not be considered, at the Council's discretion.

If proposals are sent by U.S. mail or other delivery service, it is wholly the responsibility of the Proposer to ensure that the proposal package is properly addressed and physically delivered on time.

The submission of a proposal shall constitute an acknowledgment upon which the Council may rely that the Proposer has thoroughly examined and is familiar with the RFP, the attachments (including the Scope of Work and the Sample Contract), the addenda (if any), and work sites as applicable, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions dealing with or related to the services to be provided. The failure or neglect of a Proposer to do so shall in no way relieve the Proposer from any obligations with respect to the proposal or the contract issued as a result of this RFP. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any aspect of the RFP, attachments (including the Scope of Work), addenda (if any), work sites, statutes, regulations, ordinances or resolutions.

8. ITEMS REQUIRED TO BE SUBMITTED WITH THE PROPOSAL

Items listed in this section must accompany your proposal. If any required item is omitted, the proposal may be found non-responsive and will not receive further consideration. See the referenced sections for additional details on some requirements.

- A statement of qualifications and relevant firm experience.
- A detailed work plan addressing each of the tasks in the Scope of Work.
- A list of key personnel assigned to the project.
- A project schedule.
- A detailed price proposal executed by an officer of the proposing firm.
- Disclosure and Certification Regarding Conflict of Interest (Section 12)
- If the amount of the proposal exceeds \$100,000, **either:** 1) a currently-effective Affirmative Action Certificate of Compliance, **or** 2) Affirmative Action Certification Statement (section 17)
- If the amount of the proposal exceeds \$500,000, either: 1) a currently effective Equal Pay Certificate of Compliance, or, 2) Equal Pay Certification Statement (section 23).
- Subcontractor Information Form (section 18)
- If the amount of the proposal exceeds \$25,000, a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (section 19)
- If the amount of the proposal is equal to, or exceeds \$100,000, a Lobbying Restriction Certification (section 20)

9. [RESERVED - THIS SECTION IS UNUSED IN THIS RFP]

10. WITHDRAWAL OR MODIFICATION OF PROPOSALS

Each proposal shall constitute a binding, irrevocable offer for a period of 120 days after the date the proposals are due. Proposals which have been submitted to the Council may be withdrawn by the Proposer only if a written withdrawal request is **physically received** by the RFP Administrator in person, by mail, or by facsimile prior to the time proposals are due. Proposals which are timely withdrawn shall be returned to the Proposer unopened.

A Proposer may submit a modified proposal prior to the time proposals are due. A modified proposal must be **physically received** by the RFP Administrator prior to the time proposals are due. If a modified proposal is timely submitted, the Council shall deem a previous proposal submitted by the Proposer to have been withdrawn and the previous proposal shall be returned to the Proposer unopened.

11. PROPOSAL EVALUATION CRITERIA; CONTRACT AWARD

Proposals will be evaluated by an Evaluation Panel to assess the Proposer's likelihood of successfully accomplishing the prospective project.

The Evaluation Panel will consider all the material submitted by the Proposer and other information the Evaluation Panel may obtain to determine whether the Proposer is capable of and has a history of successfully completing projects of this type including, without limitation, additional information the Evaluation Panel may request, interviews or oral presentations.

Proposals will be evaluated on the basis of the following criteria. **The Evaluation Panel will consider the trade-off between proposal price and the other evaluation criteria in determining the proposal which is most advantageous to the Council.**

Ranking	Evaluation Criteria
1	The quality of the proposal including, without limitation, its completeness in addressing the requirements of this RFP and Scope of Work, the work plan and schedule submitted as a part of the proposal and demonstrated grasp of the work required for this project.
2	The qualifications of the proposer including, without limitation, general qualifications, specialized qualifications and professional competence in areas directly related to this RFP, and successful completion of similar projects.
3	The experience of the Proposer on similar projects including, without limitation, any references provided by the Proposer.
The price of the proposal. Price will be approximately equal in importance to a combination of all other criteria shown above.	

The Evaluation Panel will review, analyze, and evaluate all proposals based on the Evaluation Criteria.

If required by Council procedures, the Evaluation Panel will determine and recommend to the Council through the appropriate committee which proposal, in its opinion, represents the most advantageous offer to the Council. The committee will review the findings and recommendations of the Evaluation Panel, and forward them along with any of its own comments, findings and recommendations to the Council for action. The Council may make its own findings and determinations.

A determination will be made as to which proposal, if any, is **most advantageous to the Council**, by considering the evaluations of the proposals, the best value to the Council, and the best interests of the Council.

If a proposal is accepted and award is authorized, in accordance with the Council's policies and procedures, a contract for the work will be executed. Until authorization of the award and execution of the contract, the Council has no obligation for the cost associated with any work performed.

12. CONFLICT OF INTEREST

A. Definition of Personal Conflict of Interest

A “personal conflict of interest” exists when (1) a Council employee or officer, or an employee or officer of any agency interested in this Contract, and any people closely related to such employees or officers, has a financial interest in the Proposer’s business or this Contract; or (2) a person associated with the Proposer has an interest which would conflict in any manner or degree with the Proposer’s performance of this Contract.

B. Definition of Organizational Conflict of Interest

An “organizational conflict of interest” occurs when any of the following circumstances arise:

1. Lack of Impartiality or Impaired Objectivity. When the Proposer is unable, or potentially unable, to provide impartial or objective assistance or advice to the Council due to other activities, relationships, contracts, or circumstances.
2. Unequal Access to Information. The Proposer has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
3. Biased Ground Rules. During the conduct of an earlier procurement, the Proposer has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

C. Disclosure and Mitigation of Actual, Potential, and Perceived Conflicts of Interest

Each Proposer must determine whether any actual, potential, or perceived conflicts of interest will exist if the Council awards a contract to the Proposer under this solicitation. Proposers are required to submit the Disclosure and Certification Regarding Conflict of Interest form included in this solicitation to certify, to the best of its knowledge and belief, that either: (1) the Proposer has determined that there are no relevant facts or circumstances which could give rise to conflicts of interest; or (2) the Proposer has determined that one or more conflicts of interest exists. If one or more conflicts of interest exist, the Proposer must provide a mitigation plan. Provisions will be included in the contract for this Project imposing continuing obligations on the successful proposer to disclose to the Council all conflicts of interest which may be later discovered and consequences which may arise from such a situation; and requiring the successful Proposer to cooperate with the Council in the elimination of any conflicts of interest.

D. Mitigation or Neutralization of Conflicts of Interest

The Council, in its sole discretion, will determine whether a conflict of interest exists, whether a conflict of interest has been sufficiently mitigated, or whether a conflict of interest cannot be mitigated. For additional information, please see: the Council’s Conflict of Interest Guidelines, available online at: <https://metro council.org/About-Us/What-We-Do/Doing-Business/Contracting-Opportunities/Conflict-of-Interest-Guidelines-and-Disclosure-of.aspx>; 49 C.F.R. 19.43; 2 C.F.R. 200.319(a)(5); and the Federal Transit Administration Circular 4220.1F Chapter VI paragraph 2(a)(4)(h), Rev. 4, 3/18/2013.

13. PROTESTS

Proposers who wish to file a protest regarding the RFP process shall conform in all respects to the Council's Protest Procedure. (*See Attachment to the Proposal Instructions: Protests for Procurements \$25,000 and Over.*) All protests must be addressed to the RFP Administrator at the address indicated in section 5.

14. DATA PRACTICES ACT

The Minnesota Government Data Practices Act provides that the names of proposers are public once the proposals are opened. With the exception of trade secret information as defined in Minnesota Statutes, section 13.37, all other information submitted by a Proposer in response to this RFP becomes public at the times specified in the act and is then available to any person upon request. Trade secret information is defined in section 13.37 as data, including a formula, pattern, compilation, program, device, method, technique, or process, (1) that was supplied by the Proposer; (2) that is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Any information in its response to this RFP for which the Proposer claims protection as trade secret information in accordance with the above provisions must be limited and set apart in the RFP response on separate pages, with a heading that identifies the information as trade secret information. The Council will make the ultimate determination whether the information meets the applicable definition. Any information submitted in response to this RFP which does not meet the legal definition will be considered public information, regardless of the Proposer's identification of it as trade secret information. **Proposers are advised that blanket-type identification by designating whole pages or sections as containing trade secret information will not assure protection --- the specific information for which the Proposer claims trade secret protection must be clearly identified as such.**

Submitted proposals shall not be copyrighted. A statement by the Proposer that submitted information is copyrighted or otherwise protected does not prevent public access to the information contained in the RFP response.

15. FORM OF CONTRACT

A copy of the standard Council contract for professional/technical services is attached to this RFP as Attachment to the Proposal Instructions: Sample Professional/Technical Service Contract. The standard contract outlines various legal and administrative duties and responsibilities assumed by persons or organizations contracting with the Council. **The successful Proposer will be expected to execute this contract.**

16. INCORPORATION OF AFFIRMATIVE ACTION REQUIREMENTS

If a contract based upon this RFP or any modification of the contract exceeds a value of \$100,000, the provisions of Minnesota Statutes, section 473.144, and Minnesota Rules, parts 5000.3400 to 5000.3600 will be incorporated into said contract or modification. The referenced provisions relate to contractor requirements for affirmative action plans for minority individuals, women, and disabled individuals. Copies of the referenced provisions are available upon

request from the RFP Administrator. Copies may also be accessed at the following internet web sites:

- Minnesota Statutes, section 473.144: www.revisor.leg.state.mn.us/stats/473/144.html
- Minnesota Rules, parts 5000.3400 - .3600: www.revisor.leg.state.mn.us/arule/5000/

17. CERTIFICATE OF COMPLIANCE FOR PUBLIC CONTRACTS

The provisions of this section 17 apply only if the amount of the proposal exceeds \$100,000.

Under the provisions of Minnesota Statutes section 473.144, the Council may not accept a bid or proposal for over \$100,000 from any business having more than forty (40) full-time employees in Minnesota on a single working day during the previous twelve (12) months, unless that business has submitted an affirmative action plan to the Minnesota Commissioner of Human Rights for approval. The Council may not execute a contract for over \$100,000 with any business having more than forty (40) full-time employees in Minnesota on a single working day during the previous twelve (12) months, unless that business has an approved affirmative action plan, evidenced by a Certificate of Compliance from the Minnesota Department of Human Rights. A certificate is valid for 2 years. In addition, for any business which did not have more than forty (40) full-time employees in Minnesota, but which had more than forty (40) full-time employees on a single working day during the previous twelve (12) months in the state in which it has its primary place of business, the Council may not execute a contract with such a business unless the business has an approved affirmative action plan, evidenced by a Certificate of Compliance from the Minnesota Department of Human Rights, or the business certifies to the Council that the business is in compliance with federal affirmative action requirements.

To ensure compliance with this statute, Proposers must submit with their proposal **EITHER**:

- A. a copy of the Proposer's currently effective affirmative action Certificate of Compliance issued by the Minnesota Department of Human Rights; OR
- B. an Affirmative Action Certification Statement (see Attachment to the Proposal Instructions: Affirmative Action Certification Statement) with information which indicates that the Council can accept the Proposer's proposal.

Failure to submit one of these documents along with the proposal may result in the proposal being rejected and returned to the Proposer without further consideration. Proposers are advised that the Council may verify representations made by a Proposer in any Affirmative Action Certification Statement which is submitted.

If a Proposer submits an Affirmative Action Plan for approval of the Minnesota Commissioner of Human Rights in order to qualify for acceptance of its proposal by the Council and becomes the selected vendor, the Council will not execute the contract for services until the Proposer has actually been issued a Certificate of Compliance from the Minnesota Department of Human Rights. The Council is under no obligation to delay the award and execution of a contract until a Proposer has completed the human rights certification process. It is the sole responsibility of a Proposer to apply for and obtain a human rights certificate prior to contract award and execution.

18. SUBCONTRACTING

Proposers may subcontract for functions to fulfill the obligations of their proposal. All Proposers **MUST** complete and include the attached Subcontractor Information Form with their proposal, even if no subcontractors are proposed to be used on this project. If the required Subcontractor Information Form is not submitted, the proposal may be found to be non-responsive and will not receive further consideration.

Proposers must indicate on the form either:

- A. that no subcontractors will be used on this project; or
- B. the name, address, and telephone number of a) each subcontractor proposed to be used on the project AND b) each subcontractor who submitted a bid or quote for the project but was not selected by the Proposer.

Proposers must also complete and execute the certification on page two of the form. (See *Attachment to the Proposal Instructions: Subcontractor Information Form.*)

19. CERTIFICATION OF NON-DEBARMENT (FTA OR PFA FUNDING)

The provisions of this section 19 apply only if the amount of the proposal exceeds \$25,000.

Proposers must sign and submit with their proposals the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion attached to this RFP. If the required Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Form is not submitted, the proposal may be found to be non-responsive and will not receive further consideration.

20. LOBBYING RESTRICTION CERTIFICATION (FTA OR PFA FUNDING)

The provisions of this section 20 apply only if the amount of the proposal is equal to, or exceeds \$100,000.

The Proposer must comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(b)(5), and 49 CFR part 20, which provide restrictions on lobbying with federally-appropriated funds and impose disclosure requirements for lobbying with non-federal funds. The Lobbying Restriction Certification attached to this RFP must be completed and submitted with proposals equal to or exceeding \$100,000. If the required Lobbying Restriction Certification Form is not submitted, the proposal may be found to be non-responsive and will not receive further consideration.

The certification and disclosures are material representations of fact upon which the Council will rely in awarding the contract. Upon award of any subcontracts or supply contracts equal to or exceeding \$100,000 under the contract, the successful proposer will be required to obtain the same certification from its subcontractors and suppliers and forward the certification and any disclosures to the Council.

21. [RESERVED - THIS SECTION IS UNUSED IN THIS RFP]

22. INCORPORATION OF EQUAL PAY REQUIREMENTS

If a contract based upon this RFP or any modification of the contract exceeds a value of \$500,000, the provisions of Minnesota Statutes chapter 363A.44 will be incorporated into said contract or modification. The referenced provisions relate to contractor requirements for equal pay certification. Copies of the referenced provisions are available upon request from the RFP Administrator. Copies may also be accessed at the following internet web site:

Minnesota Statutes chapter 363A.44: www.revisor.leg.state.mn.us/stats/363A/44.html

23. EQUAL PAY CERTIFICATE OF COMPLIANCE FOR PUBLIC CONTRACTS

The provisions of this section 23 apply only if the amount of the proposal exceeds \$500,000.

Under the provisions of Minnesota Statutes chapter 363A.44, the Council may not accept a bid or proposal for over \$500,000 from any business having more than forty (40) full-time employees in Minnesota or in the state where the business has its primary place of business on a single working day during the previous twelve (12) months from the due date of this solicitation, unless that business has an equal pay certificate or it has certified in writing that it is exempt. The Council may not execute a contract for over \$500,000 with any business having more than forty (40) full-time employees in Minnesota or in the state where the business has its primary place of business on a single working day during the previous twelve (12) months from the due date of this solicitation, unless that business has an equal pay certificate, evidenced by a Certificate of Equal Pay. A certificate is valid for 4 years.

To ensure compliance with this statute, Proposers must submit with their proposal **EITHER**:

1. a copy of the Proposer's currently effective Equal Pay Certificate of Compliance issued by the Minnesota Department of Human Rights; OR
2. an Equal Pay Certification Statement (see Attachment to the Proposal Instructions: Equal Pay Certification Statement) with information which indicates that the Council can accept the Proposer's proposal.

Failure to submit one of these documents along with the proposal may result in the proposal being rejected and returned to the Proposer without further consideration. Proposers are advised that the Council may verify representations made by a Proposer in any Equal Pay Certification Statement which is submitted.

If a Proposer submits an Equal Pay verification for approval of the Minnesota Commissioner of Human Rights in order to qualify for acceptance of its proposal by the Council and becomes the selected vendor, the Council will not execute the contract for services until the Proposer has actually been issued an Equal Pay Certificate from the Minnesota Department of Human Rights. The Council is under no obligation to delay the award and execution of a contract until a Proposer has obtained an Equal Pay Certificate. It is the sole responsibility of a Proposer to apply for and obtain an Equal Pay Certificate prior to contract award and execution.

LIST OF ATTACHMENTS TO PROPOSAL INSTRUCTIONS

Attachment Number	Title	Section Reference
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2	Protests for Procurement \$25,000 and Over	13
3	Sample Professional/Technical Services Contract	15
4	Affirmative Action Certification Statement	17
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1. SCOPE OF WORK

(See Proposal Instructions, section 1, for further information)

Contract Number: 18P064

Project Name: Transportation Model Network Rebuild

Introduction

As part of maintaining a regional transportation forecasting model, the Metropolitan Council maintains a set of multimodal networks representing the regional highway, transit, and non-motorized systems. Maintaining networks that are consistent with known transportation supply, correct, and easy to update with future projects is essential to the operation of a credible forecasting model.

While specific network attributes, conflation, and procedures have been continually updated, the lineage of the current Council highway networks stretches back to the 1980s, before the development of modern GIS base maps and transit data formats. Public agencies, as well as open-source communities and private companies, continually update highway and transit data, and the Council needs to be able to reproducibly import these updates into its regional model.

The Council is seeking a consultant to recreate the regional model networks through development of tools to reproducibly interface with external network data.

General principles

The Council's networks are currently coded and assignment/skimming procedures applied in the Citilabs Cube environment. It is expected that this will not change, and that the ultimate objective of this project is to create Cube networks. However, the Council does wish to avoid long-term vendor lock-in, and would prefer network structures to be flexible enough to be migrated to other software, including DTA software.

The test of a network is not just its base year accuracy, but the ability to maintain a set of networks for different base and future year scenarios that are consistent with each other and maintainable. Procedures and scripts to develop base year networks and to maintain and code scenarios should be sufficiently documented that a relatively novice forecaster uninvolved with this project can readily understand and learn to execute them.

Project Management

The Council project manager will be assisted by other forecasting and GIS staff as necessary in oversight of each task of the project. It is expected that regular meetings, either by phone, web, or in-person, will be required through the length of the project.

The consultant should propose a schedule by task. The Council anticipates that the entire project should be accomplished in 6-9 months from notice to proceed.

The consultant should propose a quality control plan to ensure accuracy of all deliverables.

Task 1: Identification of methods and data needs

The consultant will review practices for generating new networks, updating network data, and maintaining highway, transit, and non-motorized networks in a selection of peer regions. The peers should include regions that use an activity-based model, regions with large and complex transit systems, and regions with managed lane systems, and regions that use Citilabs Cube in all or part of their regional modeling process.

The consultant will review the Twin Cities regional activity-based model and identify network requirements that need to be fulfilled for proper model functioning.

The consultant will review network data available in the Twin Cities for developing networks that satisfy model requirements for the execution of tasks 2 and 3.

Deliverable: Technical memorandum describing findings from peer analysis and review of local model and data, and making recommendations for Council practice.

Task 2: Highway/Non-Motorized Network

The consultant will review available maintained data sources for the base highway network. These sources may include the Metro Regional Centerlines Collaborative (MRCC) Local Centerline GIS data, the MnDOT linear referencing system, and other public, private, and open data sources that can be used to develop correct geometry, topology, routability, and attributes for the highway network.

The consultant will develop scripts and procedures for creating a functional Cube highway network.

The Council networks have traditionally represented dynamically priced managed (MnPASS) lanes as dummy parallel highway links, with dummy connectors to represent access points. The consultant should develop a procedure or script for generating these links automatically based on an attribute value on the freeway.

The consultant will develop procedures and/or scripts to attach count data and speed data to the highway network for use in assignment validation and adjustment.

The consultant will develop a set of procedures and scripts for maintaining a master network or other method for consistently maintaining networks for multiple years and scenarios.

The consultant will review highway assignment and skimming scripts within the activity-based model and adjust them if necessary to account for the new networks.

The consultant will develop scripts and procedures for creating a useable and correct non-motorized network (including regional trails and other exclusive bike/pedestrian facilities, and identification of highway facilities that have bicycle lanes of different types). The consultant will review non-motorized skimming scripts within the ABM and adjust them if necessary.

Deliverables: Highway network, and all scripts, programs, and procedures for the creation and maintenance of the network. Technical memorandum and user guide documenting the networks and their maintenance.

Task 3: Transit Network

The consultant will develop processes to convert Council General Transit Feed Specification (GTFS) format transit networks and convert them into Cube transit networks, compatible with the highway networks.

The consultant will develop a set of procedures and scripts for maintaining a master network or other method for consistently maintaining networks for multiple years and scenarios. This process should also reflect potential changes to the highway network and levels of service. The consultant may recommend that future/scenario network coding occur within Cube or within a GTFS editor.

The processes should allow new/changed GTFS data to be incorporated without losing future year scenario transit.

The consultant will review methods for automatically generating transit access links for use in Cube transit network skimming and assignment, and modify scripts as needed. These procedures should be validated by test assignments.

Deliverables: Transit network, and all scripts, programs, and procedures for the creation and maintenance of the network. Technical memorandum and user guide documenting the networks and their maintenance.

Task 4: Development of future year networks and network management tools

To provide a stable base, and to test the implementation of networks and tools developed in previous tasks, the consultant will code highway, transit, and non-motorized networks corresponding to the 2015 base year and the Current Revenue Scenario in the 2040 Transportation Policy Plan. The consultant will complete model runs with the networks.

The consultant will develop a process for dynamically adjusting the highway and transit networks, allowing for updates to the master network and/or individual scenarios.

Deliverables: 2015 and 2040 future year highway, transit, and non-motorized networks. Validated skims from both model runs. Tools/scripts for maintaining networks, documentation on network maintenance.

2. PROTESTS FOR PROCUREMENT \$25,000 AND OVER

(See Proposal Instructions, section 13, for further information)

Issued By:	Contracts & Materials	Document No:	30.06.02
Approved By:	Regional Administrator	Total Pages:	4
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Policy

The Metropolitan Council strives to ensure fairness to every offeror for all goods and services procured through the established competitive processes. The Council acknowledges its responsibility to promptly and fairly investigate procurement protests that conform to the requirements of this procedure. The Council also acknowledges the interest of the public in resolving unjustified claims without unduly delaying needed procurements. To balance the interests of offerors and the public, these procedures require that offerors file protests in a timely manner, carefully document their allegations, and conform their protests to all requirements contained herein.

Offerors are encouraged to resolve questions or disputes informally before pursuing a written protest. If offerors believe they will be filing a protest, they are encouraged to advise the Council verbally as soon as possible in order to maximize the offeror's options.

Written protests will be reviewed by designated staff, and a written protest decision will be issued. Protesters may request a single reconsideration of the protest decision. The decision of the designated protest authority is final. The Council will not consider nor respond to oral protests.

Purpose

This procedure provides a process for a full and fair consideration of all claims that raise legitimate questions about the procurement process without allowing proposers to exploit protest procedures to obtain a competitive advantage or obstruct needed procurements. The requirements of this procedure serve important public purposes and offerors are cautioned that noncompliance will result in waiver of protest rights. Offerors must review the Council procurement protest procedure carefully before filing a protest. At the time of filing a protest, the offeror agrees to be bound by this procedure.

Applicability

This policy is applicable to all protests arising from Council procurements \$25,000 and over. Note that violations of federal law or regulation will be handled by the complaint process as stated within that law or regulation.

If this procurement is funded in whole or in part by the Federal Transit Administration (FTA), offerors are hereby notified that a protester must exhaust all administrative remedies with the Council before pursuing a protest with FTA. Reviews of protests by FTA will be limited to:

1. the Council's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
2. violations of federal law or regulation; or

3. violations of State or Local Law or Regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the COUNCIL or other basis of appeal to FTA.

Definitions

For the purposes of this document:

- A *protest* is an offeror's remedy for correcting a perceived wrong in the procurement process.
- *Working days* are office business days for Metropolitan Council Regional Administration staff.
- A *solicitation phase protest* is received prior to the proposal opening or the proposal due date.
- An *award phase protest* is a protest received after the bid opening or proposal due date.
- The *protest authority* is the employee assigned to review the individual protest decision. Please refer to the table on page 4.
- The *offeror* is the bidder or proposer responding to a solicitation request.

Procedure:

Protests must be filed and processed according to the methods and timetables outlined below.

Responsible Party Required Actions

Protester

1. Files written protest with the Metropolitan Council contact person designated in the solicitation document.
 - a) Offerors are cautioned that the Council may choose to continue with the given procurement, based on business needs.
 - b) Protests may be filed on the following bases:
 - Offerors or parties who may have an interest in the potential outcome of a protest or a procurement decision may file a solicitation phase protest if a bid or proposal specification or condition is incorrect or inappropriate; or
 - Offerors may file an award phase protest if the purchase was awarded inappropriately or unfairly.
 - A reconsideration of a protest decision may be requested after a decision has been rendered only if data becomes available that was not previously known or if there has been an error of law or regulation.
 - All protests must be in writing. The Council will not respond to verbal protests.

c) The protest must specify the following:

- The protester's name, the protester's company name, address, and phone and fax numbers.
- The project name and number and the contract number or other solicitation identifier.
- A complete and accurate identification of the grounds for protest, including references to any and all laws, regulations, or other legal authority that the protester claims were violated.
- A presentation of any and all evidence known to support any allegations of protest including but not limited to the names of the persons involved, a description of relevant occurrences, the documents upon which the protester relied, the particular language in the solicitation documents which is alleged to be defective or illegal, and a description of the Proposer's material, component, or product which is adversely affected by allegedly defective or illegal language.
- Complete identification of the relief the protester is seeking.

d) Protest Filing Deadlines

- Solicitation phase protests must be filed no later than three (3) working days prior to the scheduled bid opening or the proposal due date.
- Award phase protests must be filed within five (5) working days of Council action, for those items which by policy require Council action, **or** within five (5) days of the award for those items not requiring Council action.
- Requests for reconsideration must be filed within five days of the protest decision.
- Failure to file a protest within the time period indicated shall result in waiver of the protest.

**Designated Contact
Person**

2. Reviews the protest and:

- a) Reports the protest filing to the General Manager or Division Director and the Office of General Counsel, and
- b) If the protest is a Solicitation Phase Protest, determines if the scheduled bid opening date/proposal due date should be extended to allow for resolution of the protest and, if so, issues an addendum to all offerors.
- c) Notifies funding authorities (such as the FTA) upon protest filing and as required by rule or regulation. Notification to FTA

will include a brief description of the protest, the basis of disagreement, the status of the protest, and whether an appeal has been taken or is likely to be taken.

- d) Decide if the protest has an impact on other offerors. If the protest does have an impact on other offerors, notify them.

- Protest Authority**
- 3. Render a written decision that addresses, in detail, each substantive issue raised in the protest. The decision must be issued and appropriate action must be taken as quickly as possible but no later than ten (10) working days after the filing of the protest.

Department	Protest Authority
Environmental Services	General Manager of Wastewater Services or ES Division Director
Metro Mobility	Director of Transportation Planning
Metro Transit	General Manager
Community Development	Division Director
All other	Deputy Regional Administrator

- Protester**
- 4. If the protester feels the protest decision is not valid, based on new information not previously known or an error of law or regulation, s/he may seek reconsideration within 5 working days through a written request filed with the protest authority.

- Protest Authority**
- 5. Reconsideration of a protest decision:
 - a) Determine if the grounds for reconsideration are valid.
 - b) If the grounds are deemed valid, render a decision.
 - c) If the grounds are deemed invalid, reject the reconsideration request.

- Protest Authority Or Designee**
- 6. Convey the final decision to protester and to other agencies.

Records Retention All protest-related documents must be retained for ten (10) years.

Questions Questions regarding this policy may be directed to the Purchasing Manager/Contracts and Documents Unit Manager.

Deviations In appropriate circumstances, the protest authority may extend the stated deadlines. No other deviations are allowed.

3. SAMPLE PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

(See Proposal Instructions, section 15, for further information)

Contract Number: _____

**METROPOLITAN COUNCIL
390 NORTH ROBERT STREET
SAINT PAUL, MINNESOTA 55101**

THIS CONTRACT is entered into between the Metropolitan Council, a Minnesota political subdivision ("the COUNCIL"), and _____, a business authorized to do business in Minnesota, with its regular place of business at _____ ("the CONTRACTOR").

WHEREAS, the COUNCIL requires the services described in Exhibit A to this Contract; and

WHEREAS, the COUNCIL has issued a Request for Proposals, dated _____ for the services, and

WHEREAS, the CONTRACTOR submitted a proposal dated _____ to perform such services; and

WHEREAS, the COUNCIL has reviewed the CONTRACTOR's proposal and, in reliance on the representations made, has awarded the Contract to the CONTRACTOR.

NOW, THEREFORE, in consideration of the mutual promises contained in this Contract, the parties agree as follows:

I. SCOPE OF WORK

1.01 Scope of Services. This Contract is to provide professional/technical services for: _____.

The COUNCIL agrees to engage the CONTRACTOR, and the CONTRACTOR agrees to perform in a satisfactory, timely, and proper manner, as determined by the COUNCIL, the services specified in Exhibit A, which is attached to and made a part of this Contract. If there is a contradiction between the terms of this Contract and Exhibit A, the terms of this Contract shall prevail. In the performance of its obligations pursuant to this Contract, the CONTRACTOR agrees to comply with all applicable provisions of federal, state, and local laws, regulations and directives, and agrees that the most recent of such provisions shall govern this Contract at any particular time.

For the purposes of this Contract:

1. "Work" shall mean all authorized services to be provided by the CONTRACTOR under this Contract;
2. "Deliverables" shall mean the studies, reports, sketches, drawings, maps, models, photographs, audio/video tapes, computer programs/models, electronic media, specifications, cost estimates, field data, test data, and other tangible documents identified in the attached exhibits to be provided by the CONTRACTOR under this Contract, and as identified in a written notice relating to the Work.

II. COMPENSATION BASIS; MAXIMUM TOTAL COMPENSATION

2.01 Compensation Basis. For the services to be performed under Article I, the COUNCIL will pay CONTRACTOR on the basis of the fee schedule attached as Exhibit B ("Contractor Fee Schedule").

2.02 Maximum Total Compensation. The maximum total compensation payable to the CONTRACTOR by the COUNCIL for all services performed under this Contract, including any expenses incurred, shall not exceed the amount of \$_____.

Travel expenses must be actual, reasonable and incurred specifically for the Work. Reimbursable expenses shall be paid at cost with no markup by the CONTRACTOR. Only project-related travel costs as provided for under FAR, 48, C.F.R. Subpart 31.2 shall be considered for reimbursement. Reimbursement for privately owned vehicle mileage shall not exceed the applicable U.S. General Services Administration (GSA) rate. Reimbursement for lodging, meals and incidental expenses shall not exceed the applicable GSA per diem rate. The CONTRACTOR shall coordinate with the COUNCIL to schedule flights as far in advance as possible to reduce the expenses incurred. If the CONTRACTOR travels to the Minneapolis-Saint Paul area to provide services or support to other CONTRACTOR customers, the COUNCIL shall be responsible only for a proportionate share of the travel and travel-related expenses.

III. METHOD OF PAYMENT

The CONTRACTOR shall submit to the COUNCIL a reasonably detailed statement of services rendered under this Contract on or before the 20th day of each month following the month in which the services are rendered. Each statement will set forth the following information:

- a. The Contract number.
- b. A list of each item of service on the Fee Schedule which was performed, the date or dates the item of service was performed, and the cost for each item of service in accordance with the Fee Schedule.
- c. The total sum chargeable for the month against the Contract.

On verification and acceptance by the COUNCIL's Contract Manager of each invoice and status report, the COUNCIL shall pay the CONTRACTOR the invoiced amount.

Upon completion of the Contract Work, the CONTRACTOR shall submit to the COUNCIL a final status report, a final invoice, and a request for payment of the sums then owing. The final invoice must include the following certification, signed by an authorized representative of the CONTRACTOR:

The undersigned represents that payment of this request for payment constitutes completion of the services agreed upon and acknowledges that the undersigned shall reimburse the COUNCIL for any payments due the COUNCIL as a result of an audit and any amount due the COUNCIL resulting from Contract adjustments.

The COUNCIL shall pay this final invoice upon the COUNCIL's approval and acknowledgment of satisfactory completion of Contract work.

CONTRACTOR shall not receive payment for work found by the COUNCIL to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

IV. PROJECT MANAGER

The COUNCIL's Project Manager for the purposes of administration of this Contract is XXXX, or such other person as may be designated in writing by the COUNCIL. However, nothing in this Contract shall be deemed to authorize the Project Manager to execute amendments to this Contract on behalf of the COUNCIL.

V. [RESERVED.]

VI. [RESERVED.]

VII. TIME OF PERFORMANCE; TERMINATION OF CONTRACT

7.01 Time of Performance. The term of this Contract shall commence on the date this Contract is executed and shall terminate on _____, unless otherwise terminated as provided in this Contract.

7.02 Commencement of Services. The Services under this Contract are to commence when authorized in writing by the COUNCIL and are to be completed in accordance with the schedule specified in Exhibit A, or as approved in writing by the COUNCIL. CONTRACTOR shall not commence any work under this Contract until receiving the written authorization.

7.03 Termination of Contract. The COUNCIL shall have the right to terminate this Contract at any time and for any reason by submitting written notice of termination to the CONTRACTOR at least thirty (30) calendar days prior to the specified effective date of termination. In such event, all finished and unfinished Deliverables prepared by the CONTRACTOR and its subcontractors under this Contract shall become the property of the COUNCIL, and the CONTRACTOR shall be entitled to compensation for all authorized services satisfactorily completed under this Contract prior to the date of termination, in accordance with the compensation terms specified in Article II. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the COUNCIL for damages sustained by the COUNCIL by virtue of any breach of this Contract by the CONTRACTOR. The COUNCIL may withhold any payment to the CONTRACTOR until such time as the exact amount of damages due the COUNCIL from CONTRACTOR is determined.

VIII. ACCOUNTING; RECORDS-KEEPING; AUDIT REQUIREMENTS

8.01 Records-Keeping. The CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance of the work under this Contract in accordance with generally accepted accounting principles and practices, including payrolls, time records, invoices, receipts, and vouchers. The CONTRACTOR shall also maintain the financial information and data used in preparation or support of the cost submission for any negotiated Contract amendment or change order and provide printed or copied documentation to the COUNCIL as requested. These books, records, documents, and data shall be retained for at least six (6) years after the term of the Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the CONTRACTOR agrees to maintain them until the COUNCIL and any of its duly authorized representatives have disposed of the litigation or claims.

8.02 Audits. As required by Minnesota Statutes, section 16C.05, subdivision 5, the records, books, documents, and accounting procedures and practices of the CONTRACTOR and of any subcontractor relating to work performed pursuant to this Contract shall be subject to audit and examination by the COUNCIL and the Legislative Auditor or State Auditor. The CONTRACTOR and any subcontractor shall permit the COUNCIL or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance under this Contract. Audits conducted by the COUNCIL under this provision shall be in accordance with generally accepted auditing standards. Financial adjustments resulting from any audit by the COUNCIL shall be paid in full within thirty (30) days of the CONTRACTOR's receipt of audit.

IX. INDEMNIFICATION; INSURANCE REQUIREMENTS

9.01 Indemnification. The CONTRACTOR agrees that it will save and protect, hold harmless, indemnify, and defend the COUNCIL and its members, agents, and employees against any and all claims, expenses (including attorneys' fees), losses, damages, or lawsuits arising out of or resulting from, whether

in whole or part, the CONTRACTOR's performance of the Contract, including acts or omissions of its employees, subcontractors, representatives, or agents.

9.02 Insurance Requirements. The CONTRACTOR shall procure and maintain for the term of the Contract, or for longer periods of time as may be required elsewhere in this Contract, insurance against claims, which may in any manner arise out of or result from acts or omissions in performing work under this agreement, by the CONTRACTOR or its employees, subcontractors, suppliers, representatives or agents. Any deductibles or self-insured retentions, which must be declared and approved by the COUNCIL, are the sole responsibility of CONTRACTOR.

9.03 Minimum Scope of Insurance. CONTRACTOR shall procure and maintain the following insurance:

1. Commercial General Liability occurrence form (ISO CG 00 01 or equivalent) and, if necessary, an Umbrella Liability policy on a following-form basis, providing coverage for, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations (if any work results in a completed operations hazard), personal injury and advertising injury, and contractual liability assumed under Section 9.01 of this Contract. Policy must be maintained for a period of two years after Final Acceptance of the Work;
2. Business automobile coverage, ISO CA 00 01, 1997 or later edition, and if necessary an Umbrella Liability policy on a following-form basis, for liability arising out of the operation, maintenance or use of any automobile, whether owned, non-owned, rented or leased. If hauling pollutants, pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached;
3. Statutory Workers' Compensation and Employers' Liability coverage, including, other states coverage and, if applicable, Maritime and/or United States Longshoremen and Harbor Workers Act Coverage. If CONTRACTOR is a sole proprietor the following shall be provided:
 - a. Documentation that CONTRACTOR has voluntarily chosen not to purchase workers' compensation coverage; and/or
 - b. Evidence of a personal health and disability insurance coverage;
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession.

If insurance is written on a claims-made basis, any Retroactive Date shall be prior to CONTRACTOR'S first act of performance under the agreement. Further, CONTRACTOR shall not change the form of the policy from a claims-made without express written consent from the COUNCIL. Policy shall also provide Extended Reporting Period of not less than five years.

5. Contractor's Pollution Liability (CPL). Required for any work involving excavation or boring. If required, coverage shall include bodily injury, property damage, including loss of use of property, clean-up costs, defense (including costs and expenses incurred in the investigation, defense, or settlement of claims), products and/or completed operations, and contractual liability. Coverage shall also be provided for transport of waste and non-owned disposal sites, if Consultant is disposing of waste, the following shall be provided:
 - a. The COUNCIL shall also be listed as additional insured on such policy.

- b. If CPL policy is written on a claims-made basis, then retroactive date must precede the earlier of either i.) the effective date of this contract, or ii.) the date work begins, and shall provide an extended reporting period

If CONSULTANT utilizes a sub-contractor for any excavation or boring, CONSULTANT may satisfy this CPL requirement by requiring its sub-contractor to provide such coverage, provided that the coverage and limits be no less than required in this section.

9.04 Limits of Insurance: The CONTRACTOR shall maintain the following limits.

1. Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$1,000,000 products/completed operations aggregate. The general aggregate limit shall apply separately to this Contract.
2. Automobile Liability with a limit not less than \$1,000,000 each Accident.
3. Workers' Compensation to be statutory. Employer's Liability with a limit not less than \$500,000 each person per accident, \$500,000 each employee by disease, and \$500,000 all employees by disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession with a limit not less than \$2,000,000 per claim/occurrence.
5. Contractor's Pollution Liability (CPL), if applicable, with a limit not less than \$5,000,000 each claim.

9.05 Other Insurance Provisions.

1. The COUNCIL, its members, agents, and employees added as additional insureds under the CONTRACTOR'S CGL coverage, and under the commercial umbrella, if any, utilizing ISO CG 20 10 07 04 and ISO CG 20 37 07 04 (if any work results in a completed operations hazard), or their equivalent.
2. The COUNCIL, its members, agents, and employees must be added as an Insured under the CONTRACTOR'S Business Automobile policy, and under the umbrella, if any, utilizing ISO CA 20 48, or its equivalent.
3. With the exception of Workers' Compensation and Professional Liability, the CONTRACTOR's insurance coverage shall be primary and non-contributory as respects the COUNCIL, its members, agents and employees.
4. The CONTRACTOR shall be responsible for obtaining separate certificates and endorsements for each subcontractor. CONTRACTOR shall determine the appropriate level of insurance coverage and limits from its subcontractors.
5. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed, except after thirty days' prior written notice (ten days notice for cancellation due to non-payment of premium), has been given to the COUNCIL at the following address:

**Metropolitan Council
Attn: Jonathan Ehrlich
390 North Robert Street
Saint Paul, MN 55101**

In addition to notifying its insurer(s) in accordance with the policy, CONTRACTOR shall provide prompt written notice (to the address above) as soon as reasonably possible of any accident or loss relating to work performed on behalf of the COUNCIL.

6. With the exception of Professional Liability, each policy shall be endorsed to state that the insurer agrees to waive all rights of subrogation against the COUNCIL, its members, agents and employees, for losses arising out of the performance of this Contract.
7. Insurance is to be placed with insurers with Best's rating of no less than A:VII.

9.06 Verification of Coverage. The CONTRACTOR shall furnish the COUNCIL with certificates of insurance and with copies of endorsements evidencing coverage required by this article. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The COUNCIL is not obligated to review certificates or other evidence of insurance, or to advise the CONTRACTOR of any deficiencies in such documents, and receipt thereof will not relieve the CONTRACTOR from, nor be deemed a waiver of, the COUNCIL'S right to enforce, the terms of the CONTRACTOR'S obligations hereunder. The COUNCIL will have the right to examine any policy required by this Contract. All certificates and endorsements are to be received by the COUNCIL before work commences.

9.07 CONTRACTOR's Responsibility for Insurance. The COUNCIL does not represent in any way that the insurance specified in this Contract, whether in scope of coverage or limits, is adequate or sufficient to protect the CONTRACTOR's business or interests. It is the sole responsibility of the CONTRACTOR to determine the need for and to procure additional coverage that may be needed in connection with this Contract. Furthermore, the procuring of such required policy or policies of insurance shall not be construed to limit the CONTRACTOR's liability under this Contract nor to fulfill the indemnification provisions and requirements of this Contract

9.08 Non-Waiver of Municipal Immunity and Limits. Nothing in this Contract shall be construed to waive the municipal immunities or liability limits provided in the Minnesota Municipal Tort Claims Act or other applicable state or federal laws.

X. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

10.01 Prohibition on Discriminatory Practices. The CONTRACTOR shall take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age.

10.02 Affirmative Action. The provisions of this Section 10.02 apply only if the amount of this Contract (including the value of any amendments thereto) exceeds one hundred thousand dollars (--\$100,000).

A. General Requirements. The requirements of Minnesota Statutes, section 473.144, and Minnesota Rules, parts 5000.3400 to 5000.3600, regarding affirmative action plans, are incorporated in this Contract by reference.

B. Disabled Individuals Affirmative Action.

1. The CONTRACTOR must not discriminate against any employee or applicant for employment because of a physical, sensory, or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical, sensory, or mental disability in all employment practices such as the following: employment, upgrading,

demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The CONTRACTOR agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
3. In the event of the CONTRACTOR's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes, section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
4. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices must state the CONTRACTOR's obligation under law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
5. The CONTRACTOR must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically, sensory, and mentally disabled persons.

10.03 Freedom from Sexual Harassment. The COUNCIL has a policy which establishes a work environment for COUNCIL employees free of sexual harassment of any form, whether mental or physical. The CONTRACTOR shall require its employees, subcontractors, and all other persons providing materials and services for the Work, to conform to this Policy as their actions may relate to COUNCIL employees.

10.04 Drug Free/Graffiti Free Environment. The CONTRACTOR shall not permit the possession or use of intoxicating liquors or illegal drugs by the CONTRACTOR, its subcontractors, or their agents or employees upon any COUNCIL facility or property.

The COUNCIL prohibits the display of all graffiti of any kind, plus pictures and other materials of any kind, containing racial or ethnic slurs, sexually explicit material, or general foul language on all COUNCIL property and facilities. The CONTRACTOR shall require its employees, subcontractors, and all other persons providing materials and services for the Work, to conform to this prohibition of display of graffiti, pictures, and other materials on or within CONTRACTOR's, subcontractors', and other persons' equipment, facilities, and vehicles which are located upon, brought onto, or used on COUNCIL property and facilities.

XI. AMENDMENTS

The terms of this Contract may be changed by mutual agreement of the parties. Such changes shall be effective only on the execution of written amendment(s) signed by the COUNCIL and the CONTRACTOR.

XII. ASSIGNMENT; SUBCONTRACTS

12.01 Assignment. Except as provided in this part, the CONTRACTOR shall perform with its own organization the Work provided for under this Contract and shall not assign, subcontract, sublet, or transfer any of the Work without receiving the express written consent of the COUNCIL.

12.02 Suspended or Debarred Subcontractors. The CONTRACTOR shall not make awards to subcontractors who have been suspended or debarred by the State of Minnesota.

12.03 Names of Subcontractors. The CONTRACTOR shall furnish, in writing, the names of all subcontractors, and their proposed Scope of Work to be used to complete the Work. The COUNCIL shall in writing within two (2) weeks of receipt of subcontractor information, advise the CONTRACTOR of the COUNCIL's acceptance or objection to proposed subcontractor(s). The CONTRACTOR's submission shall contain the CONTRACTOR's express representation that none of the listed subcontractors have been suspended or debarred from award of contracts or subcontracts under state or local law. The CONTRACTOR shall not contract with any subcontractor to whom the COUNCIL has made objection.

12.04 Requirements of Subcontractor Contracts. All subcontracts between the CONTRACTOR and its subcontractors shall require each subcontractor to be bound to the CONTRACTOR by the terms of this Contract, and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by this Contract, assumes toward the COUNCIL.

12.05 Subcontract Requirements. All subcontracts shall expressly state that incorporation by reference of specific terms and conditions of this Contract shall not be deemed to create any contractual relationship between the COUNCIL and any subcontractor, and that subcontractors are not third-party beneficiaries of this Contract.

12.06 [Reserved.]

12.07 Prompt Payment of Subcontractors. Consistent with Minnesota Statutes, section 471.425, if any part of the Work is subcontracted, the CONTRACTOR shall pay any such subcontractor within ten (10) days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR shall not, by reason of said payments, be relieved from responsibility for that portion of the Work done by the subcontractor and shall be responsible for the entire Work until the same is finally accepted by the COUNCIL.

The CONTRACTOR shall pay interest at the rate of one and one half percent (1½%) per month or part thereof to a subcontractor on any undisputed amount not paid in accordance with the preceding paragraph. The minimum monthly interest payment for an unpaid balance of one hundred dollars (\$100) or more is ten dollars (\$10). For an unpaid balance of less than one hundred dollars (\$100), the CONTRACTOR shall pay the actual interest due to the subcontractor.

In accordance with Minnesota Statutes, section 471.425, a subcontractor who prevails in a civil action to collect interest penalties from the CONTRACTOR must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action. Execution of this Contract constitutes the CONTRACTOR's consent to such award in the event a subcontractor prevails in such an action.

XIII. RETENTION AND REUSE OF DOCUMENTS

13.01 Deliverables to be Kept Confidential. All Deliverables along with such working papers, calculations, notes, and other information used to produce the Deliverables shall be kept as confidential and shall not be made available to any individual or organization by the CONTRACTOR, its subcontractors, or their agents or employees without the prior written approval of the COUNCIL.

13.02 Documents Property of COUNCIL. All documents and records coming into the possession of the CONTRACTOR relating to the Work shall be provided to the COUNCIL by the CONTRACTOR. Deliverables shall become the property of the COUNCIL. The CONTRACTOR is not, however, required to provide the COUNCIL with the CONTRACTOR's correspondence file and original working papers, calculations, and notes developed as a result of the Work. The CONTRACTOR shall make available to the COUNCIL copies of the CONTRACTOR's correspondence and original working papers, calculations, and notes relating to the Work upon request of the COUNCIL.

13.03 Format of Deliverables. Deliverables shall be prepared in Standard English (US) units and language in an accessible format. An accessible document is useable by everyone, including the blind and individuals with low vision. Documents must follow a logical order or a group of rules and procedures designed to ensure that persons using various assistive technology devices can access the information contained in the document. Upon completion or termination of this Contract, the CONTRACTOR shall provide the COUNCIL with a copy, in electronic form, of all Deliverables, reports, studies and other documents developed by the CONTRACTOR in connection with the matters which are the subject of this Contract. Such materials shall be provided in an electronic format, accessible and compatible with the following, as appropriate:

- Word processing files: Microsoft® 2003 or 2007
- Spreadsheet files: Microsoft® 2003 or 2007
- Database files: Microsoft® 2003 or 2007
- Drawing files: ACAD© in conformance with the MCES drafting guidelines
- Other formats: As agreed to in advance by the COUNCIL

13.04 Deliverables Not Subject to Copyright. COUNCIL is hereby granted a right and license to any copyright that may subsist in or to the Deliverables to make, have made, reproduce, have reproduced, distribute, make derivative works from, and otherwise use the Deliverables produced under this Contract for COUNCIL purposes, all without notice or accounting to the CONTRACTOR, provided COUNCIL appropriately acknowledges the contributions of creators in developing the Deliverable.

XIV. GENERAL PROVISIONS

14.01 Legal Compliance. This Contract shall be governed by and construed according to the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. The CONTRACTOR shall comply with all applicable local, state or federal laws or regulations. The CONTRACTOR agrees that the most recent version of these shall govern at any given time. The CONTRACTOR shall exert its best efforts to give all notices required by law and to avoid violations of the law in connection with services provided under this Contract. The CONTRACTOR shall monitor its agents, subcontractors, and employees for the purposes of ensuring compliance with all applicable laws. If any change in circumstances or law will affect the CONTRACTOR's performance under this Contract, the CONTRACTOR shall notify the COUNCIL's Project Manager of the change in circumstances or law at the CONTRACTOR's earliest opportunity.

14.02 Independent Contractor Status. The CONTRACTOR, in performance of Work under this Contract, operates as an independent contractor and covenants and agrees that it shall conduct itself consistent with such status, that it shall neither hold itself out as nor claim to be an officer or employee of the COUNCIL by any reason of this Contract, and that it shall not by reason of this Contract make any claim or demand nor apply for any right or privilege applicable to an officer or employee of the COUNCIL, including, but not limited to, workers' compensation coverage, unemployment or reemployment insurance benefits, Social Security coverage, or retirement membership or credit. The CONTRACTOR assumes sole responsibility for payment of all taxes required by federal and state law, including income, employment, property, or franchise taxes.

The CONTRACTOR shall be responsible for the satisfactory work performance of all its employees or subcontractors in performing the Work described in this Contract. Any person employed by the CONTRACTOR to perform services under this Contract shall not be considered an employee of the COUNCIL for any purpose. The CONTRACTOR shall be responsible for payment of all employee wages and benefits and the costs of any subcontractor. The CONTRACTOR shall comply with the requirements of

employee liability, workers' compensation, unemployment or reemployment insurance, and Social Security, as applicable to its operations. The CONTRACTOR shall have in effect personnel policies that conform to all applicable federal, state and local laws. The CONTRACTOR shall maintain at all times a current list of personnel assigned to perform Work with corresponding documentation of any current licenses or certifications each employee must legally have to carry out the employee's assigned duties.

14.03 Federal Transit Administration Clauses. The provisions of Exhibit C "Federal Transit Administration Clauses" are attached to this Contract and incorporated by reference because this Contract is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in Exhibit C are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of Exhibit C is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in Exhibit C shall prevail.

14.04 Dispute Resolution. Claims by the CONTRACTOR disputing the meaning and intent of this Contract or arising from performance of this Contract shall be referred in writing to the COUNCIL's Project Manager for a written decision. The COUNCIL's Project Manager shall respond to the CONTRACTOR in writing with a decision within ten (10) calendar days following receipt of the CONTRACTOR's claim by the COUNCIL's Project Manager.

If the CONTRACTOR disagrees with any determination or decision of the COUNCIL's Project Manager, the CONTRACTOR shall, within fifteen (15) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the _____, who shall serve as the COUNCIL's Dispute Official. Such written appeal shall include all documents and other information necessary to substantiate the dispute or claim. The Dispute Official shall review the dispute or claim and transmit a decision in writing to the CONTRACTOR within thirty (30) calendar days from the receipt of the dispute or claim. Failure of the CONTRACTOR to appeal the decision or determination of the COUNCIL's Project Manager within the fifteen (15) calendar day period shall constitute a waiver of the CONTRACTOR's right to assert thereafter any claim resulting from such determination or decision. Submission of a dispute or claim to the Dispute Official shall be a condition precedent to any litigation under this Contract.

Pending final decision of a dispute under this article, the CONTRACTOR and the COUNCIL shall proceed diligently with the performance of the Contract and the question or claim shall be temporarily resolved in accordance with the decision of the Dispute Official, until final resolution of the question or claim. Failure by the CONTRACTOR to comply precisely with the time deadlines under this paragraph as to any claim shall operate as a release of that claim and a presumption of prejudice to the COUNCIL.

14.05 Data Practices. Consistent with Minnesota Statutes, section 13.05, subdivision 6, if any data on individuals is made available to the CONTRACTOR by the COUNCIL pursuant to this Contract, the CONTRACTOR shall administer and maintain any such data in accordance with Minnesota Statutes, Chapter 13 (the "Minnesota Government Data Practices Act"), and any other statutory provisions applicable to the data. If and to the extent that Minnesota Statutes, section 13.05, subdivision 11, is applicable to this Contract, then: a) all of the data created, collected, received, stored, used, maintained, or disseminated by the CONTRACTOR in performing this Contract are subject to the requirements of the Minnesota Government Data Practices Act; b) the CONTRACTOR must comply with those requirements as if it were a government entity; and c) the remedies in Minnesota Statutes, section 13.08 apply to the CONTRACTOR.

In the event the CONTRACTOR receives a request to release data referred to in this section, the CONTRACTOR must immediately notify the COUNCIL. The COUNCIL shall give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

14.06 Licenses and Permits. The CONTRACTOR and any subcontractors shall procure and keep current any and all licenses, permits, or certificates which are or may be required by properly constituted authorities for the performance of the services under this Contract.

14.07 Complete Contract. This Contract, including exhibits and other documents incorporated in this Contract or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Contract between the CONTRACTOR and the COUNCIL. This Contract supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition of the Contract shall not affect the validity of other terms or conditions. The COUNCIL's failure to insist in any one (1) or more instances upon the CONTRACTOR's performance of any term or condition of the Contract shall not be construed as a waiver or relinquishment of the COUNCIL's right to such performance, or to future performance, of such term or condition by the CONTRACTOR, and the CONTRACTOR's obligation for performance of that term or condition shall continue in full force and effect.

14.08 Continuing Obligations. The CONTRACTOR acknowledges that the provisions of this Contract impose continuing obligations on the CONTRACTOR which extend and are effective notwithstanding the conclusion of the term of this Contract.

14.09 Workers Compensation and Tax Withholding Representations. In accordance with Minnesota Statutes, section 176.182, CONTRACTOR represents that it is in compliance with the workers' compensation coverage requirements of Minnesota Statutes, section 176.181, subdivision 2.

In accordance with Minnesota Statutes, section 270C.66, CONTRACTOR represents that it and all its subcontractors under this Contract, if any, are in compliance with the tax withholding on wages requirements of Minnesota Statutes, section 290.92.

14.10 Commissioner of Health Licensing, Certifications, and Rules. All asbestos-related work or asbestos management activity, if any, performed by the CONTRACTOR under this Contract shall be performed:

1. by persons or subcontractors licensed or certified (for the types of such work or activity to be carried out) by the Commissioner of Health under the Minnesota Asbestos Abatement Act, Minnesota Statutes, sections 326.70 to 326.81; and
2. in accordance with rules prescribed by the Commissioner of Health related to asbestos abatement and asbestos management activity.

Prior to commencing any such Work, the CONTRACTOR shall provide to the COUNCIL copies of currently valid licenses or certificates (for all the types of asbestos-related work or asbestos management activities to be carried out under this Contract) issued by the Commissioner of Health under the Minnesota Asbestos Abatement Act.

XV. CONFLICTS OF INTEREST

15.01 Definitions.

An "organizational conflict of interest" occurs when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the CONTRACTOR is unable, or potentially unable, to provide impartial or objective assistance or advice to the COUNCIL due to other activities, relationships, contracts, or circumstances.
- b. Unequal Access to Information. The CONTRACTOR has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the CONTRACTOR has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

A "personal conflict of interest" exists when: (1) a COUNCIL employee or officer, or an employee or officer of any agency interested in this Contract, and any people closely related to such employees or officers has a financial interest in the CONTRACTOR's business or this Contract; or (2) a person associated with the CONTRACTOR has an interest which would conflict in any manner or degree with the CONTRACTOR's performance of this Contract.

15.02 Certification. The CONTRACTOR certifies that, to the best of its knowledge and belief, and except as disclosed in its proposal, there are no relevant facts or circumstances which could give rise to a personal or organizational conflict of interest in connection with this Contract. The CONTRACTOR further certifies that: (1) no one except the CONTRACTOR's bona fide employees or designated agents or representatives has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and (2) the CONTRACTOR and its agents, employees, and representatives have not offered or given, and will not offer or give any gratuities, gifts, favors, entertainment, or offers of employment to any official, member, or employee of the COUNCIL or other governmental agency to secure this Contract or to secure favorable treatment with respect to the awarding or amending, or the making or any determination with respect to the performance of this Contract.

15.03 Conflicts During the Term. If the CONTRACTOR learns of facts or circumstances which could give rise to a conflict of interest during the term of this Contract, the CONTRACTOR will immediately notify the COUNCIL in writing. The notice must include a full disclosure and the CONTRACTOR's proposal for avoiding, mitigating, or neutralizing the conflict. The COUNCIL retains the right to take other appropriate action to eliminate the organizational conflict of interest and the CONTRACTOR shall cooperate as reasonably requested by the Council. If, in the Council's sole discretion, the conflict of interest cannot be adequately avoided, neutralized, or mitigated the Council may cancel this Contract. If the Council determines, in its sole discretion, that the CONTRACTOR was aware of any conflict of interest described in this section prior to award and execution of this Contract, and failed to disclose it, the COUNCIL may terminate this Contract for default.

15.04 Flow Down. The provisions of this clause must be included in all subcontracts for work to be performed under this Contract, with the terms "Contract," "CONTRACTOR" and "COUNCIL" modified appropriately to preserve the COUNCIL's rights.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized officers on the dates set forth below.

METROPOLITAN COUNCIL

By:	By:
<div></div> <div>(Please print name legibly below)</div> <div></div>	<div></div>
Its:	Its:
<div></div>	<div></div>
Date:	Date:
<div></div>	<div></div>

EXHIBIT A TO CONTRACT

BASIC SERVICES

This Exhibit is intentionally left blank in the RFP. This document will be developed based on the Scope of Work and the successful Proposer's proposal, and it will be inserted as Exhibit A.

EXHIBIT B TO CONTRACT
CONTRACTOR FEE SCHEDULE

EXHIBIT C TO CONTRACT
Supplemental Conditions for FTA-funded projects

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The provisions of this Exhibit C are required because this Contract is funded in whole or in part by the United States Department of Transportation (USDOT), Federal Transit Administration. The requirements in this Exhibit are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement of this Exhibit is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in this Exhibit shall prevail.

ARTICLE FTA-1. DEFINITIONS

- 1.1 **C.F.R.**: The acronym referring to the United States Code of Federal Regulations, which contains regulations applicable to FTA grant recipients and their contractors and subcontractors.
- 1.2 **DOT**: The acronym referring to the United States Department of Transportation. Also represented as USDOT.
- 1.3 **EPA**: The acronym referring to the United States Environmental Protection Agency. Also represented as USEPA.
- 1.4 **FTA**: The acronym referring to the Federal Transit Administration, a public transit regulatory unit of the USDOT, formerly known as the Urban Mass Transit Administration.
- 1.5 **U.S.C.**: The acronym referring to the United States Code.

ARTICLE FTA-2. ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 2.1 **Access to Records.** The CONTRACTOR agrees to provide sufficient access to FTA and its contractors to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.

In accordance with 49 U.S.C. section 5325(g), CONTRACTOR agrees to provide the Council, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to this Contract for the purposes of making audits, examinations, inspections, excerpts, and transcriptions.

CONTRACTOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project

management oversight (“PMO”) contractor, access to CONTRACTOR’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311.

- 2.2 Access to the Sites of Performance.** CONTRACTOR agrees to permit FTA and its contractors access to the sites of performance under this Contract as may reasonably may be required.
- 2.3 Reproduction of Documents.** The Contractor will retain, and will require its subcontractors at all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 2.4 Retention Period.** The CONTRACTOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. CONTRACTOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The expiration or termination of this Contract does not alter the record retention or access requirements of this Section.

ARTICLE FTA-3. RESERVED

ARTICLE FTA-4. CARGO PREFERENCE

- 4.1 Reserved.**
- 4.2 Fly America Requirements** The CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section FTA-4.2 in all subcontracts that may involve international air transportation.

ARTICLE FTA-5. RESERVED

ARTICLE FTA-6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 6.1 The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the CONTRACTOR certifies that neither it nor its principals, affiliates, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this contract by any Federal department or agency. This certification is a material representation of fact upon which the COUNCIL relies in entering this Contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to the COUNCIL, the Federal Government may pursue available remedies, including suspension and/or debarment. The CONTRACTOR shall provide to the COUNCIL immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The CONTRACTOR will include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE FTA-7. ENVIRONMENTAL STANDARDS AND PRACTICES

- 7.1 **Clean Water Act.** For any project of \$150,000 or more, 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. sections 1251-1387. The CONTRACTOR agrees to report each violation to the COUNCIL and understands and agrees that the COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency ("EPA") Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.
- 7.2 **Clean Air Act Compliance.** For any project of \$150,000 or more, 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. sections 7401-7671q. The CONTRACTOR agrees to report each violation to COUNCIL and understands and agrees that COUNCIL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

7.3 *Energy Conservation.* 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 federal Energy Policy and Conservation Act.

7.4 *Reserved.*

ARTICLE FTA-8. LOBBYING RESTRICTIONS

For any project of \$100,000 or more, the CONTRACTOR is required to make the following certifications. The CONTRACTOR must also require its contractors or subcontractors to make the following certification in any contracts or subcontracts valued at or above \$100,000.

8.1 *Certification of Restrictions on Lobbying; Disclosure.* The CONTRACTOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit

Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CONTRACTOR 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 COUNCIL has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By its signature on this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Section 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE FTA-9. RESERVED

ARTICLE FTA-10. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 10.1 *National Intelligent Transportation Systems Architecture and Standards.*** To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

ARTICLE FTA-11. Program Fraud and False or Fraudulent Statements or Related Acts

- 11.1 *Program Fraud and False or Fraudulent Statements or Related Acts.*** The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. section 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 this Contract or the FTA-assisted project for which this 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.
- The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above language in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

ARTICLE FTA-12. CIVIL RIGHTS

Under this Contract, the CONTRACTOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part hereof.

12.1 *Nondiscrimination.*

12.1.1 ***Nondiscrimination in Employment.*** 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, religion, national origin, sex (including gender identity), age, or disability. In addition, the CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

12.1.2 ***Nondiscrimination in Contracting.*** The CONTRACTOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: (1) The CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the CONTRACTOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

12.2 *Equal Employment Opportunity.* The following equal employment opportunity requirements apply to this Contract:

12.2.1 ***Race, Color, Religion, National Origin, Sex.*** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 200e *et seq.*, and federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. section 2000e note, as further amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. section 2000e note. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment

advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

- 12.2.2 **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. sections 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90 and Federal transit law at 49 U.S.C. section 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.
- 12.2.3 **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and Federal transit law at 49 U.S.C. section 5332, the CONTRACTOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the CONTRACTOR agrees to 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, and any implementing requirements FTA may issue. The Contractor will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. section 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. section 4151 *et seq.*, and any applicable implementing regulations.

- 12.3 **Inclusion in Subcontracts.** The CONTRACTOR agrees to include the requirements of this article FTA-12 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

ARTICLE FTA-13. GENERAL PROVISIONS

- 13.1 **Federal Changes.** The CONTRACTOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the agreement between the COUNCIL and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.
- 13.2 **No Obligation by the Federal Government.** The COUNCIL and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 COUNCIL, CONTRACTOR, or any other party (whether or

not a party to the Contract) pertaining to any matter resulting from this Contract.

The CONTRACTOR agrees to include the preceding clause in each subcontract under this Contract, modified only to identify the subcontractor that will be subject to the provisions.

- 13.3 *Incorporation of FTA Terms.*** Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F (as revised from time to time) and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNCIL requests which would cause the COUNCIL to be in violation of the FTA terms and conditions.

ARTICLE FTA-14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) – NO GOAL

- 14.1 *Nondiscrimination.*** Pursuant to 49 CFR part 26, 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 applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this Contract or such other remedy as the COUNCIL deems appropriate. The CONTRACTOR shall include this requirement in all subcontracts pursuant to this Contract.

14.2 *Prompt Payment.*

14.2.1 Reserved.

14.2.2 The CONTRACTOR agrees to pay subcontractors within ten (10) calendar days of the CONTRACTOR's receipt of payment from the COUNCIL for undisputed services provided by the subcontractor. The CONTRACTOR agrees to pay subcontractors all undisputed retainage payments within ten (10) calendar days of completion of the work, regardless of whether the CONTRACTOR has received any retainage payment from the COUNCIL. The CONTRACTOR shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the COUNCIL. The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this Section 14.2 may result in the COUNCIL finding the CONTRACTOR in noncompliance with the DBE provisions of this Contract.

- 14.2.3 The CONTRACTOR shall not, by reason of said payments, be relieved from responsibility for Work done by the subcontractor and shall be responsible for the entire Work under this contract until the same is finally accepted by the COUNCIL.
- 14.2.4 The CONTRACTOR agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.

The CONTRACTOR will not be reimbursed for work performed by subcontractors unless and until the CONTRACTOR ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section FTA-14.2 may result in the COUNCIL finding CONTRACTOR in noncompliance with the DBE provisions of this contract.

ARTICLE FTA-15. VETERANS PREFERENCE

The Contractor will give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C Section 2108) who have the requisite skills and abilities to perform the construction work required under this contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with disability, or former employee.

ARTICLE FTA-16. RESERVED

ARTICLE FTA-17. INTELLECTUAL PROPERTY RIGHTS

The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. The CONTRACTOR shall grant the COUNCIL intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the

release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

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

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

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

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

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

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

17.5 Data developed by the CONTRACTOR and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the

underlying Contract is exempt from the requirements herein, provided that the CONTRACTOR identifies those data in writing at the time of delivery of the Contract work.

- 17.6** The CONTRACTOR agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

END OF DOCUMENT

Sample Contract

4. AFFIRMATIVE ACTION CERTIFICATION STATEMENT

(See Proposal Instructions, Section 17, for more information.)

Proposer Company Name: _____

Contract Number: 18P064 **Project Name:** Transportation Network Model Rebuild

(NOTE: If the proposal amount exceeds \$100,000, EITHER this form OR a currently effective affirmative action Certificate of Compliance for the Proposer, issued by the Minnesota Department of Human Rights, MUST be submitted with the proposal. See section 17 of the Instructions to Proposers for additional information.)

Instructions: If a proposal is in an amount greater than \$100,000, the Council cannot accept the proposal unless the Proposer can affirm either Statement #1 or Statement #2 below. The Proposer must select (by checking the appropriate box) and certify as true one of the two statements below, if it is able to do so. In making its certification, the Proposer should carefully bear in mind the post-submittal requirements noted in connection with each statement. After submittal of the proposal the Council reserves the right to require documentation from the Proposer supporting the certification or to otherwise verify the accuracy of the certification. **If neither statement can be affirmed, no proposal should be submitted.**

CHECK ONLY ONE BOX!

- | | |
|--------------------------|---|
| <input type="checkbox"/> | <p>The business executing this certification <u>did have more</u> than 40 full-time employees within the State of Minnesota on one or more working days during the 12 months previous to the date the proposal is due. IN ADDITION, the business either:</p> <ul style="list-style-type: none">a. has submitted an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals to the Commissioner of Human Rights for approval; orb. has a currently effective Certificate of Compliance from the Commissioner of Human Rights indicating that it has an approved affirmative action plan. <p>Note: Prior to execution of any agreement arising out of this procurement, the Proposer will be required to provide the Council with a copy of its currently effective Certificate of Compliance.</p> |
| <input type="checkbox"/> | <p>The business executing this certification <u>did not have more</u> than 40 full-time employees within the State of Minnesota on any working day during the 12 months previous to the date the proposal is due. Note: Prior to execution of any agreement arising out of this procurement, the Proposer will be required to provide the Council with at least one of the following on a form to be provided by the Council:</p> <ul style="list-style-type: none">a. certification that the business has a currently effective Certificate of Compliance issued by the Commissioner of Human Rights, along with the copy of that document; orb. certification that the business is in compliance with federal affirmative action requirements; orc. certification that the business's primary place of business is not in the United States; ord. certification that the business did <u>not</u> have more than 40 full-time employees on any working day during the 12 months prior to the date on which it submitted its proposal, in the state where the business has its primary place of business. |

CERTIFICATION

On behalf of the Proposer, I certify that the above response is true as of the date this form is signed. I have read and understand the requirements related to this certification statement.

Proposer Name: _____

By: _____ Date: _____

Name: _____ Title: _____

5. EQUAL PAY CERTIFICATION STATEMENT

(See Proposal Instructions, Section 23, for more information.)

Proposer Company Name: _____

Contract Number: 18P064 **Project Name:** Transportation Network Model Rebuild

Instructions: If a proposal is in an amount greater than \$500,000, the Council cannot accept the proposal unless the Proposer can affirm either Statement #1 or Statement #2 below. The Proposer must select (by checking the appropriate box) and certify as true one of the two statements below, if it is able to do so. In making its certification, the Proposer should carefully bear in mind the post-submittal requirements noted in connection with each statement. After submittal of the proposal the Council reserves the right to require documentation from the Proposer supporting the certification or to otherwise verify the accuracy of the certification. **If neither statement can be affirmed, no proposal should be submitted.**

CHECK ONLY ONE BOX!

<input type="checkbox"/>	<p>The business executing this certification <u>has more</u> than 40 full-time employees either in the State of Minnesota or in a state where it has its primary place of business on a single day during the prior 12 months. IN ADDITION, the Proposer will certify:</p> <ol style="list-style-type: none"> 1. The business is in compliance with Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Minnesota Human Rights Act, and Minnesota Equal Pay for Equal Work Law; 2. The average compensation for its female employees is not consistently below the average compensation for its male employees within each of the major job categories in the EEO-1 employee information report for which an employee is expected to perform work under the contract, taking into account facts such as length of service, requirements of specific jobs, experience, skill, effort, responsibility, working conditions of the job, or other mitigating factors; 3. The business does not restrict employees of one sex to certain job classifications and makes retention and promotion decisions without regard to sex; 4. The wage and benefit disparities are corrected when identified to ensure compliance with the laws cited in Minn. Stat §363A.44, Subd.1; and 5. How often wages and benefits are evaluated to ensure compliance with the laws cited in Minn. Stat §363A.44, Subd. 2(a) (5). <p>Note: Prior to award of any agreement arising out of this procurement, the Proposer must provide the Council with a copy of its currently effective Certificate of Compliance.</p>
<input type="checkbox"/>	<p>The business executing this certification <u>did not have more</u> than 40 full-time employees within the State of Minnesota or a state where it has its primary place of business on a single day during the 12 months prior to the due date.</p>

CERTIFICATION

On behalf of the Proposer, I certify that the above response is true as of the date this form is signed. I have read and understand the requirements related to this certification statement.

Proposer Name: _____

By: _____ Date: _____

Name: _____ Title: _____

6. SUBCONTRACTOR INFORMATION FORM

Proposer Company Name: _____

Contract Number: 18P064 **Project Name:** Transportation Network Model Rebuild

(NOTE: This form MUST be submitted with each proposal.)

Check ONE of the following:

___ No subcontractors will be used by Proposer on this project.

___ Subcontractors are proposed to be used on this project. The following is 1) a list of subcontractors proposed to be used on the project AND 2) a list of subcontractors who submitted bids or quotes to the Proposer for the project but were not selected by the Proposer:

1) SUBCONTRACTORS PROPOSED TO BE USED ON THE PROJECT:

Firm Name	Address	Telephone Number

2) SUBCONTRACTORS WHO SUBMITTED BIDS OR QUOTES BUT WERE NOT SELECTED:

Firm Name	Address	Telephone Number

(Form continued on next page. Use copies of page 1 of this form if space is needed to list additional subcontract firms and attach such copies to the form.)

CERTIFICATION

On behalf of the Proposer identified below, I certify that the information provided in this form is true and correct.

Proposer Name: _____

By: _____ Date: _____

Name: _____

Title: _____

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(See Proposal instructions, Section 19, for further information)

Proposer Company Name: _____

Contract Number: 18P064 **Project Name:** Transportation Network Model Rebuild

(NOTE: This form MUST be submitted with each proposal if the proposal amount exceeds \$25,000.)

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

1. **By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification referred to in this paragraph is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Council may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Council if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR part 29. You may contact the Council for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Council.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this paragraph. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Council may pursue available remedies including suspension and/or debarment.

CERTIFICATION

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its "principals" (as defined at 49 CFR section 29.105(p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this certification.

Proposer Name: _____

By: _____ Date: _____

Name: _____

Title: _____

8. LOBBYING RESTRICTION CERTIFICATION

(See Proposal Instructions, section 20, for further information)

Proposer Company Name: _____

Contract Number: 18P064 **Project Name:** Transportation Network Model Rebuild

(NOTE: This form MUST be submitted with each proposal if the proposal amount is equal to, or exceeds \$100,000.)

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federally funded contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. **IF ANY FUNDS** other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded 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.
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 is 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 section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Proposer Name: _____

By: _____ Date: _____

Name: _____

Title: _____

DISCLOSURE AND CERTIFICATION REGARDING CONFLICT OF INTEREST

(See Proposal Instructions, section 12, for further information)

This document is not intended to be and should not be construed as legal advice. If you are unsure if a conflict of interest exists, or if you are unsure how to mitigate a conflict of interest, please consult your attorney.

Conflict of Interest Guidelines

The Metropolitan Council ("Council") strives to provide full and open competition that is free of real or perceived unfair competitive advantage or conflict of interest. This document is intended to provide guidance on when a conflict of interest may exist, and how Offerors may propose to mitigate conflicts to contract with the Council. In this document, "Offeror" means the person(s) or entity submitting a bid or proposal to any solicitation, any subcontractors, and all related entities including parent companies, subsidiaries, and companies owned, controlled, or owned and controlled by the same or closely related people.

When does a conflict of interest exist?

An organizational conflict of interest occurs when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the Offeror is unable, or potentially unable, to provide impartial or objective assistance or advice to the Council due to other activities, relationships, contracts, or circumstances.
- b. Unequal Access to Information. The Offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the Offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Conflicts of interest may exist at an organizational level, and at a personal level. Conflicts of interest may be "actual," meaning they currently exist, or they may be "perceived," meaning a reasonable person with all the material facts believes there appears to be a conflict, *whether or not* the organizations or individuals involved are in relationships that actually create or experience bias or unfair advantage. Actual, potential, and perceived conflicts of interest are collectively referred to as "conflicts of interest" in this document.

Please note that the information provided serves as a guide only, and a conflict may arise in other situations not described in this document.

For federally funded procurements, please see: 49 C.F.R. 19.43; 2 C.F.R. 200.319(a)(5); and the Federal Transit Administration Circular 4220.1F Chapter VI paragraph 2.a(4)(h), Rev. 4, 3/18/2013, for additional information.

Disclosure of Conflict of Interest

An Offeror shall either: (1) disclose all conflicts of interest and propose a plan to mitigate the conflicts to successfully perform work for the Council; or (2) certify that the Offeror is unaware of any facts or circumstances which would give rise to a conflict of interest in performing work under this solicitation. (See Disclosure Form p. 3). A disclosure will not automatically disqualify the Offeror from being awarded a contract.

Failure to disclose

If, in the Council's sole discretion, a conflict is discovered after award or execution of a contract, the Council may cancel the contract. In the event the Offeror was aware of a conflict of interest prior to the award of the contract and did not disclose the conflict to the Council, the Council, in its sole discretion, may terminate the contract for default whether the conflict can be mitigated or not.

Instructions for Preparation of Disclosure and Certification Regarding Conflict of Interest form

The Offeror must determine if a conflict of interest exists. Offerors and their subcontractors or subconsultants must complete and submit a Disclosure and Certification Regarding Conflict of Interest form as part of the proposal, including forms for all proposed subcontractors. If the Offeror determines that a conflict of interest exists, it must provide the required supplemental information under the Mitigation Plan. Offerors may disclose a potential conflict of interest at any time by submitting the Disclosure of Conflict of Interest form to the RFP Administrator named in the proposal. The Council, in its sole discretion, will make the final determination as to whether a conflict of interest exists and whether the Offeror's Mitigation Plan is sufficient.

Mitigation Plan

An Offeror that has a conflict of interest shall submit a Mitigation Plan. A Mitigation Plan is an Offeror's proposed plan for avoiding, neutralizing or mitigating the negative effects of a conflict of interest, to allow the Council to consider whether to contract with the Offeror. The Council encourages all Offerors to tailor the mitigation to their circumstances as appropriate. The submission by an Offeror of a mitigation plan does not require the Council to accept the plan; the Council may in its discretion reject a Mitigation Plan, accept a Mitigation Plan or negotiate potentially acceptable changes with the Offeror.

Instructions for Preparation of a Mitigation Plan

Each Mitigation Plan should be thorough, detailed, and substantive, to allow the Council to adequately evaluate whether it avoids, neutralizes or mitigates a conflict of interest or any situation that would affect the Offeror's ability to properly and appropriately perform work for the Council without any adverse or inappropriate influence. A Mitigation Plan should, at a minimum, include the following:

- A description of the nature of the conflict, including all facts and information pertaining to the conflict and any supporting documentation which may be necessary.
- Applicable contract numbers or other data that will allow identification of any related contracts with the Council or any other entity.
- A description of the difference between the work performed on a prior contract for the Project and the work to be performed under this solicitation.
- A description of any other factors, including (without limitation) the personnel involved, the nature and extent of their involvement, or the amount of time that has passed between the end of the original contract or subcontract and this solicitation.
- A description of the measures proposed to avoid, neutralize or mitigate the conflict(s).
- Contact information for (1) the individual responsible for oversight and administration of the mitigation plan, and (2) a contact person authorized to discuss this disclosure form with Council personnel.

Council Review of Mitigation Plan

The Council reserves the right to negotiate or require additional mitigation prior to award if the Council deems additional or different mitigation steps are necessary in its sole discretion. The Council is not required to negotiate the conflict mitigation plan. If, in the Council's sole discretion, a

conflict of interest is determined to exist which cannot be adequately mitigated, the Council may find the Offeror not responsive or not responsible, as applicable.

The remainder of this page is intentionally blank. See page 4 for the Disclosure and Certification of Conflict of Interest Form.

Disclosure and Certification Regarding Conflict of Interest

Name: _____ (the "Offeror")

Relationship: _____
(i.e. contractor, consultant, subcontractor, etc.)

1. Certification. The Offeror hereby acknowledges that it has read the Conflict of Interest Guidelines included in the solicitation and has, to the best of its knowledge and belief:

(Choose One)

_____ Determined that there are no relevant facts or circumstances which could give rise to conflicts of interest. (Offeror may provide an explanation or any supporting documentation).

OR

_____ Determined that one or more conflicts of interest exists. (Offeror must provide a Mitigation Plan).

2. Flow-Down. The Offeror must include a signed copy of this certification form for each of its subcontractors and subconsultants with the terms "contract," "Offeror," and "Council" modified appropriately to preserve the Council's rights. The Offeror must submit all subcontractor forms to the Council with its proposal.

3. Continuing Obligations. The Offeror has a continuing obligation to the Council to disclose conflicts of interest to the Council during the solicitation phase or, if awarded a contract, throughout the duration of the contract. During the solicitation, the Disclosure and Certification Regarding Conflict of Interest Form(s) and any related mitigation plan(s) must be submitted to the RFP Administrator. After the Council issues a Notice to Proceed, all documents must be submitted to the Contract Manager designated by the Council.

By signing below, the Offeror certifies that the information contained in this form is accurate to the best of its knowledge, and that the Offeror agrees to comply with the requirements herein. The Offeror has a continuing obligation to the Council to disclose conflicts of interest to the Council during the solicitation phase or, if awarded a contract, throughout the duration of the contract.

Signed:

Name:

Title:

Date: