



# REQUEST FOR PROPOSAL FY20-R-006

for

## BUS INSPECTION SERVICES

for

## DES MOINES AREA REGIONAL TRANSIT AUTHORITY

<b>Services Requested:</b>	Bus Inspection Services
<b>Contract Type:</b>	Professional Services
<b>Number of Contracts:</b>	One
<b>Duration:</b>	Five Years
<b>Funding Source:</b>	Operating and Capital Budgets
<b>Date Issued:</b>	October 15, 2019
<b>Deadline for Questions Regarding this RFP:</b>	October 25, 2019
<b>Answers to Questions Posted on Website:</b>	October 30, 2019
<b>Proposals Due:</b>	November 15, 2019, 2:00 PM CST
<b>Tentative Contract Award Date:</b>	December 6, 2019

**Des Moines  
Area Regional  
Transit Authority**

620 Cherry Street  
Des Moines, Iowa  
50309-4530

515-283-8100  
Fax 515-283-8135  
ridedart.com



## LEGAL NOTICE

REQUEST FOR PROPOSAL  
FY20-R-006  
BUS INSPECTION SERVICES

Sealed proposals are hereby requested by the DES MOINES AREA REGIONAL TRANSIT AUTHORITY, 620 Cherry St., Des Moines, Iowa to be received until 2:00 PM local time, on November 15, 2019 for Bus Inspection Services.

Requests for clarification and/or questions concerning the issued document shall be directed to Dan Clark in the DART Procurement Department in writing by e-mail at [dartprocurement@ridedart.com](mailto:dartprocurement@ridedart.com). All submittal questions concerning this RFP are due on or before October 25, 2019. This will be the only notice rendered for this procurement. Proposal Documents can be obtained at DART Operations and Maintenance Center, at 1100 DART Way, Des Moines, Iowa during the hours of 8:00 AM and 5:00 PM, Monday through Friday or DART's website <https://www.ridedart.com/business-center/procurement>.

In accordance with Title VI of the Civil Rights Act of 1964, DART notifies all proposed vendors that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit a proposal in response to this request and will not be discriminated against on the grounds of race, color, or national origin in consideration of an award.

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# SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



All proposals are subject to the conditions specified herein. Proposals that do not comply with these conditions are subject to rejection. Proposing firms shall include the following information, at a minimum, in their proposal and shall organize their proposal in the same order as the items are listed below.

## 1.1. GENERAL REQUIREMENTS

The proposal shall:

- Contain concise written materials that enable the reviewer to clearly understand the Proposer's capabilities and approach to the contract.
- Specifically describe the Proposer's role in relationship to its subcontractors (if any) and shall describe the interfaces with said subcontractors.
- Reflect a level of understanding of the work required.

## 1.2. GENERAL FORMAT and SUBMITTAL

- Proposals shall have a maximum page number of 30, not including the required forms.
- Proposals shall be submitted via email and should be sent to: [dartprocurement@ridedart.com](mailto:dartprocurement@ridedart.com)
- All proposals must be received by the deadline. As soon as proposals are received via email, proposer will receive an email confirmation of receipt.

## 1.3. PROPOSAL REQUIREMENTS

### A. PROPOSAL LETTER

This letter must be completed and executed by an authorized representative of the Proposer. No other letter may replace or be included in addition to the Proposal Letter.

A proposal letter transmitting the proposal must be submitted and dated. The letter must indicate that the Proposer agrees to be bound by the proposal without modifications, unless mutually agreed to by DART and the Proposer.

The proposal letter shall also contain the name, title, address, e-mail address, and telephone number(s) of an individual(s) with authority to bind the Proposer during the period in which DART is evaluating proposals. The cover letter shall also identify the legal form of the firm. If the firm is a corporation, the cover letter shall identify in which state the company was incorporated. If a consortium, joint venture or team approach is being proposed, provide the above information for all participating firms.

The cover letter shall be signed by a principal of the firm or other person fully authorized to act on behalf of the firm or team.

### B. FIRM AND STAFF QUALIFICATIONS

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The proposal shall include a general description of the firm and its background as it relates to the requested services. Specific information shall be submitted and include:

- Information regarding previous experience with similar or related projects. It should contain a brief description of these projects and the firm's role.
- Information demonstrating the firm's capabilities to perform all aspects of this particular service.
- Information demonstrating the firm's knowledge, expertise, skills, and experience in public transit, quality assurance techniques, quality management planning, FTA Buy America provisions, FTA vehicle purchase regulations, factory and field product inspection and acceptance testing, auditing, and project management.
- A listing of the key staff members who will be working on this project and which includes the qualifications and background of these individuals. At a minimum this should include the project manager, auditor, and lead or supervisor of the quality assurance/inspection team.
- Three (3) references including client name, address, contact person, telephone number, email, project start and end date as well as a project description. References should be for similar or related projects that proposed key staff members for this project have worked.
- If any work is to be subcontracted to another firm(s), the proposal must include the above firm and staff qualification information for each subcontractor, a description of the services the firm performs as well as related projects and references.

### **C. PRICING PROPOSAL**

Submit your pricing proposal using Attachment 8, Price Rate Sheet. Use of any other format will make your proposal non-responsive.

### **D. PROFESSIONAL SERVICES CONTRACT**

Indicate your willingness to accept the terms and conditions in the Contract Provisions (Section 6), including the required Federal Clauses (Section 7), or list those to which you take exception, and, as appropriate, provide proposed alternate wording. It is not DART's intent to make substantial changes to the outlined Contract Provisions.

### **E. FORMS**

Compliance with these forms is mandatory for contract award:

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement on Subcontractors

ATTACHMENT 4 – Non-Collusion Affidavit

ATTACHMENT 5 – Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters

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ATTACHMENT 6 – Certification of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusions (if applicable)

ATTACHMENT 7 – DBE Participation Form

ATTACHMENT 8 – Price Rate Sheet

## **SECTION 2: SCOPE OF WORK**



### **2.1. INTRODUCTION AND BACKGROUND**

The Des Moines Area Regional Transit Authority, or DART, is the largest public transit agency in Iowa, serving 12 municipalities in and around Polk County. DART operates Fixed Route, Paratransit and On Call services as well as provides resources for those who vanpool, walk or bike. Our fleet of nearly 150 buses travel around 15,000 miles daily throughout the Greater Des Moines region, transporting people to work, events, shopping, school and home.

DART is committed to providing a safe and economical public transit system. The agency replaces its vehicles when they have met the service life requirements set forth by FTA, as long as capital funding is available to support the purchase of replacement vehicles. DART is required to perform in-plant inspection and quality assurance services as a part of its bus procurement process.

### **2.2. PROJECT DESCRIPTION**

DART is seeking a Contractor to conduct transit bus line inspection and secondary in-plant quality assurance services. The overall goal for these services is to ensure that each of the vehicles being produced is manufactured in compliance with 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases" regulations and 49 CFR 661 "Buy America" requirements; as amended by the "Fixing America's Surface Transportation" (FAST) Act. These inspections also ensure that the vehicles comply fully with the specifications of the order, and ensure that each vehicle is free from defects.

### **2.3. ESTIMATED NUMBER OF VEHICLES**

The estimated number of vehicles planned for procurement over the Term of the Contract is incorporated into DART's Price Rate Sheet included at Attachment 8. The information presented therein is for planning purposes only and is subject to change. DART will assign inspection work through a written notice (the Task Order) as further outlined in Section 2.7 of this Scope of Work. DART makes no guarantee as to the total number of Task Orders to be issued under this Contract.

### **2.4. BACKGROUND AND REFERENCES**

On September 24, 1991, the Federal Transit Administration (FTA) published a final rule requiring pre-award and post-delivery audits of rolling stock purchased with Federal financial assistance from the FTA. This rule applies to funds obligated by FTA on or after October 24, 1991. The intent of this provision in the law is to improve compliance with (1) Buy America requirements, (2) buying agency's vehicle specifications, and (3) Federal Motor Vehicle Safety Standards. On December 14, 2015 the FAST Act was signed into law. This act contained several changes to FTA Buy America Requirements. A revised Buy America Handbook, reflecting these changes, was published in January 2017 with an

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effective date of March 21, 2017. The Contractor shall be thoroughly knowledgeable of applicable regulations, including the following references as they pertain to the service requirements throughout the term of this Contract:

- FTA Buy America Regulations and Guidance;  
<https://www.transit.dot.gov/buyamerica>
- 49 C.F.R. 661 Buy America Requirements;  
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=49%3A7.1.2.1.18>
- 49 C.F.R. 663 Pre-Award and Post-Delivery Audits  
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=49%3A7.1.2.1.19>
- Selected Buy America Regulations and Rulemaking Documents (1981-Present)  
<https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-regulations>
- Buy America Handbook  
<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/buy-america/58191/buy-america-handbook-rpt0106.pdf>
- Fixing America's Surface Transportation Act  
<https://www.fhwa.dot.gov/fastact/>

The Contractor shall be responsible for knowledge of any updates, changes or amendments of these references or other FTA communications as they pertain to this Contract. The Contractor shall notify DART of any changes that may occur during the period between Task Orders; in any regard no later than at the time Contractor provides a response to any particular Task Order. Contractor shall cooperate with incorporating any updates, changes, or amendments of these or any other changes to Buy America requirements as they relate to and affect any current or future Task Orders.

### 2.5. TERM OF CONTRACT

DART is soliciting for firms to perform transit bus inspections on an as needed basis. DART will award to the proposer who can satisfy all of the criteria listed within and is judged to provide the best value to DART, and is deemed responsive and responsible. This contract will be for a period of five (5) years.

### 2.6. TASK DESCRIPTIONS

#### 2.6.1. Purpose:

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The purpose of this Contract is to establish an on-call service to perform necessary, thorough inspections of the vehicles being manufactured or purchased for product quality assurance, including but not limited to fit and finish, maintainability, and workability; as well as provides audits and certifications required for FTA Buy America regulations pertaining to rolling stock purchases. DART considers the Contractor's ability to plan, communicate and execute these services as a requirement of award of this contract. The Contractor shall provide the minimum of the following services under this contract:

- All required FTA audits and documentation pertaining to transit vehicle purchases
- Technical Configuration Certification and Reports
- Vehicle Manufacturing Production Quality Assurance and Reports
- Pre-Delivery Inspection and Testing Reports
- Conditional Acceptance Testing at the Manufacturer's plant and Reports

### **2.6.2. DART Responsibilities:**

DART's Operations Manager – Maintenance will be the DART Program Manager for this project. The Program Manager's key responsibilities include, but are not limited to:

- Issuing Task Orders for inspection services and furnish specification and contract information for the vehicle purchases;
- Providing direction, review and approval of all service and reports completed under this contract, as well as program administration for contract compliance, interpretation of scope, schedule and budget;
- Other departments within DART may be involved in the administration of the contract.

### **2.6.3. Contractor Responsibilities:**

The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without compensation, correct or revise any errors or deficiencies in its designs, drawings, reports and other services. The Contractor shall not jeopardize or add risk to DART's procurement during the performance of this service including contributing to the late delivery of the vehicles.

### **2.6.4. Contractor Personnel:**

It is the Contractor responsibility to perform quality service under this contract. The Contractor's personnel shall possess thorough knowledge, expertise, skills and experience in the following minimum subject matter: public transit, quality assurance techniques, quality control techniques, quality management planning, Buy America provisions, FTA vehicle purchase regulations, factory and field product inspection and acceptance testing, auditing and project management.

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The Contractor shall provide employee staff under the terms and conditions of this Contract, with a minimum of three (3) years of experience in each of their assigned job positions. Inspectors and auditors shall have a minimum of five (5) years of experience in their position, including high voltage familiarization, with at least two years specifically related to the transit industry.

Each employee shall have the knowledge, skill and ability to use the necessary equipment and to perform the service as specified herein. Each employee shall have the ability to work with, provide superb customer service, and partner with DART employees and bus manufacturers, their employees and production processes.

DART reserves the right to disapprove any Contractor's staff assigned to the perform work under this contract, and/or Contractor's proposed changes in staff. DART will not reimburse the Contractor for additional expenses for staff changes requested by DART under this contract. Such disapproval will require removal or reassignment of the staff found unacceptable by DART for good cause. Good cause includes, but not limited to, any conflict of interest or lack of performance, real or apparent. This right extends to subcontractors used under this contract.

### **2.7. TASK ORDERS**

DART shall issue a separate Task Order to the Contractor for each inspection service to be provided. Unless otherwise amended by DART, the Contractor shall be responsible for the following services under each Task Order:

1. Provide a Project Manager to supervise the audit and inspection team, guide production line inspection duties, and assume ultimate responsibility for written reports until the Task Order is satisfactorily completed;
2. Contractor shall assess all vehicles covered under each individual Task Order throughout the production process and evaluate their final condition prior to delivery to DART;
3. Complete Pre-Award Buy America Audit Reports and Management Reports;
4. Inspector to participate in production meetings, as requested;
5. Auditor to participate in a meeting(s) to furnish answers to the FTA or other required parties related to various audits/reviews (such as Triennial, Procurement System Reviews, Project Management Oversight, and/or other audits) pertaining to Buy America Audits, as requested;
6. Project Manager to review DART's bus specifications and provide recommendations, if requested;
7. Contractor may be asked to provide information or recommendations regarding best practices or design features which have been requested by other transit agencies;

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8. Provide timely quality digital pictures of parts, items or issues for review to the DART Project Manager or their designee electronically;
9. Perform the Configuration audit;
10. Perform all required pre-delivery visual and measured inspections;
11. Perform all required pre-delivery total vehicle operation tests per the vehicle specifications and a test of HVAC conditioning systems, wheelchair ramp, on-board announcement and sign systems (when applicable), and all other installed equipment;
12. During manufacture and assembly, the Contractor shall provide qualified personnel to perform vehicle inspection and quality assurance inspection in accordance with Section 2.12 below.
13. Collect copies of all bus manufacturer's documents pertaining to the build of each individual bus, including but not limited to, defect sheets, check off sheets, completion sheets, Master Resolution List, QC\QA sheets, reports, change orders, parts outages, subcomponent serial numbers, DART provided tire serial numbers and the exact locations of each tire and serial number branded, all bus tests performed by the manufacture, and copies of related pass\fail documentation, measurements or validations of specific bus performance and provide same to DART's Project Manager; and
14. Perform Post-Production Buy America component compliance including certification.

### **2.8. Pre-Award Buy America Audit**

Pre-Award Buy America Audits are completed prior to award of contracts and those contracts being fully-executed with a selected vehicle manufacturer. The Contractor shall perform all Pre-Award Buy America Audits according to the laws and procedures provided by the FTA, see Section 2.4, and/or DART's Maintenance department, and shall include at a minimum:

Buy America Certification through an audit, prepared by someone other than the manufacturer, or its agent, of the documentation provided by the manufacturer which lists:

1. All components and subcomponents identified by the manufacturer of the parts, their country of origin, percentage, and cost.
  - A. Verification that the components include typical components as identified by the FTA;
  - B. More than 70% of the components, independent verification with the suppliers that the components identified as domestic comply with Buy America requirements with regards to containing at least 70% domestic product content and that final assembly occurred in the United States;

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- C. The location of final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the proposed cost of final assembly; and
  - D. Verification that final assembly includes the minimum final assembly activities as identified by the FTA.
2. Purchaser's vehicle specification requirements certified by an audit that determines:
    - A. The rolling stock contracted for is the same product described in DART's solicitation specification;
    - B. The proposed manufacturer is a responsible manufacturer capable of producing the required vehicles; and
    - C. A copy of the manufacturer's Federal Motor Vehicle Safety certificate. (Manufacturer states "will comply.")
  3. A signed representation letter from an officer of the manufacturer stating that the information provided and relied upon during the Buy America Audit is true and accurate as of the date signed with regards to the following:
    - A. Components and subcomponents listing and total material cost. Total material costs shall be provided directly to DART's Project Manager;
    - B. Final assembly activities, location, and proposed cost of final assembly; and
    - C. FMVSS Certification
  4. Reports shall be submitted to DART in the following manner:
    - A. One hardcopy and one electronic version of all reports shall be submitted;
    - B. Electronic files shall use Microsoft Office Suite programs for written and spreadsheet type documents, and the most current AutoCAD release product for drawings and schematics;
    - C. Electronically submitted files shall not be password protected, or in any other way prepared and/or saved in a manner in which DART cannot access them and use them at their disposal;
    - D. Proprietary software is not allowed; and
    - E. The electronic version can be placed on a USB drive and mailed if file is too large to email. Hardcopies shall be bound, standard 8.5" x 11" pages, in an executive-like briefing style, with clear table of contents, and free from errors.
    - F. Reports shall contain a minimum of the following:
      - a. Introduction: shall contain Buy America background and discussion of requirements, including any recent changes;

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- b. Signature pages: auditor's certification, inspector's certification, Buy America compliance certification, purchaser's requirements certification, purchaser's FMVSS compliance certification;
- c. Methodology: shall contain discussion of how the Audit was conducted and the reasoning used, description of audit activities, audit process, data/documentation reviewed, and names and qualifications of auditors;
- d. A discussion of the processes used to verify domestic content, final assembly activities, and location of final assembly at the Pre-Award stage;
- e. A discussion regarding the evidence reviewed and/or independent analysis performed to verify the domestic content of materials and the total cost of components/subcomponents;
- f. A discussion of whether the vehicle bodies will be manufactured in the U.S., or if will they arrive as "knock down" components from abroad, requiring minor assembly work;
- g. Certification: shall contain any necessary discussion about the vehicle and its compliance details, including a table of major components and subcomponents with compliance percentages;
- h. Inspection: shall contain a discussion of visual inspections to be performed during production, contain any inspector's notes or planning;
- i. Manufacturer/supplier Buy America certification with complete vehicle parts listing and compliance percentages;
- j. Final assembly: discussion, cost of final assembly process, and conclusion as to the reasonableness of the proposed cost of final assembly; and
- k. FMVSS: manufacturer approvals and certifications.

### 2.9. Post-Delivery Buy America Audit

Post-Delivery Buy America Audits are completed prior to title of rolling stock transfer from the vehicle manufacturer to DART. Pre-Delivery Buy America Reviews shall be completed prior to build production. The Contractor shall perform all Pre-Delivery Reviews and Post-Delivery Buy America Audits according to the laws and procedures provided by the FTA, see Section 2.4, and/or DART's Maintenance department, and shall include at a minimum:

- 1. Buy America Certification auditor's report prepared by someone other than the manufacturer, or its agent consisting of the following elements:
  - A. All final components and subcomponents identified by manufacturer of the parts, their country of origin, and cost;
  - B. Verification that the components include typical components as identified by the FTA;
  - C. More than 70% of the components, independent verification with the suppliers that the components identified as domestic comply with Buy

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- America requirements with regards to containing at least 70% domestic product content and that final assembly occurred in the United States;
- D. The actual location of final assembly point for rolling stock, including a description of the activities that took place at the final assembly point and the cost of final assembly; and
  - E. Verification that final assembly includes the minimum final assembly activities as identified by the FTA.
2. Purchaser's Vehicle Specification Certification Audit includes:
    - A. Accurate records of all vehicle construction activities;
    - B. Inspections: For a sample of domestic components found on the component and subcomponent list, trace components to the vehicle verifying the supplier is the same as that listed on the component list;
    - C. Report on how the construction and operation of the vehicles fulfills the contract specifications. DART will visually inspect and road test the delivered vehicles prior to final acceptance; and
    - D. A copy of the manufacturer's Federal Motor Vehicle Safety Certificate. (Manufacturer states that vehicle "does comply.")
  3. A signed representation letter from an officer of the manufacturer stating that the information provided and relied upon during the Buy America Audit are true and accurate as of the date signed with regards to the following:
    - A. Components and subcomponents listing and total material cost. Total material cost shall be provided directly to DART's Project Manager;
    - B. Final assembly activities, location, and cost of final assembly; and
    - C. FMVSS Certification
  4. Post-Delivery Buy America Audit reports shall be submitted to DART in the following manner:
    - A. Two (2) sets of hardcopies and one (1) electronic version of the reports;
    - B. The first hardcopy set will be bound per vehicle, to be delivered per each vehicle release from Plant/OEM shop submitted to DART's Project Manager;
    - C. The second hardcopy will be of the full Audit, including all vehicles, after the project is complete, submitted to DART's Finance department;
    - D. Electronic versions shall use off-the-shelf software, such as Microsoft Office Suite programs, or Adobe Acrobat;
    - E. The electronic version can be on a USB drive and mailed if file is too large to email.
    - F. Proprietary software is not allowed;
    - G. Hardcopies shall be bound, standard 8.5" x 11" pages, in an executive-like briefing style, with clear table of contents, and free from errors; and
    - H. Reports shall contain a minimum of the following:

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- a. Introduction: shall contain Buy America background and discussion of requirements, including any recent changes, and discussion relating to comparison with the Pre-Award Audit;
- b. Signature pages: auditor's certification, inspector's certification, purchaser's requirements certification, Buy America compliance certification, purchaser's FMVSS compliance certification, manufacturer's FMVSS approvals and certifications;
- c. Methodology: shall contain discussion of how the Audit was conducted and the reasoning used, description of audit activities, audit process, data/documentation reviewed, and names and qualifications of auditors;
- d. A discussion of the processes used to verify domestic content, final assembly activities, and location of final assembly at the post-delivery stage;
- e. A discussion regarding the evidence reviewed and/or independent analysis performed to verify the domestic content of materials and the total cost of components/ subcomponents;
- f. A discussion of whether the vehicle bodies were manufactured in the U.S., or if will they arrived as "knock down" components from abroad, requiring minor assembly work;
- g. Certification: shall contain any necessary discussion about the vehicle and its compliance details, including a table of major components and subcomponents with compliance percentages, individual vehicle component audits;
- h. Inspection: shall contain a discussion of visual inspections during production, contain any inspector's notes, relevant emails and an executive briefing of any issues discovered during production, including color photos of any such items. Discussion whether inspector(s) monitored manufacturing and completed a report on the manufacture of the buses providing accurate records of all bus construction activities. Discuss whether the report addresses how the construction and operation of the buses fulfill the contract specifications;
- i. Manufacturer / supplier Buy America certification with complete vehicle parts listing and compliance percentages; and
- j. Final assembly: discussion, cost of final assembly process, reasonableness of final assembly cost, and a final configuration audit with regards to purchaser specifications.

### **2.10. Other Required Reports**

DART requires these other reports to be provided for each Task Order, unless specifically excluded, in writing in the Task Order or changes thereto.

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1. Detailed Vehicle Inspection Report:
  - A. Use the suggested FTA inspection form or a local form containing all the same information;
  - B. Inspector's notes, and photographs of problem areas;
    - a. Confirmation of problem fixes;
    - b. In-plant QC/QA forms;
  - C. These records shall be based upon on-site, constant monitoring of vehicles during the production by independent, qualified, experienced inspectors;
  - D. One report for each vehicle.
  
2. Weekly Status Report:
  - A. Progress of each vehicle in the production cycle;
  - B. Include any concerns or problems identified as well as any corrective actions;
  - C. Email format.
  
3. Monthly Status Report:
  - D. Status of order;
  - E. Summation of the daily inspector's production reports for the month;
  - F. Individual vehicle status;
  - G. Any pre-delivery inspection and testing reports;
  - H. Manufacturer's production process quality assurance reports, as available;
  - I. Technical specification configuration certification reports.

### **2.11. Production and Quality Assurance Inspection**

The Contractor is free to propose additions or alterations to the activities required by DART in order to provide excellent inspection and quality assurance services during the vehicle production.

The Contractor may need to provide engineering expertise during the construction phase of the regular production runs to evaluate the manufacturer's engineering changes and requested emergency use of non-conforming components and materials.

The Contractor shall be responsible for acceptance testing and inspection of vehicles prior to delivery to DART. Written documentation of the performance testing shall be submitted to DART. Any concerns, issues or failures shall be documented as well as the correction made by the vehicle manufacturer.

### **2.12. Vehicle Inspection and Quality Assurance Inspection**

During manufacture and assembly, the Contractor shall provide qualified personnel to observe and test torque of critical bolts and fasteners, welding and riveting techniques, as well as cut and trim of metal, plywood, insulation and sealing, lubrication, priming and painting, installation of wiring, hoses, cables and standard components such as power

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plants, axles, batteries, wheelchair lift(s), seats, etc., from start of framing to road testing the complete bus. Key observation inspection points shall be:

1. Monitor and evaluate critical buildup of components, including sidewalls, floor and roof structures
2. Monitor and evaluate critical buildup of components related to the power train installation including engine, non-lighting electrical system – general electrical, charging, cranking, and ignition; air intake system; vehicle cooling system; transmission; and hydraulic system.
3. Monitor installation of HVAC and standard and auxiliary heating systems.
4. Inspect and assess the high voltage systems to verify proper installation (if applicable).
5. Visually verify joining of sidewall, roof and floor structures
6. Visually verify proper assembly and attachment of all body components
7. Visually identify and verify repair of any air and /or fluid leaks
8. Evaluate routing and dressing of lines, hoses, and wiring including their protection from abrasion, sharp edges and the installation of supports
9. Verify uniformity of components, installation and alignment of components
10. Verify critical adjustment of steering, steering column, and tie mechanism, slack adjusters, door operations, adjustable foot pedal assemblies, fan shroud clearances and belt tensions
11. Visually inspect alignment of access doors and hinges, floor covering, interior and exterior panels and moldings
12. Inspect proper thickness, type and adhesion of primers, paints and all coatings
13. Visually verify proper alignment and installation of engine mounting, suspension members and axle mountings
14. Inspect and ensure proper function of all installed systems and subsystems
15. Inspect and ensure proper function of any other item installed on the vehicle per specifications and change orders.

### **2.13. OWNERSHIP**

All work performance and services by the Contractor under this agreement shall be the property of DART. All reports, drawings, specifications, photographs and electronic data developed by the Contractor shall be surrendered to DART at the conclusion of this contract or upon request.

The Contractor expressly waives all copyright privileges to such information, and DART may use or modify same without any additional payment to the Contractor. Any reuse of work prepared by the Contractor shall be solely at DART's risk with no liability to the Contractor. Any data used in, or developed as a result of, this contract shall be revealed to no one except DART without the expressed consent of DART.

In accordance with FTA Project Oversight guidance, DART's Project Manager will

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coordinate with the Resident Engineer, Inspector, and DART's Finance department to perform Domestic Content Monitoring activities to assess any impact on the compliance of the vehicle by the following (as applicable):

- Change orders;
- Changes in the Bill-of-Materials;
- Changes to the assembly or manufacturing processes;
- Changes to the final assembly location; and
- Any changes that would affect the domestic content of the vehicle (including cost or the origin of components and/or subcomponents).

### **2.14. OPTIONAL PURCHASES AND PRODUCTION SLIPPAGE**

DART requests from each proposer a quote for additional units purchased which are above and beyond the quantities forecasted by the agency. DART also requests a quote for each additional day of eight hours of inspection coverage in the event of production slippage. Please include these on Section H (Unit Pricing) of Attachment 8 (Price Rate Sheet).

### **2.15. Travel and Related Expenses**

The Contractor shall provide a signed acknowledgement that the base quote includes travel and related expenses which will be reimbursed at the rates established on published federal schedules. Travel expenses for planned purchases are to be included in your quoted price. This includes travel to the agency location for services provided during commissioning of vehicles. Travel expenses for any optional purchases will be negotiated at the time of the request for those services.

All travel will be reimbursed at the rates established on published federal schedules. These costs shall be separately invoice, itemized, and may require justification statements. Schedules can be found at the U.S. General Services Administration website: [www.gsa.gov](http://www.gsa.gov).

### **2.16. Non-Exclusive Contract**

The Bus Inspection contract is non-exclusive. DART expressly reserves the right to contract with other contractors for performance of bus inspections as described in this RFP. DART retains and does not vacate any discretionary rights or authority because of any Bus Inspection Contract for specified services.

## **SECTION 3: PROPOSAL EVALUATION AND AWARD PROCEDURE**



### **3.1. GENERAL GUIDANCE**

DART reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more proposers concurrently should they both be deemed equal, and enter into a Contract with such proposer who is determined, by DART, to provide the services which are in the best interest of DART. DART may agree to such terms and conditions as it may determine to be in its interest.

DART's evaluation committee reserves the right to request additional information from proposers, to negotiate terms and conditions of the contract, request oral presentations, inspect proposer's facilities, and/or ask proposers to appear before the evaluation committee to answer questions or clarify points of their proposal.

### **3.2. EVALUATION CRITERIA**

The evaluation criteria for this procurement are:

#### **A. Qualifications and Technical Capability of the Proposer (35 Percent)**

The evaluation will be based upon:

- Demonstrates understanding of the projects and their requirements
- Utilizes and promotes current technologies and practices

#### **B. Technical Qualifications of Personnel Assigned to the Project (35 Percent)**

The evaluation will be based upon:

- Project management team.
- Availability of key personnel.

#### **C. Price (30 Percent)**

The evaluation will be based upon:

- Comparative to similar systems/ proposals for each element in the Price Proposal Form.
- Unit prices comparable to similar unit prices in the industry.

All Respondents will be notified after the Selection Committee has selected the most qualified Respondent(s).

Award of this RFP shall be on the basis of the above-outlined evaluation criteria and awarded to the Proposer whose proposal is judged as providing the best value in meeting the interest of DART and the objectives of the project, in DART's sole determination.

## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



### **4.1. INTERPRETATION OF RFP DOCUMENTS**

No oral interpretations will be made to any firms as to the meaning of specifications or any other contracts documents. All questions pertaining to the terms and conditions or scope of work of this RFP must be sent in writing (mail or e-mail) to the DART Procurement Manager and received by the date specified. Responses to questions may be handled as an addendum if the response would provide clarification to requirements of the proposal. All such addenda shall become part of the contract documents. DART will not be responsible for any other explanation or interpretation of the proposed proposal made or given prior to the award of the contract. The DART Procurement Manager may be unable to respond to questions received after the specified time frame. If no request for clarification is submitted by the Proposer all conditions and requirements contained within are accepted and understood by the Proposer.

### **4.2. ADDENDUM TO RFP**

If it becomes necessary to revise this RFP, any addendums will be posted on the DART website and to or to those having expressed an interest in submitting a proposal.

### **4.3. TYPE OF CONTRACT**

DART intends to award a firm, fixed unit price contract. The services of the Contractor will be based on the Scope of Work as outlined in Section 2 (Scope of Work).

### **4.4. RIGHTS OF DART IN REQUEST FOR PROPOSAL PROCESS**

DART may investigate the qualifications of any Proposer under consideration. DART may require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the Services described in this RFP. DART reserves the right to:

- Disqualify any Proposer in accordance with Instruction to Proposers
- Reject any or all of the Proposals, at its discretion
- Remedy errors in the RFP
- Cancel the entire RFP
- Issue subsequent RFP
- Appoint a Selection Committee to review Proposals
- Visit Proposers' facilities as a part of the evaluation process
- Seek the assistance of outside technical experts to review Proposals
- Approve or disapprove the use of particular Subcontractors and Suppliers
- Establish a short list of Proposers eligible for discussions after review of written Proposals
- Solicit best and final offers (BAFO) from all or some of the Proposers
- Negotiate with any, all or none of the Proposers
- Accept other than the lowest priced Proposal
- Disqualify the Proposal(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer(s)
- Waive any informalities or irregularities in any Proposal, to the extent permitted by law.

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## SECTION 4: INSTRUCTIONS TO PROPOSERS



This RFP does not commit DART to enter into a Contract.

### 4.5. DART PROTEST PROCEDURES

- A. Who May Protest or Appeal.** Any Proposer showing a substantial economic interest in the award of a contract under this procurement who claims to be aggrieved in connection with the solicitation or proposed award of a contract under this procurement may protest to DART in accordance with the procedures set forth herein.
- B. Timing of Protest.** A protest must be submitted by an Interested Party no later than 7 business days prior to the date and time designated for submittal of bids or proposals or within 5 business days after the allegedly aggrieved person or party is notified of contract award. All protest must be in writing and shall contain the following:
- the procurement title and/or number under which the protest is made;
  - the name and address of the allegedly aggrieved party;
  - a detailed description of the specific grounds for the protest and all supporting documentation;
  - the specific ruling or relief requested; and
  - the written protest shall be addressed to DART Procurement Manager, Des Moines Area Regional Transit Authority, 620 Cherry Street, Des Moines, IA 50309.
- C. Evaluation of Protests.** A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The Procurement Manager may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Procurement Manager shall notify parties involved in the procurement as identified above, and such DART personnel or others as may be appropriate or necessary to determine the validity of the protest. A notice of the receipt of a protest pertaining to a federally participating purchase shall be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate.

The Procurement Manager may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record.

The Procurement Manager shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the Iowa Freedom of Information Act prior to furnishing such submission to any other party, unless the person furnishing the

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information consents, in writing, to distribution of the information to other interested parties.

The Procurement Manager will consult DART Legal Counsel prior to issuing a decision regarding the protest.

- D. Response to Protest.** Upon receipt of a timely written protest, the Procurement Manager will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the DART CEO (Chief Executive Officer).

The decision document will contain four parts:

- Summary – Describes briefly the protesting party, the solicitation involved, the issue(s) raised, and the decision.
- Background – Describes in more detail the history of the solicitation and the procurement events leading to the protest, the date the protest was received, and the process by which it was evaluated.
- Discussion – Identifies the issue or issues raised by the protestor, and the factors considered in reaching a decision, and the rationale for the decision.
- Determination – States the decision and any remedy or subsequent action, e.g. cancellation of the procurement, resulting from it.

The decision made by the Procurement Manager shall be final and conclusive unless appealed in writing to the CEO within 5 business days of receipt by the Protestor. The CEO will consider the appeal and promptly issue a written decision, which shall be final and conclusive.

A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.

Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in its rejection by DART.

After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right.

- E. Record of Protest.** Upon receipt of a protest involving FTA funded contracts, FTA shall be notified, and shall be kept informed of the status of the protest until resolved.
- F. Protest at the Federal Transit Administration level.** Protests made to the FTA will be limited to DART's failure to have or follow its protest procedures, DART's failure to review

## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

- A protest must be filed with the FTA no later than 5 business days after the protester learns or should have learned of an adverse decision by DART or other basis of appeal to FTA;
- A protest to FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII, as amended.
- The Procurement Manager shall submit to the FTA Regional Office a copy of all protests and DART's response.

### **4.6. PRICES, TERMS AND PAYMENT**

Firm prices shall be proposed and must include all ancillary costs as well as the following:

- Taxes: DART does not pay federal excise and sales taxes or state excise and use taxes on direct purchases.
- Mistakes: Proposers are expected to examine the conditions, scope of work, proposal prices, extensions, specifications and all instructions pertaining to the request for proposal. Failure to do so will be at the Proposers risk.
- Invoicing and Payment: Charges rendered from the potential contractor to DART shall be due and payable on terms of Net 30 days after proper and complete billing is received from DART.

### **4.7. DURATION OF OFFER**

All proposals shall remain in effect for a minimum of one hundred eighty (180) days from the proposal opening date or scheduled date for receipt of proposals. Proposers that allow less than one hundred eighty (180) days for acceptance by DART may be considered non-responsive and will be rejected.

### **4.8. TAX EXEMPTION**

DART is exempt from payment of all Federal, State, and local taxes in connection with this Project. Said taxes shall not be included in the proposal or proposal prices. DART will provide necessary tax exemption certificates. This provision does not relieve the Proposer from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.

### **4.9. LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS**

Any proposal received at the DART offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the proposer unopened.

A proposal may be withdrawn in person by the proposer or their authorized representative, provided their identity is made known and a receipt is signed for the

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proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

### **4.10. QUALIFICATIONS FOR AWARD**

Award of this contract shall be made to the proposal which is responsive in all respects to these procurement requirements, and where the Proposer is determined to be a responsible Proposer, a determination that shall be made solely at the discretion of DART.

The Proposer affirms and declares:

- The proposer has the capacity to do business within the State of Iowa.
- The proposer has the capability to assure completion of the required services within the time specified under this contract.
- The proposer presently has the necessary facilities, financial resources and licenses to complete the contract in a satisfactory manner and within the required time.
- The proposer is of lawful age and that no other person, firm or corporation has any interest in this proposal or the contract proposed to be entered into.
- The proposer is not in arrears to the Des Moines Area Regional Transit Authority upon debt or contract and is not defaulting as surety or otherwise, upon any obligation to the Des Moines Area Regional Transit Authority.
- No member, officer, or employee of DART during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- To be "qualified" by DART, the proposer must have all State and Local licenses as legally required that are necessary to perform and complete the work as called for herein.
- The proposer is not on the Comptroller General's list of ineligible consultants.

### **4.11. WITHHOLDING AWARD**

This solicitation for proposals does not commit DART to award a contract, pay any costs incurred in preparation of proposal or proposals in response to this solicitation, or to procure or contract for goods or services. Proposer shall be responsible for all costs incurred as part of their participation in the pre-award process.

### **4.12. PROPOSAL ACCEPTANCE, REJECTION AND/OR POSTPONEMENT**

DART reserves the right to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the DART Commission deems to be in its best interest to do so, subject to the rules and regulations set forth by the U.S. Department of Transportation.

Any person, firm, corporation, Joint Venture/partnership, or other interested party that has been compensated by DART or a consultant engaged by DART for assistance in preparing the RFP Documents and/or estimate shall be considered to have gained an unfair competitive advantage in proposing and shall be precluded from submitting a Proposal in response to the RFP.

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Any person, firm, corporation, Joint Venture/partnership, or other interested party that has continued discussions regarding this RFP with DART or consultant staff (with the exception of the Procurement Department regarding DBE informational requests or informational requests on the Lobbying Program) after the RFP is issued may be considered to have gained an unfair competitive advantage in proposing and may be precluded from submitting a Proposal in response to the RFP.

### **4.13. DEBARMENT AND SUSPENSION**

Proposers shall complete and submit as part of their proposal, the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$100,000. The proposer shall also submit a list of subcontracts and subcontractors that will have a financial interest in this Project that exceeds \$25,000 or will have a critical influence on or a substantive control over the Project. A Certification Of Lower-Tier Participants Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the proposer to DART for each listed subcontractor prior to contract award.

During the term of the Contract the successful proposer will be required to immediately notify DART of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

### **4.14. DBE PARTICIPATION**

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 or agreement). The requirements of 49 CFR Part 26 and the recipient's U.S. DOT-approved Disadvantaged Business Enterprise (DBE) program are incorporated in this (contract or agreement) by reference. In connection with the performance of this contract, the contractor will cooperate with DART in meeting its DBE goal and shall have the maximum practical opportunity to compete for subcontract work under this contract. The current DART annual DBE goal is 0.53 percent. It is the policy of DART that DBE's shall have the maximum practicable opportunity to participate in DART contracts. In order to insure that a fair proportion of the purchases and contracts are placed with DBE's, the bidder agrees to take affirmative action to the greatest extent practicable including good faith effort to identify qualified DBE firms for supplies and services to this bid, if applicable. Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of the contract, agreement or Purchase Order, which may result in the termination of this (contract or agreement) or such other remedy as DART deems appropriate.

**DART has not set a specific DBE goal for this RFP.**

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### **4.15. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS**

DART agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any federal assistance awarded by the Federal Transit Administration to support procurements using exclusionary or discriminatory specifications. DART further agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute.

### **4.16. COLLUSION**

The Proposer, by affixing his signature to the Certification Form, agrees to the following: "Proposer certifies that their proposal is made without previous understanding, agreement, or connections with any person, firm, or corporation making a proposal for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".

### **4.17. LEGAL REQUIREMENTS**

Federal, state, county and local laws and ordinances, rules and regulations shall govern submittal and evaluation of proposals received and shall govern claims and disputes between Proposer(s) and DART by and through its officers, employees, authorized representatives, or any person, natural or otherwise. Lack of knowledge by Proposer is not a cognizable defense against legal effects.

### **4.18. EXCEPTIONS**

Proposer is advised that if it wishes to take exception to any of the terms contained in this RFP it must identify the term and the exception in its response to the procurement. Failure to do so may lead DART to declare any such term non-negotiable. Consultant's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENTS**

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement on Subcontractors

ATTACHMENT 4 – Non-Collusion Affidavit

ATTACHMENT 5 – Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters

ATTACHMENT 6 – Certification of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusions (if applicable)

ATTACHMENT 7 – DBE Participation Form

ATTACHMENT 8 – Price Rate Sheet

**SECTION 5:  
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**ATTACHMENT 1**

**ACKNOWLEDGEMENT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give number and date of each)

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to this Request for Proposal, which will require rejection of the proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 2**

**PROPOSAL FORM**

TO: Des Moines Area Regional Transit Authority  
1100 DART Way  
Des Moines, Iowa 50309

The undersigned hereby agrees to furnish the services in accordance with the scope of work herein with the Des Moines Area Regional Transit Authority, which have been carefully examined and attached hereto.

Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Age of Firm (years): \_\_\_\_\_ Contractor Federal I.D. #: \_\_\_\_\_

Annual Gross Receipts of the Firm:

\_\_\_\_\_

Telephone #: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Is the Firm Certified by the State of Iowa as a Disadvantaged Business Enterprise:

\_\_\_\_\_

Person to Contact after Award: \_\_\_\_\_

**I Hereby Agree To Abide By All Conditions Of This Proposal and Certify That I Am Authorized To Sign This Proposal For The Proposer.**

Print Authorized Name: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Signature (Written): \_\_\_\_\_

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**SECTION 5:  
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**ATTACHMENT 3**

**CONTRACTOR'S STATEMENT ON SUB-CONTRACTORS**

1. There are NO sub-Contractors associated with this proposal.

Authorized Signee: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

For (Company): \_\_\_\_\_

OR

2. Listed below are sub-Contractors associated with this proposal. Additional sheets are attached as required. I \_\_\_\_\_ have also attached appropriate Disadvantage Business Certifications.

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone #: \_\_\_\_\_

E-mail: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone #: \_\_\_\_\_

E-mail: \_\_\_\_\_

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 4**

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, on  
Name

his/her oath says he is \_\_\_\_\_ of \_\_\_\_\_;  
Title Name of Firm

who is the Bidder that has submitted the attached bid. He/she is fully informed respecting the preparation and contents of the attached Bid. Such bid is genuine and not a collusive or sham bid. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement, or collusion or communication or conference with any other Bidder, firm, or person to fix the price or prices in the attached Bid or of the bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the AGENCY or any person interested in the proposed Contract; and the price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties on interest, including this affiant.

(SIGN HERE): \_\_\_\_\_

County \_\_\_\_\_ In and for the State of \_\_\_\_\_

Subscribed and Sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**REQUEST FOR PROPOSAL:  
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**SECTION 5:  
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**ATTACHMENT 5**

**CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The undersigned, an authorized official of the Proposer stated below, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

(If the undersigned is unable to certify to any of the statements in this certification, such official shall attach an explanation to this proposal).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Official \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Name (Printed)

\_\_\_\_\_  
Notary Public Signature County of

\_\_\_\_\_  
Expiration Date

**REQUEST FOR PROPOSAL:  
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**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 6**

**CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Undersigned Lower Tier Participant (Subcontractor to the Primary Contractor), certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. If the above named Lower Tier Participant (Subcontractor) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

The Undersigned Lower-Tier Participant (Subcontractor), certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31. U.S.C. Sections 3801 et seq. are applicable thereto.

Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Official \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Name (Printed)

\_\_\_\_\_  
Notary Public Signature County of

\_\_\_\_\_  
Expiration Date

**NOTICE TO PROPOSER: THIS CERTIFICATION SHALL BE COMPLETED BY ALL  
SUBCONTRACTORS WHICH WILL HAVE A FINANCIAL INTEREST IN THIS PROJECT WHICH  
EXCEEDS \$25,000 OR SUBCONTRACTORS WHICH WILL HAVE A CRITICAL INFLUENCE ON OR  
A SUBSTANTIVE CONTROL OVER THE PROJECT.**

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**SECTION 5:  
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**ATTACHMENT 7  
DBE PARTICIPATION FORM**

DART has not set a DBE goal for this project.

Proposer must check the appropriate boxes, provide the information requested, sign and submit this form with its proposal. Failure to complete and submit this form may result in rejection of the proposal as non-responsive.

Proposer is not certified according to the requirements of DOT 49 CFR Part 26 as DBE eligible for participation in DOT assisted contract work.

Proposer will not be using subcontracted firm(s) who are certified according to the requirements of DOT 49 CFR Part 26 as DBE eligible for participation in DOT assisted contract work.

Proposer will meet the DBE goal for this contract. Proposer is certified according to requirements of DOT 49 CFR Part 26 as a DBE eligible for participation in DOT assisted contracts, and will be performing \_\_\_\_ percent (\_\_\_\_ %) of the contract work.

Proposer will meet the DBE goal for this contract. If awarded this contract, proposer will subcontract with the DBE(s) listed below which will be performing a total of \_\_\_\_ percent (\_\_\_\_%) of the total dollar amount of contract work. Each DBE listed below is certified according to requirements of DOT 49 CFR Part 26 for participation in DOT assisted contracts.

<u>DBE Name and Address</u>	<u>Description of Work</u>	<u>Percent of Dollar Amount of Total Contract Work</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Attach additional sheets)

**SECTION 5:  
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[ ] Proposer does not meet the DBE goal for this contract. Proposer certifies that it has made good faith efforts in accordance with the Request for Proposal to meet the DBE goal, but, despite those efforts, \_\_\_\_\_ has been unable to meet the goal. The Good Faith Efforts Documentation Form is attached to this Participation Form.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 8**

**RATE PROPOSAL SHEET**

The following proposal prices includes all costs for labor, materials, taxes, insurance, overhead, travel expenses, profits, and all other costs necessary to perform the work in accordance with the contract documents.

Quantities contained herein are estimates based upon the agency’s current information. Actual quantities purchased during the contract term may vary.

Please submit prices based on DART’s prediction of its bus purchase needs over the five (5) years. Please fill out tables with zero estimated quantities with pricing, to allow for changes bus sizes or manufacturers.

**A. 40-FOOT, HEAVY DUTY BUSES**

<b>Model Year</b>	2020	2021	2022	2023	2024
<b>Bus Type</b>	40’ HD	40’ HD	40’ HD	40’ HD	40’ HD
<b>Service Type</b>	Fixed Route	Fixed Route	Fixed Route	Fixed Route	Fixed Route
<b>Estimated Quantity</b>	9	7	6	4	9

<b>Location (Fill In by Proposer)</b>	<b>Price Per Bus</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**B. 35-FOOT, HEAVY DUTY BUSES**

<b>Model Year</b>	2020	2021	2022	2023	2024
<b>Bus Type</b>	35’ HD	35’ HD	35’ HD	35’ HD	35’ HD
<b>Service Type</b>	Fixed Route	Fixed Route	Fixed Route	Fixed Route	Fixed Route
<b>Estimated Quantity*</b>	0	0	0	0	0

<b>Location (Fill In by Proposer)</b>	<b>Price Per Bus</b>
1.	\$
2.	\$

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3.	\$
4.	\$
5.	\$

**C. 30-FOOT, HEAVY DUTY BUSES**

<b>Model Year</b>	2020	2021	2022	2023	2024
<b>Bus Type</b>	30' HD	30' HD	30' HD	30' HD	30' HD
<b>Service Type</b>	Fixed Route	Fixed Route	Fixed Route	Fixed Route	Fixed Route
<b>Estimated Quantity</b>	5	5	5	5	0

<b>Location (Fill In by Proposer)</b>	<b>Price Per Bus</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**D. 23-FOOT MEDIUM DUTY BUSES**

<b>Model Year</b>	2020	2021	2022	2023	2024
<b>Bus Type</b>	23' MD	23' MD	23' MD	23' MD	23' MD
<b>Service Type</b>	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit
<b>Estimated Quantity</b>	0	0	0	0	0

<b>Location (Fill In by Proposer)</b>	<b>Price Per Bus</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

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**E. 27-FOOT MEDIUM DUTY BUSES**

Model Year	2020	2021	2022	2023	2024
Bus Type	27' MD	27' MD	27' MD	27' MD	27' MD
Service Type	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit	Flex On-Call Paratransit
Estimated Quantity	3	4	3	3	5

Location (Fill In by Proposer)	Price Per Bus
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**F. 31-FOOT, MEDIUM DUTY BUSES**

Model Year	2020	2021	2022	2023	2024
Bus Type	31' MD	31' MD	31' MD	31' MD	31' MD
Service Type	Paratransit	Paratransit	Paratransit	Paratransit	Paratransit
Estimated Quantity	2	1	2	2	0

Location (Fill In by Proposer)	Price Per Bus
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**G. 60-FOOT, HEAVY DUTY, ARTICULATED BUSES**

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<b>Model Year</b>	2020	2021	2022	2023	2024
<b>Bus Type</b>	60' HD Articulated	60' HD Articulated	60' HD Articulated	60' HD Articulated	60' HD Articulated
<b>Service Type</b>	Fixed Route	Fixed Route	Fixed Route	Fixed Route	Fixed Route
<b>Estimated Quantity</b>	0	0	0	0	4

<b>Location (Fill In by Proposer)</b>	<b>Price Per Bus</b>
1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

**H. UNIT PRICING FOR OPTIONAL PURCHASES AND PRODUCTION SLIPPAGE**

The following proposed prices will be used for any units over DART’s planned purchases (shown above) over the next 5 years. Pricing for this section, does not include travel. Travel for services performed under this section will be negotiated, as needed.

<b>Description</b>	<b>Unit Price</b>
1. 60' Heavy Duty, Articulated Bus	\$
2. 40' Heavy Duty Bus	\$
3. 35' Heavy Duty Bus	\$
4. 30' Heavy Duty Bus	\$
5. 31' Medium Duty Bus	\$
6. 27 ' Medium Duty Bus	\$
7. 23' Medium Duty Bus	\$
8. 1 Additional Day of Inspection (8 hours)	\$

I, \_\_\_\_\_ (Printed Name), hereby declare that I am the \_\_\_\_\_ (Title) of \_\_\_\_\_ (Name of Proposing Firm), and that I am submitting this Rate Proposal Form; that I am duly authorized to execute this Rate Proposal Form on behalf of the proposer; and that all information set forth in this Rate Proposal Form and all attachments hereto are, to the best of my knowledge, true, accurate, and complete in its submission. I further certify that the above proposed unit prices includes all costs for labor, tools, material, taxes, insurance, travel, overhead, profit, and all other costs

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necessary to perform the work in accordance with the Contract Documents and are valid for the Term of the Contract.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION 6:  
CONTRACT PROVISIONS**



**CONTRACT [DRAFT]**

**FOR BUS INSPECTION SERVICES**

This CONTRACT FOR BUS INSPECTION SERVICES (the "Contract") is made as of \_\_\_\_\_ (the "Effective Date") by and between Des Moines Area Regional Transit Authority, an entity created pursuant to Chapter 28E of the Iowa Code ("DART"), whose address is 620 Cherry Street, Des Moines, Iowa 50309, and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ ("Contractor").

**RECITALS**

- A. Contractor, for and in consideration of the Contract Price as hereinafter specified, hereby covenants and agrees to commence and complete work for Bus Inspection Services for DART (the "Services") in accordance with the terms of this Contract;
- B. DART desires to obtain goods and/or services provided by Contractor (collectively, "Services") according to the requirements set forth in the Request for Proposal (the "Solicitation") and as further described in this Contract;
- C. Contractor has submitted a bid or response in connection with the Solicitation (the "Response"), which DART has selected for the Project;
- D. Contractor represents and warrants to DART that Contractor is qualified and duly licensed to furnish the Services in Iowa;
- E. Contractor warrants that all representations made by Contractor in the Response remain valid, accurate, and binding; and
- F. Contractor desires to render the Services and meet the obligations set forth in the Contract Documents (defined below).

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:



## SECTION 6: CONTRACT PROVISIONS



### AGREEMENT

**1. DEFINITIONS.** Terms not defined in the Contract Documents shall have the meanings ascribed to such terms in applicable federal, state or local laws and regulations. In the event there is a conflict between any defined terms, DART's reasonable interpretation of said term shall govern.

**2. CONTRACT DOCUMENTS.** For the purposes of this Contract, the following documents are collectively referred to herein as the "Contract Documents":

- a. The third-party contracting requirements located herein;
- b. Written change orders or amendments to this Contract which have been mutually agreed and executed by both parties;
- c. This Contract together with all Exhibits and attachments hereto; and
- d. The Solicitation.

In the event of a conflict between the terms of any of the documents that constitute the Contract Documents, the order of precedence of such documents shall be in descending order starting from (a). Unless specifically incorporated as an Exhibit or attachment hereto, Contractor's Response shall not constitute part of the Contract Documents. Any inclusion of the Response in an Exhibit or attachment hereto shall be for purposes of scope of work reference only, and any terms or provisions contained in the Response shall not be applicable and shall not constitute part of the Contract Documents.

**3. COMPLIANCE WITH APPLICABLE LAW; LICENSES AND PERMITS; FEDERAL CLAUSES; STATE CERTIFICATIONS; FEDERAL CERTIFICATIONS.** Contractor agrees to comply with all applicable federal, state, and local laws, ordinances, rules and/or regulations that in any manner relate to or affect the Services. Contractor must also maintain any and all appropriate licenses and permits to conduct business in DART's service territory and the state of Iowa. Contractor shall bind its Subcontractors to the obligations of this provision. Without limiting the foregoing, as applicable, Contractor agrees to abide by the provisions of the federal clauses (the "Federal Clauses") set forth in **[Exhibit X]** attached hereto and made a part hereof. Further, Contractor agrees to execute all state and federal certifications (the "State and Federal Certifications") set forth in **[Exhibit X]** attached hereto and made a part hereof, as applicable to Contractor and its performance hereunder. Contractor shall at all times be responsible for ensuring that it is in compliance with the most current version of the Federal Clauses and State and Federal Certifications.

**4. NON-EXCLUSIVE CONTRACT.** This is a non-exclusive contract. Contractor acknowledges and agrees that DART is not obligated to utilize Contractor for all of DART's needs for procurement goods and/or services which are the same or similar to the type provided by Contractor under this Contract. DART specifically reserves the right to concurrently contract with other companies for the same or similar goods and/or services if DART deems such action to be in DART's best interest.

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**5. REQUIRED NOTICE TO PROCEED.** Contractor shall not proceed with any work required under the Contract Documents without a written notice of award from DART (the "Notice to Proceed"). Any work performed or expenses incurred by Contractor prior to receipt of the Notice to Proceed shall be entirely at Contractor's risk.

**6. STATEMENT OF WORK.** Contractor shall provide the Services to DART in conformance with the project description and scope of work (the "Statement of Work") as set forth in **[Exhibit X]** attached hereto and made a part hereof.

**7. CONTRACT PRICE.** The rate schedule and Not-to-Exceed (NTE) contract amount (the "Contract Price") shall be set forth on **[Exhibit X]** attached hereto and made a part hereof. Contractor shall not provide Services of an amount that would require payment by DART that is greater than the Contract Price, unless otherwise agreed by the parties in writing. Further, Contractor shall not be required to provide Services in excess of said amount, except as otherwise provided in the Contract Documents.

**8. CONTRACT TERM.** Unless terminated earlier in accordance with the provisions of this Contract or extended by mutual agreement of the parties, the term of this Contract shall commence on the Effective Date and shall remain in effect for a period of two (2) years thereafter (the "Term").

**9. PAYMENT.**

a. Invoicing and Payment Procedures; Audit and Setoff Rights. Invoices for work performed by Contractor pursuant to the Contract Documents shall be sent to:

DART  
Attn: Accounts Payable  
620 Cherry Street  
Des Moines, Iowa 50309

Contractor shall submit invoices in accordance with the rate schedule as set forth in **[Exhibit X]** attached hereto and made a part hereof. Payment will be made by DART in accordance with the rate schedule and only for work which is actually performed by Contractor and accepted and approved by DART in writing. DART may request additional documentation from Contractor prior to payment of any invoice from Contractor. DART may disallow and deduct any cost for which proper documentation is not provided, and DART may withhold payment for Services in the event DART deems such Services were improperly performed or failed to meet specifications. Contractor shall, at a minimum, keep and maintain all records in connection with the Contract for a minimum of three (3) years following completion of the Contract, or for such longer times as may be required by law, but in any case in accordance with the record retention requirements contained in the Contract Documents. DART may, at any time, conduct an audit of any and all records kept by Contractor in connection with the Contract. Any

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overpayment to Contractor by DART discovered during the course of such an audit shall be immediately refunded to DART or may be set off against future amounts owed to Contractor by DART, at DART's sole option.

b. Time of Payment by DART. DART shall make full payment within net thirty (30) days after receipt and approval by DART of Contractor's invoice, unless otherwise stated in the Contract Documents.

c. Prohibited Costs. Notwithstanding any other provision in the Contract Documents to the contrary, the provisions of Federal Acquisition Regulations Subparts 31.201 through 31.205 regarding "allowable costs" are hereby specifically incorporated by this reference.

d. Receipt of Payment by Contractor as Release of DART. The acceptance by Contractor, its successors, or assigns of any progress payment or final payment due pursuant to the Contract Documents shall constitute a full and complete release of DART from any and all claims, demands, or causes of action whatsoever that Contractor, its successors, or assigns may have against DART in connection with the Services performed under the Contract Documents, through the date that the Services are rendered and for which such payment is made.

e. Subcontractor Payments and Documentation. Contractor shall not subcontract any of its obligations under this Contract except to the extent specifically authorized herein. In the event Contractor utilizes any subcontractors and/or suppliers (each a "Subcontractor") in accordance with this Contract, Contractor agrees to pay each Subcontractor for satisfactory performance of their applicable subcontract no later than ten (10) business days from the receipt of each payment Contractor receives from DART. Contractor agrees further to return any retainage payments to each Subcontractor within ten (10) business days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of DART. This clause applies to both Disadvantaged Business Enterprise (as such term is used in the Third-Party Contracting Requirements) ("DBE") and non-DBE Subcontractors.

If Contractor fails to pay a Subcontractor within ten (10) business days, Contractor must notify DART and the affected Subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Contractor is obligated to pay interest to any Subcontractor on all amounts owed by Contractor that remain unpaid after ten (10) business days following receipt by Contractor of payment from DART for Work performed by a Subcontractor under the contract between Contractor and said Subcontractor, except for amounts withheld as allowed in subsection (A) of this section. Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld.

## **SECTION 6: CONTRACT PROVISIONS**



Upon request by DART, Contractor shall provide DART with copies of billings and other invoices which may be received from any Subcontractors. In addition, Contractor will obtain lien waivers and releases in favor of DART, and in a form acceptable to DART, from any Subcontractor(s) for work so performed by that Subcontractor. DART shall have the right, but not the obligation, to directly contact and discuss with a Subcontractor any work performed by that Subcontractor under the Contract Documents.

### **10. CONTRACTOR'S OBLIGATIONS.**

a. As an independent contractor, Contractor shall, at its sole cost and expense, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents.

b. Contractor will render its Services in accordance with the standard of care, skill and diligence exercised by members of the same profession providing similar services under similar conditions at the locale of the Contract and at the time the Services are to be performed.

Contractor's performance shall be considered acceptable when:

- i. Contractor's performance has been approved by DART;
- ii. All the other duties and obligations to be performed by Contractor under the Contract Documents have been satisfactorily met or performed, including the delivery to DART of any materials or documentation relating to the Services.

c. Contractor acknowledges that DART is a public agency that receives both federal and state funding. Contractor agrees to abide by and conform to all applicable federal and state laws, rules, and regulations, whether or not such laws, rules, and regulations are expressly set forth in the Contract Documents. Contractor hereby specifically agrees to abide by and conform to those certain rules and regulations promulgated by FTA and/or the Iowa Department of Transportation.

d. Contractor acknowledges DART is exempt from payment of Iowa sales and use taxes, and DART agrees to sign an exemption certificate submitted by Contractor, if required. Contractor shall pay all applicable license fees and all applicable sales, use and other similar taxes relating to or arising out of the Contract Documents. Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with DART, and Contractor is not authorized to use DART's tax exemption number in securing such materials.

e. Contractor shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act and Social Security benefits with respect to this Contract.

f. Unless otherwise expressly set forth in the Contract Documents, Contractor shall be responsible for securing, at Contractor's sole expense, all necessary permits and approvals. Contractor shall promptly furnish copies of all such permits and approvals to DART as and when obtained.

## SECTION 6: CONTRACT PROVISIONS



g. Contractor shall be required to obtain and maintain during the term of this Contract, at Contractor's sole expense, any and all insurance required under the Contract Documents or as may be otherwise reasonably required by DART. DART shall be listed as an additional insured under said insurance policies. Contractor shall furnish certificates of insurance to DART.

h. Contractor shall provide to DART such additional information as DART may reasonably request from time to time. At DART's request, Contractor and certain of its employees and representatives shall also meet with DART from time to time regarding the Services to be rendered under this Contract.

### 11. **SUBCONTRACTING.**

a. Identification of Subcontractors. Contractor shall identify any and all intended Subcontractor(s) in the Contractor's Response. Such identification shall include the entity name, address, primary contact person, and phone number for each Subcontractor, along with the type and percentage of the Services to be subcontracted.

b. Binding of Subcontractors. Contractor is solely responsible for ensuring that all Subcontractors comply with the terms and conditions of this Contract as applicable to the work to be performed by the Subcontractor. At a minimum, Contractor shall bind any and all Subcontractors to the confidentiality, indemnification, insurance, and dispute resolution provisions and third-party contracting requirements provided hereunder.

### 12. **DELAYS.**

a. Force Majeure. Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure Event (as defined herein). A "Force Majeure Event" shall be a condition beyond the performing party's control including, but not limited to acts of God, governmental restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. A party that becomes aware of a Force Majeure Event that will significantly delay performance will notify the other party promptly in writing (but in no event later than ten (10) days) after it discovers the scope of the delay. Contractor shall not be entitled to any claim for damages on account of hindrances or delays for any Force Majeure Event whatsoever. This includes, but is not limited to, any actions which result in delays of scheduling, changes in the scope of Services as set forth in the Statement of Work, or increases in the cost of performance of the Services.

b. Performance Delays Caused by Contractor. If Contractor delays the Services, DART will get appropriate credits to any invoices submitted by Contractor; and the parties will execute a written change order to credit DART for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by DART for suspending and re-mobilizing the work; project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan. Contractor shall not deny

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DART's right to an adjustment of time of performance and price based solely on DART's failure to timely assert its rights under this provision.

c. Notification of Delay by Contractor. Contractor will verbally and via email notify DART's project manager as soon as Contractor has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, Contractor will confirm such notice in writing, furnishing as much detail as is available and, if applicable, Contractor shall suggest an extension of time for completion. DART will review the letter and suggested extension. DART shall respond to Contractor within ten (10) calendar days in writing. DART may withhold amounts necessary to cover any claims of which it has been notified of subcontractors, materialmen, or suppliers from final payment to Contractor. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.

d. Notification of Delay by DART. DART will verbally and via email notify Contractor's project manager as soon as DART has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, DART will confirm such notice in writing, furnishing as much detail as is available and, if applicable, DART shall suggest an extension of time for completion. Contractor will review the letter and suggested extension. Contractor shall respond to DART within ten (10) calendar days in writing. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.

e. Unavoidable Delays. If delivery of service is unavoidably delayed, DART may negotiate the performance expectation as equal to the time of the unavoidable delay. A delay is unavoidable only if it was substantial, not reasonably foreseeable to Contractor or its Subcontractors, and in fact, caused Contractor to miss any deadlines.

### 13. CHANGE ORDERS, AMENDMENTS OR OTHER MODIFICATIONS.

a. Generally. Any and all change orders, amendments, or other modifications to any of the Contract Documents, including this Contract, shall have no effect unless set forth in a writing signed by both parties. A party may request a change order or other amendment or modification as permitted hereunder by providing a written request to the other party. Contractor will not be compensated for any work performed or goods delivered unless and to the extent mutually agreed and provided for in a written change order signed by both parties.

b. Additional Services. DART reserves the right to request additional goods and/or services related to this Contract. Changes affecting the Contract Price, or Statement of Work must follow these guidelines for implementation of the requested change:

i. DART's authorized representative may, at any time, make changes within the general scope of this Contract by providing a written, detailed request

## SECTION 6: CONTRACT PROVISIONS



- for the change. Upon receipt of DART's requested change order, Contractor shall provide DART's authorized representative a written, detailed proposal including updated price, schedule, and scope of work changes for work to be performed.
- ii. When approved by DART as an amendment or change order to this Contract and authorized in writing by DART and Contractor, Contractor shall provide such additional requirements as may become necessary.
  - iii. Failure of the parties to agree to any written amendment or change order shall be resolved under the Dispute Resolution procedures set forth in this Contract.

**14. REPRESENTATIONS AND WARRANTIES.** Throughout the Term, Contractor represents and warrants that the Services will be in conformance with the specifications set forth in the Statement of Work and as otherwise set forth in the Contract Documents, in all material respects.

**15. COVENANT AGAINST GRATUITIES.** Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of DART with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract.

**16. PATENT, INTELLECTUAL PROPERTY, AND COPYRIGHT INFRINGEMENT AND INDEMNIFICATION (if applicable).**

a. No Infringement. Contractor represents and warrants that it owns or has the absolute right to sell, license, or otherwise grant the rights in the Services, including, without limitation, any equipment, hardware and software, conveyed to DART pursuant to this Contract, and that neither the Services nor any of components thereof infringe any patent, copyrights, or other intellectual property right of, or misappropriates the trade secrets of any person or entity. Contractor hereby grants to DART a perpetual, non-exclusive, and royalty-free license to use the Services without limitation, but Contractor shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property. Software utilized under this Contract is proprietary and ownership of the software remains with Contractor and/or its subcontractors, as the case may be. DART agrees to: (1) take reasonable steps to maintain Contractor's and Subcontractor's rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where DART may disclose the software to designated Federal representatives under a nondisclosure agreement executed by both parties, (3) not use or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates (as defined herein), patches or Upgrades (as defined herein), on any equipment other than the equipment on which it was originally installed, without Contractor's written consent. "Updates" are defined as bug fixes or patches. "Upgrades" are defined as any new feature or major enhancement to the software or hardware.

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b. Indemnity. Contractor will defend, at its expense, any suit brought against DART to the extent it is for infringement of any patent, copyright, or other intellectual property rights, which covers, or alleges to cover, Contractor's Services or any components thereof or the products or equipment of any Subcontractor that are part of the Services, and Contractor will indemnify DART for damages and costs of DART for an infringement claim. Contractor shall not enter into any settlement that obligates DART to incur any expense, adversely impacts DART's rights under this Contract or interferes with the operation of DART's business without DART's prior written consent. If in any such suit so defended, the Services or any components thereof are held to constitute an infringement and its use is enjoined, or if in light of any claim of infringement Contractor deems it advisable to do so, Contractor may at its option and expense (i) procure for DART the right to continue using the Services and all components, or (ii) replace or modify it so that it becomes non-infringing while providing functionally equivalent performance.

**17. CONFIDENTIALITY AND PROPRIETARY RIGHTS.** In connection with this Contract, DART may provide, or Contractor may otherwise have access to, certain confidential information of DART, whether in written or oral form. Contractor shall maintain the confidentiality of DART's confidential information and will not copy, reproduce, or disclose it to any third party. Contractor shall only use the confidential information in furtherance of its performance under this Contract and shall restrict disclosure of confidential information to its employees who have a "need to know" the information for such purpose. To the extent DART's confidential information is furnished to a Subcontractor to procure supplies or otherwise perform Services for this Contract, Contractor shall ensure that such disclosure is strictly limited to the extent necessary for the Subcontractor to perform its portion of the Services, and Contractor shall bind each such Subcontractor to the obligations of this section. Contractor shall take all necessary and appropriate precautions to safeguard the confidentiality of the confidential information. These precautions shall in any case be of at least the same degree of care that Contractor applies to its own confidential information and will not be less than reasonable care. Further, such precautions shall include binding its employees to confidentiality provisions consistent with this section. The confidential information, including any and all proprietary rights and intellectual property contained therein, is and shall at all times remain the property of DART, and no grant of any proprietary rights in the confidential information or intellectual property is given or intended, including any express or implied license, other than the strictly limited right of Contractor to use the confidential information in the manner and to the limited extent permitted by this Contract. Contractor acknowledges that compliance with this section is necessary to protect the business and proprietary information of DART, and that a breach of the same will cause irreparable and continuing damage for which money damages may not be adequate. Consequently, if Contractor breaches or threatens to breach this section, DART is entitled to seek temporary, preliminary, or permanent injunctive relief, or other equitable relief, in order to prevent such damage in addition to money damages and any and all other relief and remedies available to DART under applicable law.

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**18. USE OF “DES MOINES REGIONAL TRANSIT AUTHORITY” NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS.** Contractor acknowledges and agrees that DART reserves the right to review and approve any advertising copy or other advertising material related in any manner to this Contract prior to any publication thereof. Contractor agrees that it will not allow any such copy or other material to be published in any advertisements or public relations programs until after such time as Contractor has submitted such copy to and received prior written approval thereof from DART. Contractor agrees that any published information relating to this Contract will be factual and will in no manner imply that DART endorses Contractor's firm, service, or product.

**19. DATA PRIVACY AND SECURITY REQUIREMENTS.** Contractor hereby agrees to at all times abide by the provisions and requirements of **[Exhibit X]** attached hereto and made a part hereof.

**20. TERMINATION.**

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

b. Termination by DART for Breach or Default. If Contractor does not deliver the Services in accordance with the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, DART may terminate this Contract for default. Termination shall be effected by serving a Notice of Termination on Contractor setting forth the manner in which Contractor is in default. Contractor will be paid only the Contract Price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract.

c. Opportunity to Cure. DART, in its sole discretion may, in the case of a termination for breach or default, allow Contractor seven (7) calendar days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to DART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within seven (7) calendar days after receipt by Contractor of written notice from DART setting forth the nature of said breach or default, DART shall have the right to terminate this Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude DART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**21. NOTICES.** All notices to be provided pursuant to this Contract shall be directed to the appropriate party staff members as provided below:

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a. Primary point of contact for daily operations regarding the Services pursuant to this Contract is:

For DART: Keith Welch  
Operations Manager – Maintenance  
1100 DART Way  
Des Moines, IA 50309  
Phone: (515) 283-5028  
Email: [kwelch@ridedart.com](mailto:kwelch@ridedart.com)

For Contractor: [NAME]  
[TITLE]  
[ADDRESS]  
[CITY, ST ZIP]  
Phone:  
Email:  
*[to be updated upon contract execution]*

b. Primary point of contact for legal notices and overall Contractor performance is:

For DART: Mike Tiedens  
Procurement Manager  
1100 DART Way  
Des Moines, Iowa 50309  
Phone: (515) 283-5034  
E-mail: [mtiedens@ridedart.com](mailto:mtiedens@ridedart.com)

For Contractor: [NAME]  
[TITLE]  
[ADDRESS]  
[CITY, ST ZIP]  
Phone:  
E-mail:  
*[to be updated upon contract execution]*

c. DART and Contractor may change their staff member designations upon written notice to the other party. The designated DART staff member shall not have the authority to modify the Contract Documents except in accordance with the terms of the Contract Documents and applicable laws, rules and regulations. Notwithstanding anything herein to the contrary, no change, modification or amendment shall be valid or binding upon DART if the staff member executing such instrument has acted without proper authority.

**22. INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS.** DART's Chief Executive Officer ("CEO") and his/her authorized representative are the only persons authorized to make changes or amendments to this Contract on DART's behalf. Any instructions, written or

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oral, given to Contractor by someone other than DART's CEO or his/her authorized representative, which are considered to be a change in this Contract, will not be considered as an authorized amendment or modification of this Contract. Any action on the part of Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

### 23. INDEMNIFICATION.

- a. Indemnity by Contractor. The parties recognize that Contractor is an independent Contractor. Contractor agrees to assume liability for and indemnify, hold harmless, and defend DART, its commission, board, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, death, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Contract, whether or not due to or caused by the negligence of DART, its commission, board, officers, employees, agents, and attorneys excluding only the sole negligence of DART, its officers, employees, agents, and attorneys. Contractor's liability hereunder shall include all attorney's fees and costs incurred by DART in the enforcement of this indemnification provision. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of insurance required to be obtained or maintained under this Contract. Subject to the limitations set forth in this provision, Contractor shall assume control of the defense of any claim asserted by a third party against DART and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. DART shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this section, Contractor shall obtain the prior written consent of DART before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by DART and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of DART, be detrimental in any material respect of DART's reputation; (ii) the third party claim seeks an injunction or equitable relief against DART; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and

## SECTION 6: CONTRACT PROVISIONS



information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

**24. CONTRACTOR'S LIABILITY INSURANCE.** Contractor acknowledges and agrees that DART will not provide any insurance for Contractor, and that Contractor shall be solely responsible for procuring and maintaining any and all insurance required under this Contract or as otherwise necessary to protect Contractor in its operations. At a minimum, Contractor shall maintain insurance of the types set forth below, including such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from Contractor's operations under the Contract, or from any Subcontractor or anyone directly or indirectly employed by either of them. This insurance shall be written for not less than the limits specified below. DART shall be named as additionally insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to DART prior to termination, cancellation or reduction in coverage in the policy. Certificates evidencing such insurance shall be filed with DART prior to commencement of Contractor's performance under the Contract.

- a. Worker's compensation insurance shall be in the amount and coverage required by the State of Iowa to protect it from claims under the Worker's Compensation Act and other employee benefit acts. Must be a minimum of \$500,000 per injury/illness/employee.
- b. General comprehensive liability insurance, including bodily injury and death, and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence and in aggregate.
- c. Automobile liability and garage keepers liability, including bodily injury and property damage, insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and in aggregate.
- d. Professional Liability insurance with limits for each claim of at least One Million Dollars (\$1,000,000) for Contractor and all Subcontractors performing design work.
- e. Cyber Liability insurance (including, at a minimum, coverages for: (i) data breach and privacy crisis management; (ii) multimedia and media liability coverage; (iii) extortion liability coverage; (iv) network security coverage; and (v) errors and omissions) with such insurance in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence.

**25. SEVERABILITY.** The invalidity or unenforceability of any provision of this Contract shall not affect the remaining provisions hereof. If any provision of this Contract is held to be invalid, illegal, void, or unenforceable, in any respect by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and will not be affected as long as the parties' basic intent under this Contract can be achieved.

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**26. SURVIVAL OF TERMS** *[to be updated upon contract execution]*. The following provisions shall survive the termination of this Contract for any reason: Section \_\_\_\_ (Contract Price); Section \_\_\_\_ (Payment); Section \_\_\_\_ (Representations and Warranties); Section \_\_\_\_ (Patent, Intellectual Property, and Copyright Infringement and Indemnification); Section \_\_\_\_ (Confidentiality and Proprietary Rights); Section \_\_\_\_ (Dispute Resolution); Section \_\_\_\_ (Indemnification); and any other rights or obligations which by their nature survive termination of this Contract.

**27. GOVERNING LAW, VENUE, AND JURISDICTION.** The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Iowa. Venue for any action shall lie solely and exclusively in Polk County, Iowa. All work done pursuant to this Contract will be controlled and governed by the laws of the State of Iowa, and any arbitration or litigation related to this Contract must be filed in Polk County, Iowa. The parties hereby irrevocably submit to jurisdiction in the Polk County, Iowa.

**28. ATTORNEY FEES.** In the event of any legal action, including arbitration proceedings, seeking enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and the costs of such proceedings from the other party, including without limitation fees and costs associated with any trial, appellate or bankruptcy proceeding.

**29. WAIVER OF JURY TRIAL.** Each party hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to the contract documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

**30. ASSIGNMENT.** The terms and provisions of the Contract Documents shall be binding upon DART and Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without DART's prior written consent. Notwithstanding anything to the contrary in this section, but subject to DART's prior written approval as required in this Contract, Contractor may subcontract a portion of its obligations to subcontractors.

DART may assign its rights and obligations under the Contract to any successor to the rights and functions of DART or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent DART deems necessary or advisable under the circumstances.

**31. ENTIRE AGREEMENT.** This Contract contains the entire understanding of the parties and supersedes all previous verbal and written agreements; there are no other

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CONTRACT PROVISIONS**



agreements, representations or warranties not set forth herein. This Contract shall not be modified except and to the extent set forth in a writing executed by the duly authorized representatives of both parties.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE ON THE FOLLOWING PAGE.]

**SECTION 6:  
CONTRACT PROVISIONS**



**IN WITNESS WHEREOF**, the authorized signatories named below have executed this Contract on behalf of the parties as of the Effective Date.

**CONTRACTOR:**

**DART:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## SECTION 7: FEDERAL CONTRACT CLAUSES



### 1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

DART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to DART, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

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

### 2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 3. ACCESS TO RECORDS AND REPORTS

- a. Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall



## SECTION 7: FEDERAL CONTRACT CLAUSES



maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

- c. Access to Records. Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

### 4. CHANGES TO FEDERAL REQUIREMENTS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between DART and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

### 5. CIVIL RIGHTS AND EQUAL OPPORTUNITY

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

- a. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race,

## SECTION 7: FEDERAL CONTRACT CLAUSES



color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

The contractor, subrecipient 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 DART deems appropriate, which may include, but is not limited to:

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

Contractor agrees to comply with the foregoing clause and shall require its subcontractors of every tier to comply with and include the foregoing clause in all

## **SECTION 7: FEDERAL CONTRACT CLAUSES**



subcontracts.

Contractor shall pay subcontractors for satisfactory performance of their contracts no later than ten (10) days from Contractor's receipt of each payment from DART. In the event this Contract contains defined DBE contract goals, Contractor shall utilize the specific DBEs listed unless Contractor obtains DART's prior written consent. Unless DART's written consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract.

### **7. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION).**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- 1) Debarred from participation in any federally assisted Award;
- 2) Suspended from participation in any federally assisted Award;
- 3) Proposed for debarment from participation in any federally assisted Award;
- 4) Declared ineligible to participate in any federally assisted Award;
- 5) Voluntarily excluded from participation in any federally assisted Award; or
- 6) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by DART. If it is later determined by DART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to DART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **8. LOBBYING RESTRICTIONS**

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**SECTION 7:  
FEDERAL CONTRACT CLAUSES**



Contractor shall provide the following certification required by 49 C.F.R. part 20:  
The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 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.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

**9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Contractor shall report each violation to FTA and the Regional Office of the Environmental Protection Agency (EPA).

Further, Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

## **SECTION 7: FEDERAL CONTRACT CLAUSES**



- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Contractor shall require all subcontractors to agree to comply with the foregoing and shall include such provisions in all subcontracts of every tier.

### **10. 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 Energy Policy and Conservation Act.

### **11. INCORPORATION OF FTA TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D (also see Change 1), dated April 15, 1996, 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 DART requests which would cause DART to be in violation of the FTA terms and conditions.