



REQUEST FOR PROPOSAL FY20-R-010

for

COMPENSATION STUDY

for

DES MOINES AREA REGIONAL TRANSIT AUTHORITY

Services Requested:	Compensation Study
Contract Type:	Firm Fixed Price
Number of Contracts:	One
Funding Source:	Operating Budget
Date Issued:	December 9, 2019
Deadline for Questions Regarding this RFP:	December 16, 2019
Answers to Questions Posted on Website:	December 18, 2019
Proposals Due:	January 6, 2020, 2:00 PM CST
Finalist Interviews (Tentative):	January 20 – 24, 2020
Tentative Contract Award:	February 1, 2020

**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-010
COMPENSATION STUDY

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 January 6, 2020 for a Compensation Study.

Requests for clarification and/or questions concerning the issued document shall be directed to Mike Tiedens in the DART Procurement Department at 515-283-5034 or e-mail dartprocurement@ridedart.com. All submittal questions concerning this RFP are due on or before December 16, 2019. This will be the only notice rendered for this procurement. Proposal Documents can be obtained at DART Central Station, above address, 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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**TABLE
OF
CONTENTS**

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

Section 1 – Proposal Submittal Requirements 4

Section 2 – Scope of Work 7

Section 3 – Proposal Evaluation and Award Procedure 10

Section 4 – Proposal Timeline..... 11

Section 5 – Instructions to Proposers..... 12

Section 6 – Contract Provisions 19

Section 7 – Attachments 35

Exhibit A – Federal Contract Clauses..... 43

Exhibit B – DART Data Privacy and Security Standards..... 48

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

- In preparing the proposal, please duplex print all sections to reduce paper consumption and use recycled products, where feasible.
- Proposals shall be prepared on 8.5 x 11" paper with 1" left margins and 1" top, bottom and right margins. Typing shall be single spaced and no smaller than font size 11.
- Use of 11 x 17" fold out sheets for large tables, charts or diagrams is permissible, but should be limited.
- Promotional or Advertising information will not be accepted.
- **Proposals shall have a maximum page number of 40, not including the required forms.**

1.3. SUBMITTAL

Proposals shall be submitted via email or hard copy.

Emailed proposals shall be sent to: dartprocurement@ridedart.com

Mailed hard copies shall be sent to:

Des Moines Area Regional Transit Authority
Attn: Procurement Department
1100 DART Way
Des Moines, Iowa 50309

If hard copies are submitted, please include 5 bound copies of the proposal.

All proposals must be received by the deadline, no matter the method of submission. If proposals are submitted via email, proposer will receive an email confirmation of receipt.

SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



1.4. 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. PROPOSED TEAM AND EXPERIENCE

The proposal shall outline the team for the project. The primary focus of this section should be on the firms and staff involved and their experience and qualifications. It shall identify the prime consultant and any joint venture partners or sub-consultants. If any work is to be subcontracted to another firm(s), the proposal must include the subcontracted firm and staff qualification information for each subcontractor, a description of the services the firm performs as well as related contracts and references.

Each firm should outline their project work and processes they would like DART to consider towards their experience from the last five (5) years. This should include the firm's experience with similar or related services that are being proposed on. Each firm should also clearly identify their understanding of services being requested in this RFP.

In addition, each firm shall identify the expertise and experience of staff person(s) to be assigned to the contract. It should also contain specific responsibilities of the staff and any coordination activities. Current and projected workload of key staff shall be identified.

Lastly, each firm shall submit at least three (3) professional references for work from the last 5 years. References should include the client's name, address, contact person, phone number, and email.

DART may also request samples of Compensation Study questionnaires and/or surveys. The personal or detailed information included should be anonymized.

SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



C. MANAGEMENT PLAN

Each proposer shall demonstrate how they will manage their responsibilities and schedule work to be performed. They should include the approach to manage a schedule for work and any project as a whole. They shall also address their approach to scope, schedule and cost control. Any other information that can help a proposer to demonstrate their unique ability to manage, control, and coordinate work or projects should be included.

Proposers should also identify their approach to quality control and change management.

D. PROFESSIONAL SERVICES CONTRACT

Indicate your willingness to accept the terms and conditions in the Contract Provisions (Section 6) 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. The Contract Provisions and Federal Clauses (Exhibit A of the RFP) will form the basis of the contract that will be executed with the winning proposer(s).

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

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

ATTACHMENT 7 – Pricing Form (Separate Form)

SECTION 2: SCOPE OF WORK



2.1. INTRODUCTION AND BACKGROUND

The Des Moines Area Regional Transit Authority (DART) is the public transportation provider in and around Polk County. DART is governed by an independent commission. DART's service area includes the following communities: Altoona, Ankeny, Bondurant, Clive, Des Moines, Grimes, Johnston, Pleasant Hill, Unincorporated Polk County, Urbandale, West Des Moines and Windsor Heights. DART has 17 local fixed routes, 7 express routes, 2 shuttle services, 1 flex/connector routes, and 2 On-Call zones. DART's fleet consists of approximately 150 vehicles with 95 vehicles operating during peak hours. DART paratransit provides both general-public demand response transportation services well as ADA complimentary service. DART also has an extensive RideShare program that operates over 100 vans throughout the region serving over 900 customers. The population of Des Moines is approximately 200,000 and the regional metro service area has a population of approximately 580,000. About 4.5 million unlinked trips are provided annually.

DART is represented by a board of 12 Commissioners, one from each member government it serves. The Chief Executive Officer (CEO) oversees the operation of the transit system in accordance with the policy direction prescribed by the DART Commission and is responsible for the overall administration of the fixed route, paratransit and rideshare services. At present, the CEO is supported by an administrative staff of approximately 75 – 85 employees. There are approximately 200 employees represented by two labor unions. Consultants are retained as needed to provide specialized technical assistance.

DART receives capital and operating assistance from a variety of sources, including the Federal Transit Administration (FTA) of the United States Department of Transportation, the State of Iowa, a local transit levy and a number of other fund sources.

2.2. PROJECT DESCRIPTION

General Information

DART has 75 salaried, administration (non-union) classifications. The organization has 14 union classifications within our maintenance and operations. The Consultant will survey all classifications.

Under the existing compensation system each non-union classification is assigned to 1 of 9 salary grades consisting of a minimum, midpoint and maximum. The current scale has been adjusted periodically for cost of living increases.

As set forth in greater detail below, the salary survey to be conducted by Consultant will include: an overall evaluation of DART's current total salaried compensation system and recommendations for changes to that system; a comparison of DART's total compensation system with that of other competitors in DART's local labor market and other transit agencies of similar size and providing similar services; a recommended

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

SECTION 2: SCOPE OF WORK



restructuring (if necessary) of DART's job hierarchy/job classification system for all administrative classifications; and a plan and timeline for implementing the changes proposed by Consultant.

In addition, the Consultant will survey full-time and part-time union positions to include payrate and average pay change/year for the contract term.

A separate CEO study will be conducted to include a review of salary, salary range, short and long term incentives, benefits and any prerequisites. In addition, contract components should be benchmarked.

Required Tasks of the Consultant

A. Administration Compensation Study

- Review the methodology, survey instrument and question set to be used in the evaluation with DART's Leadership Team prior to commencing the accumulation of data.
- For the administrative (non-union) compensation study:
 - Survey all 75 – 85 of DARTS administrative positions compared to:
 - Peer transit systems
 - Local public agencies
 - Market private sector data (for relevant positions)
 - Assess the current compensation program.
 - Work with DART's Leadership Team to develop a compensation philosophy inclusive of total compensation, step-programs, pay for performance and incentive strategies.
 - Determine where DART's current total compensation package ranks with respect to appropriate labor markets.
 - Recommend a salary structure for administrative employees that includes grade differentials, range spreads, and takes into account incentive compensation plan options if appropriate based on market data.
 - Recommend where each of DART's current 75 – 85 administrative positions should fall within the recommended structure.
 - Collect data as to FLSA (Fair Labor Standards Act) status of all surveyed positions.
 - Compare the employee benefit and incentive compensation packages at benchmark employers to each administrative position at DART
 - Establish a trend line in accordance with recommended compensation philosophy (i.e., where DART wants to be in relation to salary ranges in the industry).
- Gather organizational charts from competitors to include overall structure, span of control and chain of command.
- Resolve any inconsistencies in the survey data and be prepared to discuss the particulars of any survey data presented.

SECTION 2: SCOPE OF WORK



B. Chief Executive Officer (CEO) Compensation Study (optional)

- A separate CEO study will be conducted to include a review of salary, salary range, short and long term incentives, benefits and any perquisites. In addition, contract components should be benchmarked.

C. Union Compensation Study (optional)

- Survey full-time and part-time union positions to include payrate, and average pay change/year for the contract term.

D. Implementation of Recommendations

- Make final recommendations based on DART's strategic position with regard to its compensation policy such as whether to lead, match, or lag the market and the classifications that fall in each category.
- Design an implementation strategy for the updated compensation structure, working with DART to gain the greatest benefit in regard to retention and recruitment with the lowest possible financial impact on DART's operating budget.
- Provide a plan for keeping the compensation study up-to-date by means of periodic market studies. The plan should include suggested timelines and classifications that could be designated for benchmarking.
- Provide the necessary training, documentation, and other materials for DART to maintain the system independent of Consultant, following the implementation of the classification and compensation plan.

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 Proposers who are 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. QUALIFICATION AND TECHNICAL CAPABILITIS (20%)

The evaluation will be based upon:

- Results of customer references related to similar services/projects
- Demonstrates understanding of the services/projects and their requirements
- Utilizes and promotes current practices (and technologies, if applicable)

B. EXPERIENCE BASE (40%)

The evaluation will be based upon:

- Depth of services and project experience and demonstrated past performance (especially related to public transit and other public agencies)
- Overall installation and deployment experience

C. QUALIFICATIONS OF PERSONNEL (20%)

The evaluation will be based upon:

- Project management team
- Technical personnel
- Organizational structure and management plan
- Availability of key personnel

D. PRICE (20%)

The evaluation will be based upon:

- Comparative to similar services/proposals for each element in the Pricing Form

All Proposers will be notified after the evaluation committee has selected the most qualified Proposer(s). Award of this contract shall be on the basis of the above-outlined evaluation criteria and awarded to the Proposer or Proposers 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.

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

**SECTION 4:
PROPOSAL TIMELINE**



4.1. PROPOSAL TIMELINE

The following timeline has been established for this Request for Proposals:

TASK	DATE
Date Issued:	December 9, 2019
Deadline for Questions Regarding this RFP:	December 16, 2019
Answers to Questions Posted on Website:	December 18, 2019
Proposals Due:	January 6, 2020 2:00 PM
Proposer Interviews (Tentative):	January 20 – 24, 2020
Tentative Contract Award:	February 1, 2020

All times are expressed in Central Time Zone in the USA.

SECTION 5: INSTRUCTIONS TO PROPOSERS



5.1. 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.

5.2. 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.

5.3. TYPE OF CONTRACT

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

5.4. 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 an Evaluation 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
- Award a contract for the requested services to one or more 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.

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

SECTION 5: INSTRUCTIONS TO PROPOSERS



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

5.5. 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

SECTION 5: INSTRUCTIONS TO PROPOSERS



furnishing such submission to any other party, unless the person furnishing the 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 5: 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.

5.6. 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.

5.7. 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.

5.8. 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.

5.9. 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

SECTION 5: INSTRUCTIONS TO PROPOSERS



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

5.10. 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.

5.11. 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.

5.12. 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.

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

SECTION 5: INSTRUCTIONS TO PROPOSERS



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.

5.13. USDOT / FTA / IOWA DOT CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project may be subject to review and concurrence by the U.S. Department of Transportation, Federal Transit Administration and/or the Iowa Department of Transportation.

5.14. 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 \$25,000. 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.

5.15. 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

SECTION 5: INSTRUCTIONS TO PROPOSERS



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.

5.16. 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.

5.17. 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".

5.18. 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.

5.19. 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.

5.20. PROJECT START UP

The Contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice To Proceed by DART.

**SECTION 6:
CONTRACT PROVISIONS**



CONTRACT [DRAFT]

FOR A COMPENSATION STUDY

This CONTRACT FOR A COMPENSATION STUDY (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 a Compensation Study for DART (the "Project") in accordance with the terms of this Contract;
- B. DART desires to obtain goods and/or services provided by Contractor (collectively, "Project") 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 deliverables 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 deliverables 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 agreement. 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.

SECTION 6: CONTRACT PROVISIONS



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 Project 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 deliverables 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 deliverables 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 with the ability to request additional optional work, 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 deliverables in the event DART deems such deliverables 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

SECTION 6: CONTRACT PROVISIONS



the Contract. Any 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 deliverables performed under the Contract Documents, through the date that the agreement is 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 Project.

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 deliverables 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 deliverables 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, and 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 deliverables as set forth in the Statement of Work, or increases in the cost of performance of the agreement.

b. Performance Delays Caused by Contractor. If Contractor delays the Project, 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

SECTION 6: CONTRACT PROVISIONS



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. EXCESS RE-PROCUREMENT LIABILITY. In the event Contractor fails to perform any of its duties and obligations under the Contract Documents, Contractor shall be liable for all expenses and costs incurred by DART in re-procuring elsewhere the same or similar items or services that were to be provided by Contractor. Contractor's re-procurement expense obligation shall be limited to the excess over the price specified in the Contract Documents for such items or services.

16. 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.

17. 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 Project, including, without limitation, any equipment, hardware and software, conveyed to DART pursuant to this Contract, and that neither the Project 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 Project 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

SECTION 6: CONTRACT PROVISIONS



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.

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.

18. 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

SECTION 6: CONTRACT PROVISIONS



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.

19. 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.

20. 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.

21. 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

SECTION 6: CONTRACT PROVISIONS



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.

22. DISPUTE RESOLUTION.

a. Disputes. Disputes arising in the performance of this Contract which are not resolved by concurrence of the parties shall be decided in writing by an authorized representative of DART. Such decision shall be final and conclusive unless within ten (10) days from the date of receipt of notice thereof by Contractor, Contractor mails or otherwise furnishes a written appeal to DART. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer (CEO) of DART shall be binding upon the Contractor and the Contractor shall abide by the decision.

b. Performance During Dispute. Unless otherwise directed by DART, Contractor shall continue performance of its duties and obligations under the Contract Documents while matters in dispute are being resolved.

c. Claims for Damages. If either party suffers injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, representatives, or agents, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

d. Remedies. Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between DART and Contractor arising out of or relating to the Contract Documents will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Polk County, Iowa.

e. Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by DART or Contractor shall constitute a waiver of any right or duty afforded under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

a. Primary point of contact for daily operations regarding this Contract is:

For DART: Erica Foreman
Chief Human Resources Officer
620 Cherry St.
Des Moines, IA 50309
Phone: (515) 283-5000
Email: eforeman@ridedart.com

SECTION 6: CONTRACT PROVISIONS



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

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.

24. 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 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.

SECTION 6: CONTRACT PROVISIONS



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

26. 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,

SECTION 6: CONTRACT PROVISIONS



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.
- 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.
- 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.
- 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.

27. 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.

28. 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.

SECTION 6: CONTRACT PROVISIONS



29. 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.

30. 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.

31. 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.

32. 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.

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



ATTACHMENTS

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement On Sub-Contractors

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 Exclusion

ATTACHMENT 7 – Pricing Form

**SECTION 7:
ATTACHMENTS**



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 7:
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): _____

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

**SECTION 7:
ATTACHMENTS**



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 7:
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

and not a sham or collusive proposal, or made in the interest of or on behalf of any collusive proposal, or made in the interest of or on behalf of any person not herein named; and he/she further states that said proposer has not directly or indirectly induced or solicited any other proposer for this work to put in a sham proposal, or any other person or corporation to refrain from proposing; and that said proposer has not in any matter sought by collusion to secure to self-advantage over any other proposer or proposers.

(SIGN HERE): _____

County _____ In and for the State of

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

Notary Public

My Commission Expires: _____

**SECTION 7:
ATTACHMENTS**



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:
FY20-R-010 COMPENSATION STUDY**

**SECTION 7:
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.**

**REQUEST FOR PROPOSAL:
FY20-R-010 COMPENSATION STUDY**

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 7

PRICING FORM

Description	Fee	Basis
Administration Compensation Study	\$	Flat
CEO Compensation Study (Optional)	\$	Flat
Union Compensation Study (Optional)	\$	Flat
Rate for Extra Work Requested	\$	Hourly

Please describe how you will address reimbursable expenses:

EXHIBIT A: 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

EXHIBIT A: 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,

EXHIBIT A: 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

EXHIBIT A: 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. ENERGY CONSERVATION

Contractor agrees to comply with mandatory standards and policies relating to energy

EXHIBIT A: FEDERAL CONTRACT CLAUSES



efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9. 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.

10. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Contractor agrees to comply with such requirements.

EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



DATA PRIVACY AND SECURITY

Entering into an agreement to become a Staffing Services Provider (hereinafter referred to as "Provider") for the Des Moines Area Regional Transit Authority (DART) involves the sharing of a significant amount of legally protected Personal Information such as Personally Identifiable Information (PII), Personal Health Information (PHI) and/or Personal Credit Information (PCI). The sharing of this information is necessary to enable the Provider to provide the services relevant to this Contract. The privacy of Personal Information is governed by a number of laws including the Gramm-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA), the Health Information for Economic and Clinical Health Act (HITECH), the Fair Credit Reporting Act (FCRA), and the Children's Online Privacy Protection Act (COPPA); as well as other federal and state laws, regulations, common law privacy principles, and industry standards and guidelines. DART could face serious financial and/or reputational harm should there be an unauthorized use, security incident, or security breach. Therefore the Provider shall conform to the following standards of care and obligations with respect to the treatment of Personal Information.

"Authorized Employees" means the Provider's employees who have a need to know or otherwise access Personal Information to enable the Provider to perform their obligations under this Contract.

"Authorized Persons" means (i) Provider's Authorized employees; and (ii) Providers independent contractors, vendors, agents, outsourcers, and auditors (as specified in [Exhibit X] to this Contract) who have a need to know or otherwise access Personal Information to enable the Provider to perform their obligations under this Contract, and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means (i) an individual's government-issued identification number (including social security number, driver's license number, or other state-issued identification number); (ii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric or health data, (iv) birth date.

"Personal Information" means information provided to the Provider by or at the direction of DART or to which access was provided to the Provider at the Direction of DART, in the course of the Provider's performance under this Contract that: (i) identifies or can be used to identify an individual (including without limitation names, signatures, addresses, telephone numbers, e-mail addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including without limitation employee identification numbers, government issued identification numbers, passwords or personal identification numbers, financial account numbers, credit report information, biometric or health data, answers to security questions, and other personal identifiers); (iii) without limitation, all Highly Sensitive Personal Information. DART employees' business contact information is not by

EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



itself deemed to be Personal Information.

"Security Incident" means (i) any act or omission that compromises the security, confidentiality, or integrity of Personal Information, including any compromise of physical, technical, administrative, or organizational safeguards put in place by the Provider or Any Authorized Persons which relate to the security, confidentiality, or integrity of personal information; or (ii) receipt of a complaint in relation to the privacy practices of the Provider or any Authorized Persons; or a breach or alleged breach of this Contract relating to such privacy practices.

1. Standards of Care. The Provider agrees to abide by the following Standards of Care concerning the treatment of Personal Information:

- 1) Provider acknowledges and agrees that, in the course of their engagement by DART, Provider may receive or have access to Personal Information. Provider shall comply with the terms and conditions set forth in this Contract in its collection, receipt, transmission, storage, disposal, use, disposal, and disclosure of such Personal Information under its control or in its possession by All Authorized Employees and Authorized Persons. Provider shall be responsible for, and remain liable to, DART for the actions and omissions of all Authorized Persons that are not Authorized Employees concerning the treatment of Personal Information as if they were the Provider's own actions and omissions.
- 2) Personal Information is deemed to be the Confidential Information of DART and is not Confidential Information of the Service Provider. If the event of a conflict or inconsistency between this section and the confidentiality/compliance with laws sections of this Contract, the terms and conditions set forth in this Section shall govern.
- 3) In recognition of the foregoing, Provider agrees and covenants that it shall:
 - a) Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access or disclosure;
 - b) Use and disclose Personal Information solely and exclusively for the purposes for which the Personal information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Service Provider's own purposes or for the benefit of anyone other than DART, in each case without DART's prior written consent; and
 - c) Not, directly nor indirectly disclose Personal Information to any person other than the Provider's Authorized Employees/Authorized Persons including any unauthorized employees, independent contractors, subcontractors, agents, outsourcers, or auditors (an "Unauthorized Third Party"), without the express

**EXHIBIT B:
DART DATA PRIVACY AND SECURITY STANDARDS**



written consent from DART unless and to the extent required by Government Authorities or as otherwise to the extent expressly required by applicable law. In such cases Provider shall (i) use best efforts to notify DART before such disclosure as soon thereafter as reasonably possible; (ii) be responsible and remain liable to DART for the actions and omissions of such Unauthorized Third Party concerning the treatment of such Personal Information as if they were the Provider's own actions and omissions; and (iii) require the Unauthorized Third Party that has access to Personal Information to execute a written Contract agreeing to comply with the terms and conditions of this Contract relating to the treatment of Personal Information.

2. Information Security Standards. The Provider agrees to abide by the following Information Security Standards concerning the treatment of Personal Information:

- 1) Provider represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.
- 2) Without limiting the Provider's obligations, Provider shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices including specifically the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for Information Security Management, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security; and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.
- 3) If, in the course of its engagement by DART, Provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Service Provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Provider's sole cost and expense.
- 4) At a minimum, Provider and its Authorized Persons' safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Employees/Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment,

**EXHIBIT B:
DART DATA PRIVACY AND SECURITY STANDARDS**



including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting Highly-Sensitive Personal Information stored on any mobile media; (vii) encrypting Highly-Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of Provider or its other customers so that Personal Information is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Provider's employees.

- 5) During the term of each Authorized Employee's employment by the Provider, Provider shall at all times cause such Authorized Employees to abide strictly by Provider's obligations under this Contract and Provider's standard policies and procedures, a copy of which have been provided to DART/are attached as **[Exhibit X]** to this Contract. Provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of Personal Information by any of Provider's officers, partners, principals, employees, agents or sub-contractors. Upon DART's written request, Provider shall promptly identify for DART in writing all Authorized Employees as of the date of such request.
- 6) Upon DART's written request, Provider shall provide DART with a network diagram that outlines Provider's information technology network infrastructure and all equipment used in relation to fulfilling of its obligations under this Contract, including, without limitation: (i) connectivity to DART and all third parties who may access Provider's network to the extent the network contains Personal Information; (ii) all network connections including remote access services and wireless connectivity; (iii) all access control devices (for example, firewall, packet filters, intrusion detection and access-list routers); (iv) all back-up or redundant servers; and (v) permitted access through each network connection.
- 7) **Data Security Incident.** The Provider agrees to abide by the following standards governing Data Security Incidents:
 - a. In the event a Data Security Event occurs, the Provider shall:
 - i. Provide DART with the name and contact information for an employee of Provider who shall serve as DART's primary security contact and shall be available to assist DART twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Data Security Incident.

**EXHIBIT B:
DART DATA PRIVACY AND SECURITY STANDARDS**



- ii. Notify DART of a Data Security Incident as soon as practicable, but no later than twenty-four (24) hours after the Provider becomes aware of it.
 - iii. Notify DART of any Data Security incidents by telephone at the following number: (515) 283-5020/e-mailing DART with a read receipt at it@ridedart.com and with a copy by e-mail to Provider's primary business contact within DART.
- b. Immediately following Provider's notification to DART of a Data Security Incident, the parties shall coordinate with each other to investigate the Data Security Incident. Provider agrees to fully cooperate with DART in DART's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing DART with physical access to the facilities and operations affected; (iii) facilitating interviews with Provider's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise [reasonably] required by DART.
 - c. Provider shall take reasonable steps to immediately remedy any Data Security Incident and prevent any further Data Security Incidents at Provider's expense in accordance with applicable privacy rights, laws, regulations and standards. Service Provider shall reimburse DART for actual costs incurred by DART in responding to, and mitigating damages caused by, any Data Security Incident, including all costs of notice and/or remediation
 - d. Provider agrees that it shall not inform any third party of any Security Breach without first obtaining DART's prior written consent, other than to inform a complainant that the matter has been forwarded to DART's legal counsel. Further, Provider agrees that DART shall have the sole right to determine: (i) whether notice of a Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in DART's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
 - e. Provider agrees to fully cooperate at its own expense with DART in any litigation or other formal action deemed reasonably necessary by DART to protect its rights relating to the use, disclosure, protection and maintenance of Personal Information.
 - f. In the event of any Data Security Incident, the Provider shall promptly use its best efforts to prevent a recurrence of any such Security Breach.
- 8) **Oversight of Security Compliance.** Upon DART's written request, to confirm Provider's compliance with this Contract, as well as any applicable laws, regulations and industry standards, Provider grants DART or, upon DART's election,

**EXHIBIT B:
DART DATA PRIVACY AND SECURITY STANDARDS**



a third party on DART's behalf, permission to perform an assessment, audit, examination or review of all controls in Provider's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to DART pursuant to this Contract. Provider shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that processes, stores or transports Personal Information for DART pursuant to this Contract. In addition, upon DART's written request, Provider shall provide DART with the results of any audit by or on behalf of Provider performed that assesses the effectiveness of Provider's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- 9) **Return or Destruction of Personal Information.** At any time during the term of this Contract at the DART's written request or upon the termination or expiration of this Contract for any reason, Provider shall, and shall instruct all Authorized Persons to, promptly return to DART all copies, whether in written, electronic or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to DART that such Personal Information has been returned to DART or disposed of securely. Provider shall comply with all reasonable directions provided by DART with respect to the return or disposal of Personal Information.
- 10) **Equitable Relief.** Provider acknowledges that any breach of its covenants or obligations set forth in this Section or the Provider's standard policies and procedures (a copy of which have been provided to DART and are attached as **[Exhibit X]** to this Contract) may cause DART irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, DART is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which DART may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Contract to the contrary.
- 11) **Material Breach.** Provider's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, Customer may terminate the Contract in accordance with the procedures outlined in Section 10 of this Contract.
- 12) **Provider's Liability Insurance.** Cyber liability insurance which provides (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. Coverage shall be in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence.