



MEMORANDUM

TO: Prospective Bidders

FROM: Johnna M. Allen, Purchasing Director

RE: Request for Bid - #032-19

DATE: August 21, 2019

Enclosed you will find the necessary information for preparing and submitting your proposal for a qualified consulting firm with the experience and resources necessary to update the **Metropolitan Transportation Plan Consultant** for the City of Rome, Georgia.

The deadline for submitting your bid is **September 26, 2019 at 11:00 a.m.**

The deadline for submitting questions regarding this proposal is **September 19, 2019 by 5:00 p.m.**

If you have further questions, please e-mail any inquiries to Johnna Allen at jallen@romegeorgia.us. All questions and answers will be posted on the website www.romefloyd.com. It will be the responsibility of interested parties to visit the website frequently to insure receipt of any new information that may be made available.

Johnna M. Allen
Purchasing Director

JMA/res

INSTRUCTIONS FOR BIDDERS

I. Bids must be received by **September 26, 2019 at 11:00 a.m.**

II. Bids must be delivered to:

City of Rome
Attn: JOHNNNA M. ALLEN
601 Broad Street
P.O. Box 1433
Rome, Georgia 30162

III. Bids must be sealed and marked:

032-19 “Metropolitan Transportation Plan Consultant”

IV. Bids must be complete and include:

- A. Completed Bid Proposal Form
- B. Executed Bidder’s Declaration
- C. Executed Certificate of Non-Discrimination
- D. Executed Affidavit of Non-Collusion
- E. Prompt Payment Affidavit
- F. Request for Taxpayer I.D. Number (W-9)
- G. Drug-Free Workplace Certification
- H. E-Verify Compliance Affidavit
- I. SAVE Compliance Affidavit
- J. Federal Clauses for Procurements Funded with FTA Dollars
- K. Disadvantaged Business Enterprise Forms
- L. 5 Hard Copies and 1 Electronic Copy

All bids submitted shall be subject to acceptance or rejection and the City of Rome specifically reserves the right to accept or reject any or all bids, to waive any technicalities and formalities in the bidding.

Bidder shall submit all required forms and information simultaneously with sealed bids, which forms and information become a part of the property of the City of Rome and will not be returned to bidders unless a written request to withdraw is received prior to **September 26, 2019 @ 11:00 a.m.**

V. Payment:

When contracts are awarded, payment by the City of Rome will be the normal 30-day cycle. However, the City does make every effort to honor all discounts.

REQUIREMENTS FOR BIDDERS

These items apply to and become a part of the terms and conditions of the bidders bid. Any exceptions must be in writing.

Notice is hereby given that the City of Rome will receive sealed bids from interested parties until **September 26, 2019 at 11:00 a.m.** at its offices located at 601 Broad Street, Rome, Georgia 30162-1433.

Any bids received thereafter will not be considered.

Bids will be publicly opened and read at the City of Rome Purchasing Department located at 601 Broad Street on the day and at the hour specified.

The purchaser may consider as non-responsive, any bid in which there is an alteration of, or departure from the bid form hereto attached.

The City of Rome, Georgia is requesting qualifications and proposals from a consultant to provide a Metropolitan Transportation Plan (MTP) for the Metropolitan Planning Organization (MPO). The City will review and evaluate the RFP responses, and determine the firm that demonstrates the greatest capabilities and relevant experience, proposes a reasonable cost, and is the most advantageous in fulfilling the Owner's goals for this project. The City of Rome reserves the right to accept, reject, and/or negotiate any or all proposals as determined by them to be in the City's best interest. The bidder to whom award is made will be notified at the earliest possible date. The purchaser reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time, contracts of a similar nature, or the bid of a bidder who, in the sole opinion and discretion of the purchaser is not in a position to perform the contract, or whose name appears on the United States Comptroller General's list of ineligible contractors.

Bids may be withdrawn by written or faxed request, provided such withdrawals are received prior to bid opening date.

NOTE: Unless stated on the bid form the bid submitted will assume all specifications will be met. Please note on the bid form all exceptions.

Scope of Work

The 2050 Metropolitan Transportation Plan (MTP) will be a key tool in establishing and maintaining our regional transportation system. The 2050 MTP is meant to evaluate needs, set priorities and coordinate transportation improvements at a regional level. The MTP will evaluate short, medium, and long-range transportation needs. The MTP will address multiple modes of transportation: automobile, freight, bicycle, pedestrian, rail, air, and transit. The MPO will hire a consultant to complete the 2050 Metropolitan Transportation Plan.

The consultant shall provide all personnel, equipment, tools, materials, supervision, and other items and services necessary for the update of the Rome-Floyd County MPO Metropolitan Transportation Plan to 2050 as per the scope of services outlined below for the period from the award until no later than March 2021.

A. Introduction and Purpose

The Rome-Floyd County Metropolitan Planning Organization (MPO) is the metropolitan planning organization for the area including all of Floyd County. The Rome-Floyd County MPO is charged with carrying out the federally required continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for the area. Staff in the Rome-Floyd County Planning Department administers the planning process.

The Rome-Floyd County MPO is required to update the Metropolitan Transportation Plan (MTP) with a horizon year no less than 20 years from the adoption date of the MTP, including providing the Georgia Department of Transportation with data to update the MPO's travel demand model. Since the current 2040 MTP was approved on May 6, 2016, the next update is due to be adopted no later than May 6, 2021. The Federal Highway Administration (FHWA) published the final rulemakings in the areas of safety and Statewide and Metropolitan Planning in March and June of 2016, respectively. The Safety rulemakings require MPO's to be in compliance by February 2018. The Statewide and Metropolitan Planning rulemaking requires MPO's to set safety targets by December 2017 to be in compliance. Since both of these dates are before October 2019, a full update to the 2050 MTP will be necessary and shall be compliant with all of the required Federal Highway Administration regulations.

B. General Requirements

1. Access Control: All Meetings will be coordinated through the department contacts.
2. Hours of Operation: 8:00 AM – 5:00 PM, Monday – Friday excluding holidays, some evening and/or weekend meetings may be required based on mutually agreeable need.

C. Additional Requirements

Interested parties must be pre-qualified with the Georgia Department of Transportation in Area Class 1.01 (Statewide Systems Planning) and Area Class 1.02 (Urban Area and Regional Transportation Planning). Information regarding pre-qualifications can be obtained by contacting the Georgia Department of Transportation's Pre-qualification Office at <http://www.dot.ga.gov/PS/Business/Prequalification/PrequalConsultants>.

D. Specific Tasks

Work shall include, but not limited to the following:

- Develop base year (2015) and future year (2050) socioeconomic data as input into the travel demand model maintained by GDOT.
- Coordinate with the Rome-Floyd County MPO, GDOT, FHWA, FTA and the public to develop a federally compliant performance-based 2050 MTP that will provide for and maintain a multimodal transportation system that serves the needs of all citizens and provides efficient, safe, and convenient mobility, encourages desirable land use, promotes economic development, and minimizes adverse social and environmental impacts.
- Consultant will prepare a proposed timeline of tasks required to develop the MTP and all associated components for review and approval by GDOT and the Rome-Floyd County MPO staff to ensure that the schedule is coordinated with GDOT's model update schedule.
- Work with the Rome-Floyd County MPO to refine and develop comprehensive goals and objectives as part of the MTP.
- Work with the Rome-Floyd County MPO to identify and develop targets in support of the state's performance measures or independent performance measures (as chosen by the Rome-Floyd County MPO's Policy Committee) and incorporate into MTP.
- Identify available data sources and compile data to support the performance measures/targets. Availability of data and cost of continued compilation of data will be important considerations when developing performance measures and targets.
- Update Financial Plan Component of MTP including project costs and reasonably expected revenue sources for the period of the MTP.
- Develop and implement project prioritization process for the MTP development process.
- Perform Environmental Justice / Title VI Analysis to inform the public involvement process.
- Required public involvement including outreach efforts to reach the traditionally underserved such as minority and low-income populations. All public involvement will be documented for MPO records and future compliance review purposes.
- Provide updates to the Rome-Floyd County MPO's Technical Coordinating Committee and Policy Committee throughout the process.
- Include Unfunded Section / Aspirations Plan as supplement to MTP.
- Document the update process for staff records and federal review purposes.

Deliverables:

- Approved socioeconomic data input to be incorporated into the GDOT travel demand model for the Rome-Floyd County MPO planning area.
- All documentation of process and products (hardcopy and/or electronic).
- Hardcopies and reproducible electronic version of final deliverables (pdf and original file type).
- Federally compliant 2050 MTP that has been approved by the Rome-Floyd County MPO's Policy Committee.

E. Project Description

The update to the 2050 MTP must be cost feasible and able to be implemented by the appropriate local and state transportation agencies. This plan will be comprehensive and include pedestrian facilities, bicycle facilities, transit, and highway modes of transportation. It will include short and long-term strategies and actions that lead to the development of an integrated intermodal transportation system that facilitates the movement of people and goods. The scope of the project will include a FULL update of the Rome-Floyd County MPO MTP to 2050, including development of base and future year socioeconomic data for inclusion in the travel demand model, data identification and collection, performance measure development, performance target development, project prioritization, public involvement, and project methodology and implementation. The updated 2050 MTP will be compliant with the requirements of Moving Ahead for Progress in the 21st Century Act (MAP-21), the subsequent Fixing America's Surface Transportation (FAST) Act, and current federal guidance and regulations.

F. Refine and Maintain Project Schedule for Completing All Tasks

The consultant is required to prepare and maintain a project schedule, indicating the time frame for the project. At a minimum the project schedule must include:

- Dates for all deliverables
- Activity start and completion dates
- Milestones important to maintaining the project schedule
- Necessary milestone meetings

The MPO staff will provide information on scheduled meetings, activities, and deadlines which impact the MTP update effort and will inform the Consultant of any schedule changes. The Consultant will maintain and update the time schedule for completing each of the required tasks. The Consultant is responsible for notification to the MPO staff of all proposed changes to the project schedule for approval.

G. Public Participation

During the development of the 2050 MTP, the consultant should encourage strong outreach efforts to increase public participation. The public participation process should identify the specific public participation procedures used to collect, validate, and distribute community information. The consultant should put emphasis on early public involvement during the development of the MTP process and continue to reach out through various strategies. The

consultant shall complete and document an Environmental Justice / Title VI Analysis to inform the public participation process.

Public participation activities should include explicit outreach to those traditionally underserved by existing transportation system that include but not be limited to low- income and minority households. The Consultant shall provide outreach efforts to notify business leaders and agencies involved in the movement of freight and goods on how to provide input on transportation projects. The Consultant will document any significant comments received and summarize how those comments were addressed. The Consultant shall conduct the necessary workshops and public meetings to create an effective public participation process.

H. Develop Socio-Economic Data

The Consultant will develop base year (2015) and future year (2050) socio-economic data for the travel demand model by Traffic Analysis Zone (TAZ) for the Rome-Floyd County MPO's planning area. The socio-economic data must include, but is not limited to, the following data: population, median household income, employment by type, school enrollment, acres, and future year projections. The consultant will prepare the socio- economic data according to the Georgia Department of Transportation's General Summary of Recommended Travel Demand Model Development Procedures for Consultants, MPOs, and Modelers. The socioeconomic data will be submitted to GDOT's Modeling division for us in developing the travel demand model for the Rome-Floyd County MPO's planning area. Schedule for submitting data and the analysis of the data will be coordinated with GDOT's Modeling Group within their Planning Office.

I. Operations Plan

The initial task in this effort will be the preparation of an operations plan by the Consultant for the MPO. The Consultant, working with GDOT and the MPO staff, will start the development of the operations plan with an identification of the tasks necessary to complete the MTP. The Consultant will then develop a draft operations plan for completing the MTP which will be reviewed by the FHWA, GDOT, and MPO. The draft operations plan will include a detailed listing of the activities necessary to complete the MTP, the schedule for each activity, identification of who will be responsible for the activity, and the total resources required to complete the activity. Based upon the FHWA, GDOT, and MPO review of the draft operations plan, the Consultant will develop a final operations plan for the MTP which will then become the overall management control document for completing the MTP process.

J. Develop Goals, Objectives, and Measures of Effectiveness

The current 2040 MTP contains goals adopted by the MPO to provide guidance in development and implementation of the transportation system. These goals can be found in the current MTP online or by request of the MPO staff. Those goals will need to be re-evaluated, and objectives and performance measures will need to be developed. The goals, objectives, and performance measures of the MTP must incorporate full consideration of the FAST Act planning factors and other associated regulations. The consultant will address possible impacts of transportation policy decisions on land use and development. The consultant shall be responsible for obtaining and compiling ideas from the MPO Policy Committee, Technical Coordinating Committee, and the public. The consultant will also review any and all applicable GDOT plans and consider any other corridor studies performed in the MPO area in order to ensure consistency.

Based on the recommended goals and objectives, the consultant will review the measures of effectiveness. Consideration of any revision of the measures of effectiveness, the consultant will

provide a realistic point of view and consider the availability of data and/or the requirements for the collection of the data to be used in evaluating the measures.

K. Financial Feasibility

The purpose of this task is to ensure that the recommended projects, programs, and studies considered for inclusion in the plan can be implemented utilizing the funding that can reasonably be expected to be available within the time period of the MTP. To evaluate the financial feasibility of the recommended MTP, the consultant will develop revenue and expense components including annual operating/maintenance and repair budgets, annual safety program budgets, estimated costs for programmed improvements, local sources of revenue from general funds or SPLOST, state and federal sources of revenue, user fees, and other sources of revenue deemed reasonable by the MPO staff and planning process committees. Evaluating the financial availability of potential funds will assist with the selection of projects that are included in the MTP. The consultant will develop a consistent, straightforward methodology for potential use by the MPO in the future.

In order to effectively assess the financial feasibility, the consultant will evaluate historic federal, state, and local government transportation funding. Funding for maintenance/repair capital expenditure and mobility and safety improvements will be accounted for. The consultant will review a variety of revenue sources that have been used locally for transportation system improvements such as SPLOST funds, local transit funds and multimodal funding source opportunities utilized in other metropolitan areas similar in size and transportation network and program needs in Georgia and elsewhere in the United States to identify potential additional sources of funding for transportation improvements.

The Consultant will then project the funding levels that can be reasonably anticipated as potential funding for future MPO project implementation during the time frame of the recommended MTP. The Consultant will project potential funding sources and revenues from each source in the same time increments as the travel demand model time increments to evaluate the feasibility of the anticipated funding to enable the implementation of short, mid, and long-term recommended projects and programs. The Consultant will also estimate potential project cost. The fiscal constraint will be transparently demonstrated in the 2050 MTP.

L. Plan Development and Documentation

The purpose of this task is for the Consultant to develop the MTP and the preparation of the documentation. The consultant is responsible for every document that is involved with the update of the MTP in its entirety. While it is clearly understood that the highway component of the MTP will compromise the major element of the plan, other components of the transportation system will require appropriate consideration and evaluation as part of the MTP process, including:

- Transit Systems and Services
- Park and Ride Facilities
- Pedestrian and Bicycle Facilities
- Freight Facilities both Rail and Truck
- Airport Facilities (General Aviation and Commercial)
- Traffic Signal System

- Environmental Sections
- Title VI and Environmental Justice
- Operations and Maintenance
- Safety
- Security
- Unfunded projects

This list may be modified during the course of coordination between the Consultant, MPO, GDOT, and FHWA. In many instances, separate analysis and evaluation of these other transportation system components have already been conducted. The consultant will assist GDOT, FHWA, and MPO staff in researching and reviewing previous studies associated with these other transportation system components. Special considerations will be given to the identification of intermodal connectivity needs such as transit system services, park and ride lots, and freight and airport facilities. The Consultant will incorporate this information into the MTP process and documentation.

The documentation of the MTP is a key part of the overall process. This documentation not only provides the identification of the recommended transportation system improvements for the MPO region through the horizon year but outlines the process that leads to the development of the recommendation, i.e., it provides a “road map” of the overall process. The MTP document will be written in a manner that will allow the average citizen of the community to understand the MTP process and its recommendation. The principle deliverables are:

- Final 2050 MTP (5 hard copies and 1 reproducible electronic version of final deliverables (pdf and original file type))
- MTP Executive Summary
- All associated documentation in original electronic format for MPO record

BID FORM

TO: City of Rome – Purchasing Department
ATTN: JOHNNNA M. ALLEN
P.O. Box 1433
601 Broad Street
Rome, Georgia 30162-1433

BID PKG. 032-19 “Metropolitan Transportation Plan Consultant”

Total Cost: \$_____

Completion of the Plan must be no later than March 31, 2021.

Bidder’s response: _____

All bids submitted shall be subject to acceptance or rejection and the City of Rome specifically reserves the right to accept or reject any or all bids, to waive any technicalities and formalities in the bidding.

Name of Individual, Partner or Corporation

Company

Title

Address

Authorized Signature

City, State, Zip Code

Company phone number

Please attach contact’s business card:

BIDDERS DECLARATION

The bidder understands, agrees and warrants:

- That the bidder has carefully read and fully understands the full scope of the specifications.
- That the bidder has the capability to successfully undertake and complete the responsibilities and obligations in said specifications.
- That the bidder has liability insurance and a declaration of insurance form is included in the bid package.
- That this bid may be withdrawn by requesting such withdrawal in writing at any time prior to **September 26, 2019 at 11:00 a.m.** but may not be withdrawn after such date and time.
- That the City of Rome reserves the right to reject any or all bids and to accept that bid which will, in its opinion, best serve the public interest. The City of Rome reserves the right to waive any technicalities and formalities in the bidding.
- That by submission of this bid the bidder acknowledges that the City of Rome has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information supplied by the bidder.
- If a partnership, a general partner must sign.
- If a corporation, the authorized corporate officer(s) must sign and the corporate seal must be affixed to this bid.

BIDDER:

Name

Title

Name

Title

AFFIX CORPORATE SEAL (If Applicable)

CERTIFICATE OF NON-DISCRIMINATION

In connection with the performance of work under this contract, the bidder agrees as follows:

The bidder agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry or disability. The vendor shall take affirmative action to insure that employees are treated without regard to their race, creed, color, sex, national origin, ancestry or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruiting or recruitment, advertising, lay-off or termination, rates of pay or other compensation and selection for training, including apprenticeship.

In the event of the bidder's non-compliance with this non-discrimination clause, the contract may be canceled or terminated by the City of Rome. The bidders may be declared, by the City of Rome, ineligible for further contracts with the City of Rome until satisfactory proof of intent to comply shall be made by the vendor.

The bidder agrees to include this non-discrimination clause in any sub-contracts connected with the performance of this agreement.

BIDDER

SIGNATURE

TITLE

NON-COLLUSION AFFIDAVIT

The following affidavit is to accompany the bid:

STATE OF

COUNTY OF

Owner, Partner or Officer of Firm

Company Name, Address, City and State

Being of lawful age, being first duly sworn, on oath says that he/she is the agent authorized by the bidder to submit the attached bid. Affidavit further states as bidder, that they have not been a party to any collusion among bidders in restraint of competition by agreement to bid at a fixed price or to refrain from bidding; or with any office of the City of Rome or any of their employees as to quantity, quality or price in the prospective contract; or any discussion between bidders and any official of the City of Rome or any of their employees concerning exchange of money or other things of value for special consideration in submitting a sealed bid for:

FIRM NAME _____

SIGNATURE _____

TITLE _____

Subscribed and sworn to before me this _____ day of _____ 20_____

NOTARY PUBLIC

STATE OF GEORGIA PROMPT PAY ACT AFFIDAVIT

THIS AFFIDAVIT IS TO ACCOMPANY THE BID

GEORGIA PROMPT PAY ACT: The Georgia Prompt Pay Act was enacted by the General Assembly in 1994 and took effect January 1, 1995. This act requires owners to pay contractors within 15 days of receipt of a pay request by the owner or the owner's representative. If payment is not made the owner shall pay the contractor 1% per month interest on the delayed payment. Additionally, the contractor must pay subcontractors within 15 days of receipt of payment from the owner.

This Act is Code Section 13-11-1 (Georgia Laws of 1994, p. 1398 par. 4)

Firm Name: _____

Signature: _____

Title: _____

Subscribed and Sworn to before me this _____ day of _____, 20_____

Notary Public

CITY OF ROME

DRUG-FREE WORKPLACE CERTIFICATE

By signature on this certificate, the Bidder certifies that the provisions of O.C.G.A. Section 50-24-1 through 50-24-6 related to the “Drug-Free Workplace Act” will be complied with in full. The Bidder further certifies that:

1. A drug-free workplace will be provided for the Bidder’s employees during the performance of the contract; and

2. Each contractor who hires a subcontractor to work in a drug-free workplace shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with (contractor’s name), (subcontractor’s name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this contract pursuant to O.C.G.A. Section 50-24-3(b)(7).”

By signature on this certificate, the Bidder further certifies that it will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

Bidder: _____

By: _____

Name Printed: _____

Title: _____

Date: _____

CITY OF ROME, GEORGIA
E-VERIFY COMPLIANCE AFFADAVIT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Rome, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A., § 13-10-91 (b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification number
(Not Required if Less than 10 Employees)

Signature (if less than 10 employees)

Date of Authorization

Name of Contractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20____ in _____(city) _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20_____

NOTARY PUBLIC
My Commission Expires:

CITY OF ROME, GEORGIA

SAVE COMPLIANCE AFFADAVIT

O.C.G.A § 50-36-1(e) (2) Affidavit

By executing this affidavit under oath, as an applicant for a (n) Contract or Services, as referenced O.C.G.A. C. § 50-36-1, from the City of Rome, Georgia, the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- 1) _____ I am a United State citizen.
- 2) _____ I am a legal permanent resident of the United States
- 3) _____ I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.
My alien number issued by the Department of Homeland Security or other federal immigration agency is: _____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e) (1), with this affidavit. The secure and verifiable document provided with this affidavit can best be classified as:

_____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in _____ (city), _____ (state).

Signature of Applicant

Name of Applicant Printed

SUBSCRIBED AND SWORN

BEFORE ME ON THIS THE

_____ DAY OF _____, 20_____

NOTARY PUBLIC
My Commission Expires:

Federal Clauses for Procurements Funded with FTA Dollars
To be used for all Non-Construction procurements over \$10,000.00
-excluding Micro Purchases (less than \$9999.99)

- 1) No Federal Government Commitment or Liability to Third Parties. Except as the Federal Government Expressly consents in writing, the Recipient agrees that:
 - a) The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement, and
 - b) Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

- 2) False or Fraudulent Statements or Claims.
 - a) Civil Fraud. The Recipient acknowledges and agrees that:
 - i. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C § 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31.
 - ii. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
 - iii. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
 - b) Criminal Fraud. The Recipient acknowledges that 49 U.S.C § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, 17 FTA Master Agreement MA(24), 10-1-2017 assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

- 3) Access to Recipient and Third Party Participant Records. The Recipient agrees, and assures that each Sub-recipient, if any, will agree, to:
 - a) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Recipient and each of its Sub-recipients, 34 FTA Master Agreement MA(24), 10-1-2017
 - b) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Recipient or Third Party Participant within books, records, accounts, or other locations, and
 - c) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.

4) Civil Rights

- a) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:
- i. Prohibit discrimination based on race, color, or national origin,
 - ii. Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, and
 - iii. Follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent of consistent with applicable federal laws, regulations, requirements, and guidance, (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) All other applicable federal guidance that may be issued.
- b) Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows:
- i. Statutory and Regulatory Requirements. The recipient agrees to comply with:
 1. Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,
 2. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and
 3. Federal transit law, specifically 49 U.S. C. § 5332, as provided in section 12 of this Master Agreement. 38 FTA Master Agreement MA(24), 10-1-2017.
 - ii. DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 C.F.R. part 26.
 - iii. Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that:
 1. TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R part 26, and
 2. Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
 - iv. Assurance. As required by 49 C.F.R § 26.13(a):
 1. Recipient Assurance. The Recipient agrees and assures that : 1) It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2) it 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

contracts, 3) its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and 4) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.

2. Sub-recipient/Third Party Contractor/Third Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each sub-agreement and third party contract it signs with a Sub-recipient or Third Party Contractor and agrees to obtain the agreement of each of its Sub-recipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every sub-agreement and third party contract it signs:
 - a. The Sub-recipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted sub-agreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26,
 - b. The Sub-recipient, each Third Party Contractor, and each Third Party Subcontractor 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 sub-agreements, third party contracts, and third party subcontracts, as applicable, 39 FTA Master Agreement MA(24), 10-1-2017
 - c. Failure by the Sub-recipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this sub-agreement, third party contract, or third party subcontract, as applicable, and
 - d. The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Sub-recipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- v. Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.
- vi. Prompt payment mechanisms (added by GDOT, not listed in 2018 Master Agreement)
 1. You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.
 2. You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
 - a. You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

ADA does not apply because it exempts Indian Tribes from the definition of “employer,”

3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- ii. Federal regulations and guidance, including:
1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,
 2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
 3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
 4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
 5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
 6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
 7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
 8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F,
 9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194,
 10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609,
 11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance,” and
 12. Other applicable federal civil rights and nondiscrimination regulations and guidance.
- d) Equal Employment Opportunity, (added by GDOT, not listed in 2018 Comprehensive Review List)
- i. Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin and:
 1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.,
 2. Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note,), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,

3. Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement,
 4. FTA Circular 4704.1 “Equal Employment Opportunity (EE) Requirements and Guidelines for Federal Transit Administration Recipients,” and
 5. Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,
- ii. Specifics. The Recipient agrees to, and assures that each Third Party Participant will:
1. Prohibited Discrimination. Ensure that applicants for employment are employed and employees are treated during employment without discrimination based on their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, as provided in Executive Order No. 11246 and by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations,
 2. Affirmative Action. Take affirmative action that includes, but is not limited to:
 - a. Recruitment advertising, recruitment, and employment,
 - b. Rates of pay and other forms of compensation,
 - c. Selection for training, including apprenticeship, and upgrading, and
 - d. Transfers, demotions, layoffs, and termination, but
 3. Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer,” and
- iii. Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
1. U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Chapter 60 and
 2. Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- 5) Energy Conservation. The Recipient agrees to, and assures that its Sub-recipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.
- 6) Federal Changes. Applicability – All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor’s failure to comply shall constitute a material breach of the contract.
- 7) Incorporation of Federal Transit Administration (FTA) Terms. All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

8) Right of the Federal Government to Terminate.

- a) Justification. After providing written notice to the Recipient, the Recipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if: (1) The Recipient has failed to make reasonable progress implementing the Award, (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award, or (3) The Recipient has violated the terms of the Underlying Agreement, especially if that violation would endanger substantial performance of the Underlying Agreement.
- b) Financial Implications. In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that those obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Recipient has misused its federal assistance failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Underlying Agreement, and require the Recipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- c) Expiration of the Period of performance. Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

9) Solid Wastes (Recycled Products) – A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintain a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Procurements in the amount of \$25,000.00 or more

10) Debarment and Suspension. The recipient agrees to the following:

- a) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. SOT regulations at 2 C.F.R. part 1200.
- b) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third Party Participant that is debarred or suspended except as authorized by:
 - i. U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 C.F.R. part 1200,
 - ii. U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” 2 C.F.R. part 180, including any amendments thereto,

- iii. Executive Order No. 12549, “Debarment and Suspension of Participants in Federal Programs,” February 18, 1986, 31 U.S.C. § 6101 note, as amended by Executive Order NO. 12689, “Debarment and Suspension,” August 16, 1989 31 U.S.C. § 6101 note, and
 - iv. Other applicable federal laws, regulations, requirements, or guidance regarding participation with debarred or suspended Recipients or Third Party Participants.
- c) It will review the U.S. GSA “system for Award Management – Lists of Parties Excluded from Federal Procurement and Non-procurement Programs,: if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - d) It will include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
 - i. Complies with federal debarment and suspension requirements, and
 - ii. Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
 - e) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the:
 - i. FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement,
 - ii. FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or
 - iii. FTA Chief Counsel.

Procurements in the amount of \$100,000.00 or more

- 11) Lobbying Restrictions. The Recipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:
- a) Laws, Regulations, Requirements, and Guidance. This includes:
 - i. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended, 16 FTA Master Agreement MA(24), 10-1-2017
 - ii. U.S. DOT regulations, “New Restrictions on Lobbying,” 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - iii. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
 - b) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient’s or Sub-recipient’s proper official channels.
- 12) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§1251 – 1388), as amended. Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 13) Awards Not Involving Construction. The Recipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et

seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Procurements in the amount of \$150,000.00 or more

- 14) Preference for United States Products and Services. Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA’s U.S. domestic preference requirements and follow federal guidance, including:
- a) Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, “Buy America Requirements,” 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j),
 - b) Cargo Preference – Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. part 381, and
 - c) Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, “use of United States Flag Air Carriers,” 41 C.F.R. §§ 301-10.131 – 301-10.143.
- 15) Disputes, Breaches, Defaults, or Other Litigation.
- a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
 - b) Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located.
 - i. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - ii. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - iii. If the Recipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Recipient, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located.
 - c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.

- d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

NOTE – BEFORE SIGNING, PLEASE STRIKE THROUGH ANY CLAUSES NOT APPLICABLE TO CURRENT TRANSACTION.

For the Vendor Only:

Name of Vendor – (NAPA, Office Depot, Doctor Electric, etc.)	
Name of Sales Rep, Cashier, or Other Employee of Vendor Conducting the Sale	
Signature of Employee -	
Date Signed -	

For Transit System Only:

Name of Transit System –	
Product Purchased –	
Total Purchase Price –	
P.O. # (if known) –	

Disadvantaged Business Enterprise (DBE) **49 CFR Part 26**

Background and Applicability

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

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

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

The following clause language incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to ftantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __%. A separate contract goal [**of __% DBE participation has**] [**has not**] been established for this procurement.
- b. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 15%. The contractor will take active and aggressive efforts to assist the Department in meeting or exceeding its overall DBE participation. The directory of current DBE firms certified in the State of Georgia can be found at: <http://www.dot.ga.gov/PartnerSmart/Business/Pages/DBE.aspx> .
- c. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the

(Page 2) Disadvantaged Business Enterprise (DBE)

termination of this contract or such other remedy as deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- d. **{If a separate contract goal has been established, use the following}** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders] [Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **Authorized Users of the State of Georgia**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- f. The contractor must promptly notify State of Georgia whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of State of Georgia.

(Page 3) Disadvantaged Business Enterprise (DBE)

Contractor agrees to comply with the requirements and procedures set forth in 49 CFR Part 26 Concerning Disadvantaged Business Enterprise (DBE).

Date: _____

Signature: _____

Printed Name: _____

Company Name: _____

Title: _____