



# REQUEST FOR PROPOSAL FY24-RFP-002

for

## On-Call Taxi and Mobility Services

for

## DES MOINES AREA REGIONAL TRANSIT AUTHORITY

<b>Contract Type:</b>	Fixed Price
<b>Number of Contracts:</b>	Single Award or Multiple Award
<b>Duration:</b>	Three (3) Years with Three (3) Optional One (1) Year Renewals
<b>Funding Source:</b>	Local and Federal
<b>Date Issued:</b>	January 19, 2024
<b>Deadline for Questions Regarding this RFP:</b>	February 5, 2024
<b>Answers to Questions Posted on Website:</b>	February 9, 2024
<b>Proposals Due:</b>	February 19, 2024, 2:00 PM CT
<b>Tentative Contract Award Date:</b>	March 19, 2024

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  
FY24-RFP-002  
On-Call Taxi and Mobility Services

Sealed proposals are hereby requested by the DES MOINES AREA REGIONAL TRANSIT AUTHORITY, 620 Cherry St., Des Moines, Iowa to be received until 2:00 PM Central Time, on February 19, 2024.

Requests for clarification and/or questions concerning the issued document shall be directed to Michael Gulick in the DART Procurement Department at 515-218-7973 or e-mail [mgulick@ridedart.com](mailto:mgulick@ridedart.com). All submittal questions concerning this RFP are due on or before February 5, 2024. 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 e-procurement site <https://ridedart.bonfirehub.com/portal/?tab=openOpportunities>.

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

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# SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



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

## 1.1. GENERAL REQUIREMENTS

The proposal shall:

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

## 1.2. GENERAL FORMAT

- Proposals shall be prepared on 8.5 x 11" format 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" legal format 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 20, not including the required forms.**

## 1.3. SUBMITTAL

Proposals must be submitted via DART's e-procurement system (Bonfire). Proposers must be registered in Bonfire prior to submission.

<https://ridedart.bonfirehub.com/portal/?tab=login>

If any questions regarding registration or submission, please contact the DART Procurement team at [mgulick@ridedart.com](mailto:mgulick@ridedart.com) or 515-218-7973.

If a proposal can't be submitted through DART's procurement portal, please contact the DART Procurement team immediately at [mgulick@ridedart.com](mailto:mgulick@ridedart.com) or 515-218-7973. All proposals must be received by the deadline, no matter the method of submission.

## 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.

## SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



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

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

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

### **B. FIRM AND STAFF QUALIFICATIONS**

The proposal shall include a general description of the consultant and his or her background as it relates to the requested services. Specific information shall be submitted and include:

- Information regarding previous experience with similar or related projects. It should contain a brief description of these projects and the consultant's role.
- Information demonstrating the consultant's capabilities to perform all aspects of this particular service including providing appropriate responses to **Requirement Compliance Matrix Attachment 12**.
- This project occasionally requires assistance with little to no notice. Please include information on the availability, responsiveness and capacity of the consultant for work on this project.
- References including client name, address, contact person, telephone number, email, project start and end date as well as a project description. References should be for similar or related projects that proposed key staff members for this project have worked.
- If any work is to be subcontracted to another firm(s), the proposal must include the above firm and staff qualification information for each subcontractor, a description of the services the firm performs as well as related projects and references.

### **C. PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS**

The Proposal must indicate acceptance of the terms and conditions in the Contract Provisions (Section 6, including Exhibits A and B) on Attachment 8 Acceptance of Contract Provisions. If a Proposal takes exception to a provision, it must complete Attachment 9 Requested Contract Provisions Exceptions stating the reason for the exception and the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms and conditions or the requirements of the RFP, may be deemed non-responsive by DART, in its sole discretion, resulting in possible disqualification of the Proposal. DART reserves the right to either award a contract without further negotiation with the successful Proposer or to negotiate

## **SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS**



contract terms with the selected Proposer if the best interest of DART would be served. It is not DART's intent to make substantial changes to the outlined Contract Provisions.

### **D. 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 (if applicable)

ATTACHMENT 7 – Pricing Form

ATTACHMENT 8 - Acceptance of Contract Provisions

ATTACHMENT 9 – Requested Contract Provisions Exceptions (only if requesting)

ATTACHMENT 10 – Certifications of Restrictions on Lobbying

ATTACHMENT 11 – Disclosure of Lobbying Activities (only if applicable)

ATTACHMENT 12 – Requirements Compliance Matrix (excel file)

ATTACHMENT 13 – FTA's Assess Your Compliance – Drug and Alcohol Program Manager

ATTACHMENT 14 – Certification of 49 U.S.C. Section 5331 and FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655

## SECTION 2: SCOPE OF WORK



### 2.1. INTRODUCTION AND BACKGROUND

Des Moines Area Regional Transit Authority (DART) is the regional transit authority governed by a nineteen (19) member independent commission. DART's service area includes the following communities: Alleman, Altoona, Ankeny, Bondurant, Carlisle, Clive, Des Moines, Elkhart, Granger, Grimes, Johnston, Mitchellville, Pleasant Hill, Polk City, Unincorporated Polk County, Runnells, Urbandale, West Des Moines and Windsor Heights. DART operates out of two facility locations and has 16 local fixed routes, 7 express routes, 3 flex routes and 5 On-Call zones. DART Paratransit provides both public demand response transportation services as well as ADA complementary service.

DART also has an extensive rides share program that operates approximately 60 vans throughout the region serving over 450 customers. The population of Des Moines is approximately 214,000 and the regional metro service area has a population of approximately 580,000. About 3.2 million unlinked trips are provided annually.

DART utilizes taxi services to augment its paratransit operations and to provide support as our Guaranteed Ride Home program for DART Fixed Route and Rideshare services. On an annual basis, DART provides approximately 90,100 trips for paratransit services. Below is a breakdown of the trip information:

#### DART's Bus Plus Service

FY Year	Scheduled Trips	Total Cancellations	No Shows	Dedicated Vehicle Trips	Taxi Trips	Total Trips
2020/21	53,633	2,657	2,448	45,443	2,869	48,302
2021/22	83,777	4,743	4,251	70,392	4,391	74,783
2022/23	101,149	5,929	5,125	82,360	7,735	90,095

#### DART's On-Demand Service

FY Year	Ankeny Service Area Trips	River Bend Service Area Trips	Jordan Creek Service Area Trips	Total Trips (All Service Areas)
2021/22	6,112	0	0	6,112
2022/23	15,514	0	0	15,514

DART also provides 85 trips through the Guaranteed Ride Home program and ride share program, also known as Caravan. These figures are estimates and are provided only for the purpose of providing potential proposers with an estimate of the volume of service needed.

### 2.2. PROJECT DESCRIPTION

DART is seeking a Proposer or Proposers for the operation and management of taxicab and other types of overflow services in support of demand response for general public

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



and public paratransit services as well as other programs, using Proposer provided sedans, vans and/or accessible vehicles. This service may include new services added to DART's portfolio of transit services, including on-demand services, also known as DART On-Demand, and special services with contract businesses.

DART Paratransit service is door-to-door and contracted service will be expected to be the same. Accessible vehicles shall be ramp vehicles or lift-equipped vehicles such that wheelchair/scooter users may board a vehicle without getting out of their mobility device, and ride secured in the forward-facing position.

DART requires the Proposer to provide transportation services for individuals meeting the eligibility requirements. The Proposer shall provide all services required in support of transporting individuals to their designated destination(s).

Contracted services are being solicited for transportation within the DART Paratransit service area, including all of Polk County and surrounding areas. Services will be provided to DART Paratransit clients as directed by the DART Paratransit Department.

Additionally, the Proposer shall supply additional transit services to the public and/or individual client groups of DART, while still meeting DART's high customer service levels. Such programs include, but are not limited to, Rideshare and Guaranteed Ride Home. The service area for these services will also be Polk County and surrounding areas.

DART will be responsible for:

- Overseeing all aspects of the service (which could include vehicle and equipment inspections)
- Ensuring compliance with local, state, and federal requirements
- Reconciling and benchmarking service quality
- Implementing corrective actions that improve poor performance
- Paying the Proposer on a per-trip basis for services rendered

All services provided by the Proposer must meet Federal Transit Authority (FTA) requirements.

This contract is non-exclusive. DART expressly reserves the right to contract with other providers for the performance of the services described in this RFP. DART retains and does not vacate any discretionary rights or authority because of this contract for specified services.

### **2.3. SCOPE OF SERVICES**

It is the intent of this Scope of Services to describe DART's requirements and specifications for Proposers that provide transportation services for eligible riders, including the elderly and individuals with disabilities.

The Proposer shall provide transportation services for individuals meeting the eligibility

## SECTION 2: SCOPE OF WORK



requirements of DART. For each trip, the Proposer shall arrive at the trip's origin address and shall transport clients to their selected destinations.

DART has the right to review and reconcile (if necessary) Proposer trip logs/manifests/charge tickets. Payment is contingent upon DART'S confirmation that all invoices in the trip logs/manifests/charge tickets have been completed in accordance with the contract requirements. The Proposer shall meet all requirements described in this Scope of Services, including, but not limited to, safety, fares, drug and alcohol policy compliance, on-time performance, and reporting.

In addition to the duties and responsibilities detailed in this Scope of Services, the Proposer shall use its best efforts to assist DART in meeting its obligations to provide the highest quality and most efficient service to the public. Changes may be required by DART, from time to time, to meet these requirements or to refine the method of operation. If any such changes affect Proposer costs, they will be addressed through a contract amendment.

### **A. Service Requirements**

- Service shall be provided Monday through Sunday, 24 hours per day, as assigned by DART.
- In the event DART service is suspended or interrupted, a DART representative will notify Proposer.
- Eligible clients will be identified by the DART Paratransit Department as clients of contracting agencies. Trips for eligible clients and/or the public customer will be designated by DART staff.
- Selected Proposer will be responsible for scheduling and dispatching all trips brokered by DART to assure on-time arrival at destinations. Pickups will be considered on time when they occur within the 30-minute service window as scheduled by DART's Customer Service division.
- Services shall be provided in vehicles open and available to the public without discrimination.
- DART expects all vehicles used for this transportation to be maintained at the Proposer's own expense. They must be in clean, safe, and operable condition. Vehicles shall be free of major body damage.
- Proposer vehicles will be ADA accessible where applicable. Proposer will ensure that at least one ADA accessible vehicle is always available for service. If vehicles are operated by owner/operators, the Proposer will assure compliance of all provisions outlined.
- The Proposer shall be responsible for determining the number of vehicles and drivers required daily to provide supplemental DART service and shall adequately plan for



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increased or decreased transportation requests on a daily basis. Preparing for the availability of an adequate number of drivers and vehicles to ensure service delivery each day is the sole responsibility of the Proposer.

- The Proposer shall hire, train, and supervise staff involved in the scheduling and dispatching of DART's Bus Plus and Paratransit services. The Proposer also shall manage service data and provide DART with service reports as detailed in this section of the RFP. The following is a listing of the key responsibilities of the Proposer. Other duties of the Proposer not specifically listed below shall also be performed.
- Proposer will maintain all insurance coverage required by law.
- Proposer shall ensure that all vehicles used to provide services are insured with the following minimum coverage:
  - Commercial Vehicle Liability – combined single limit of one million dollars (\$1,000,000)
    - Proposer shall be able to provide to DART a certificate of insurance documenting this coverage and name DART as an additional insured.
- Compliance with the Americans with Disabilities Act (ADA), is mandatory to the extent that any services provided are subject to the ADA, including but not limited to providing ADA accessible and equipped vehicles. Vehicles should be ADA accessible where applicable.
- All Contracted drivers shall be required to have a valid State of Iowa commercial driver's license or chauffeur's license in effect when transporting DART customers.
- The Proposer shall comply with all accident and incident reporting procedures established by DART. The Proposer shall immediately report accidents, vehicle breakdowns, passenger injuries, disturbances in service, and vehicles operating more than thirty (30) minutes behind schedule.
- All traffic accidents, irrespective of injury, shall be reported to local Police Department or Highway Patrol, as required by law. Proposer will advise such agency of the accident and request a police unit/and or emergency services to respond. The Proposer shall notify DART (or their designee) in writing of any accident or incident within 24 hours of such an event. In cases involving injury or property damage, the Proposer shall notify DART immediately upon receipt by Proposer of such information.
- DART requires a drug and alcohol testing program that conforms to the Drug and Alcohol testing requirements of the Federal Transit Administration (FTA), for any employee in a safety-sensitive position that performs services for DART (full details below).

## SECTION 2: SCOPE OF WORK

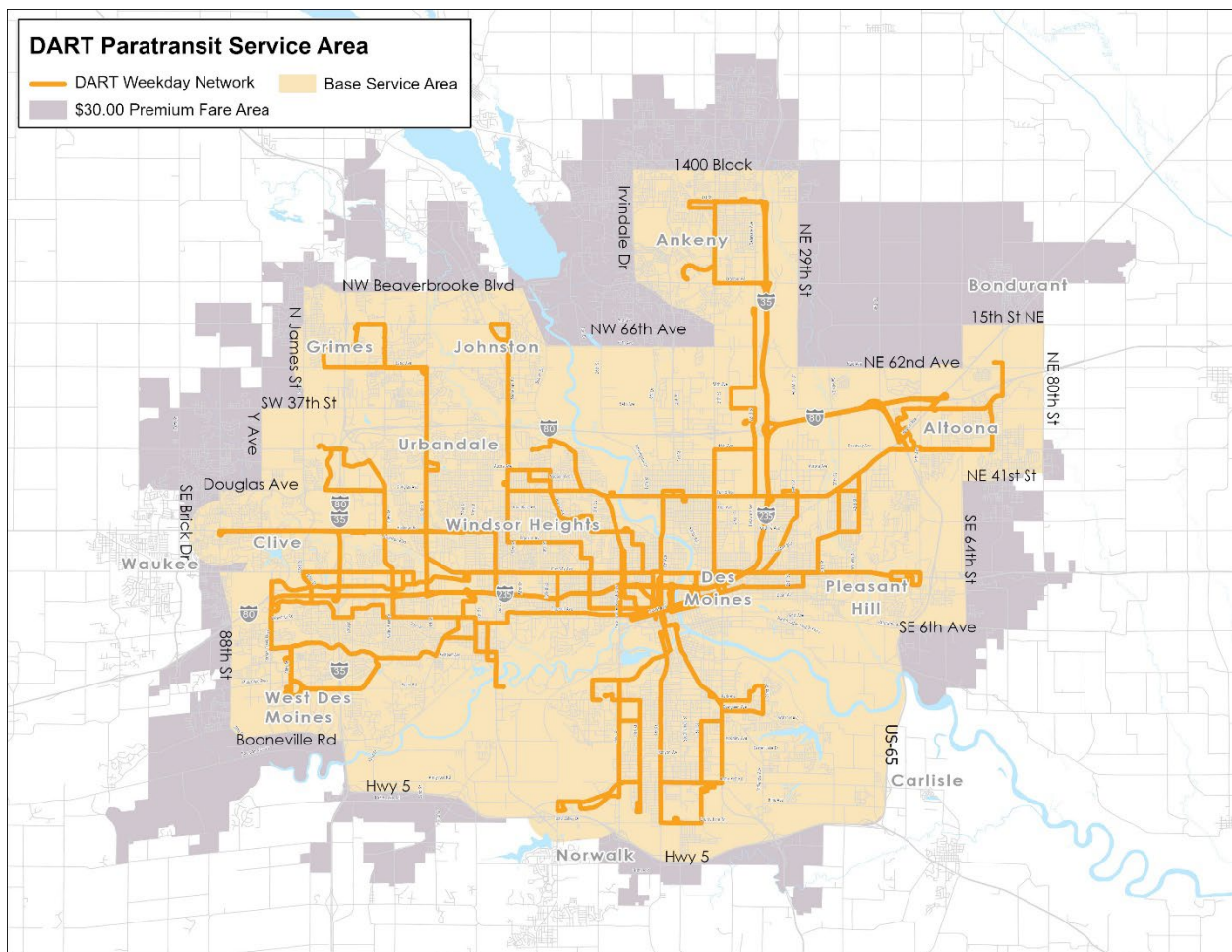


- Proposer shall attend consumer Transit Rider Advisory Committee (TRAC) meetings, DART Board meetings, and other public forums and meetings as requested by DART.

### **B. Service Territory**

Service shall be performed in DART's Fixed Route Service Area, Paratransit Service Area, and RideShare Service Area.

- Guaranteed Ride Home Service Area – DART Fixed Route Service Territory (generally greater Polk County and portions of Warren and Dallas County).
- Paratransit Service Area – Service territory is defined by the trips assigned by the DART Paratransit Department. Geographic area is greater Polk County.



## SECTION 2: SCOPE OF WORK



- RideShare Service Area/Lanes:
  - Des Moines Area to Grinnell
  - Des Moines Area to Pella
  - Ottumwa to Pella
  - Albia to Knoxville
  - Des Moines Area to Ames
  - Des Moines Area to Adair / Panora
  - Des Moines Area to Oskaloosa
  - Des Moines Area to Missouri State Line
  - Des Moines Area to Marshalltown
  - Des Moines Area to Tama
  - Other additional lanes if added at future dates

### 2.4 PROPOSER REQUIREMENTS

The Proposer shall be responsible for all tasks (except those items specifically defined herein as DART responsibilities), including but not limited to:

- Operating vehicles that comply with required specifications.
- Maintaining all vehicles for this service in a clean and neat condition at all times.
- Providing a two-way mobile communications system that meets service performance requirements detailed herein.
- Writing a proposal for collecting fare payment from passengers using DART's Bus Plus Paratransit service.
  - The proposal shall include Fare payments being recorded on the Proposer's invoice. The fare payment listed on the invoice shall be retained by the Proposer and credited on the invoice to DART.
  - DART uses a fare payment option called Tokens. Customers using DART's Bus Plus Paratransit service may pay for their travel using tokens. The Proposer shall include in their proposal how this form of payment will be collected and accounted for as payment for a trip. The value of DART's tokens is:
    - Full Fare Token: \$1.75 per token
    - Half-Fare Token: \$0.75 per token
  - Premium service fares are based on factors including service and trip type, trip distance and location, assistance needed, and whether there are attendants and/or companions. Fares are automatically calculated by the Trapeze or Via systems using information entered by reservationists and customers are informed of the fare when trips are booked. Fares are displayed on the run manifests.

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- Drivers should not make change.
- Providing an adequate number of qualified staff to handle all trips.
- Hiring and ensuring training of staff in accordance with the standards set forth herein.
- Providing on-the-road supervision to ensure that service is performed according to standards set forth herein.
- Recording and reporting to DART actual service information (arrival and drop-off times, mileages, cancellations, no-shows, incidents, etc.)
- Proposer and its employees or subcontractors shall not accept any tips or payment for fares from DART customers, unless previously authorized and arranged through DART.
- Monitoring performance and ensuring corrective action measures are taken, as needed.
- Preparing and providing billings and service reports as required by DART.
- Obtaining DART's written consent before entering any subcontract affecting the services not identified in the proposal.
- Ensuring that all data submitted to DART is accurately updated.
- Providing DART personnel with daily monitoring (within 1 business day) records of no-shows, missed trips, late cancellations, and service incidents to determine and enforce any corrective actions, exclusions, reductions, or suspensions from the services.
- Providing DART with daily Trip Requests identifying the passenger and their pick-up and drop-off locations.
- Providing initial training and periodic (annual) retraining of the Proposer's staff on the service policies and procedures.
- Assuring that drivers have the appropriate chauffeurs' or commercial driver's license (CDL) per the State of Iowa.
- Ensuring service quality by promptly addressing customer comments and complaints.
- Assuming contractual responsibility for all services.
- Transportation services shall be provided as an independent Proposer and no part of these services can be subcontracted without the express written consent of DART. However, service may be performed by operators engaged under contract or lease

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by Proposer's company as independent subcontractors.

- If vehicles are operated by owner/operators, the Proposer and any subcontractors shall assure compliance of all provisions outlined in this RFP and any resulting contract.
- DART, any agency providing funding to DART, and/or any agency entitled by law shall be permitted to inspect vehicles, services, facilities, books, and records. Such inspections would be strictly limited to, or related with, services provided under contract.
- Documentation in writing is required for the following (when transporting a DART customer):
  - All accidents
  - Incidents involving injury or damage to property
  - Incidents involving injuries or damages to persons including but not limited to passengers
  - Incidents relating to service rendered to passengers
  - Complaints from passengers regarding service provided
- Proposer shall provide DART with copies of all such documentation immediately upon preparation of same, and shall also provide notification of resolution. However, such reports shall be strictly limited to or related with services provided under contract.
- Proposer's obligation for scheduling and dispatching shall be as follows: schedule and dispatch all trips brokered to them by DART staff including but not limited to Paratransit staff, Customer Service, supervisors, and DART dispatch.
- DART allows service animals in its vehicles. Proposer must comply with these same services. Such services shall be strictly limited to, or related with, services provided under contract.
- Proposer operators are required to clearly announce any stop at the request of the customer. This is a requirement of the ADA intended to accommodate customers with visual impairments.
- Proposer operators may not deny transportation to a customer using a mobility device on the grounds that the device cannot be secured or restrained satisfactorily by the taxi service vehicle.
- Proposer operators are required to assist a customer using a wheelchair or other motorized aid by assisting the customer in positioning the mobility aid and securing the customer using the securement devices.
- Drivers shall provide assistance to all customers, including but not limited to customers using mobility devices (such as wheelchairs or walkers) and shall be solely responsible for the securement of such devices. Drivers shall assist customers who have difficulty boarding or alighting.

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- Proposer shall maintain a drug-free workplace and shall develop a drug-free workplace program. The Proposer shall provide DART with appropriate documentation that exhibits Proposer compliance with Federal Drug Use and Testing and Alcohol Misuse and Testing.

*A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.*

- Proposer or its employees shall not transport a DART service trip without being subject to testing under this program. A copy of Proposer's drug and alcohol testing program shall be provided to DART upon a signed contractual agreement. Said program shall contain a provision which requires that any non-negative test results and any situation where tests have not been administered to an employee in a safety sensitive position performing services selected for random testing shall be reported to DART.
- Proposer shall use a Third-Party Administrator (TPA) following 49 CFR Part 40.111 which directs HHS-certified laboratories to transmit an aggregate statistical summary on a semi-annual basis following DOT Rule 49 CFR Part 40 Appendix D.
  - Proposer shall instruct their TPA to also submit a copy of the summary on a semi-annual basis to DART's Mobility Services Manager.
  - Proposer must file their own annual Management Information System (MIS) report by March 15 each year to the FTA.
- Proposer shall complete FTA's Assess Your Compliance – Drug and Alcohol Program Manager (see **Attachment 13**) and submit quarterly to DART's Mobility Services Manager indicating yes or no for each compliance question. For all questions that are non-compliant, the Proposer must state steps being taken to become compliant along with a timeline.
- Proposer shall certify and submit to DART's Contract Manager annually the certification (**Attachment 12**), that states that its subcontractors are compliant with 49 U.S.C. Section 5331 and FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.
- Proposer shall comply with FTA's drug and alcohol compliance audits, including providing a comprehensive review of testing records and related documentation.
  - Audits may include on-site records review.
  - All testing records and related documentation shall include applicable Custody and Control Forms, MRO-verified results, and Alcohol Testing Forms. Additional testing records will vary based on test type.
    - Examples include, but are not limited to, random selection lists, post-accident full accident reports, supervisors reasonable suspicion

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reports, positive and refusal documentation of SAP referral, return-to-duty and follow SAP reports and testing plan.

- DART promotes a policy of a smoke-free workplace. The Proposer shall not permit smoking within any vehicles, facilities, or services while providing services under this Contract.
- The Proposer shall be solely responsible for the satisfactory work performance of its employees and subcontractors for meeting the performance standards established by DART.
- The Proposer shall be solely responsible for payment of all employees' wages and benefits. The Proposer's and sub-Proposer's personnel wages and work hours shall be in accord with the local, county, state, and federal regulations affecting all personnel.
- Without any additional expense to DART, the Proposer shall comply with the requirements of employee liability, worker's compensation, employment insurance, and Social Security. These costs shall be the sole responsibility of the Proposer.
- The Proposer shall have a personnel program that includes recruitment, hiring, training, and performance review. The Proposer shall also have in effect personnel policies that conform to all State of Iowa and federal laws including, but not limited to, all regulations concerning Equal Employment Opportunities, FTA Drug and Alcohol Regulations, DART's Drug and Alcohol Policy (see Appendix A), and Family Medical Leave (FMLA/CFRA).
- The Proposer shall comply with applicable state and federal employment laws, including the Iowa Labor Code and Title VI of the Civil Rights Act of 1964 as amended.
- All personnel assigned to this project shall be responsible for knowledge of the service area.
- All project personnel shall maintain a professional, courteous attitude, answering to the best of their ability any passenger questions regarding provision of service. Discourtesy, rudeness, inappropriate conversation, or the use of profanity will not be tolerated and shall be grounds for immediate removal of the offending personnel from performing work under this contract.
- Supervision of service delivery is the responsibility of the Proposer; the Proposer shall identify one contact point, such as Dispatch or a supervisor/manager, who is available during all operating hours to handle DART questions related to service delivery.
- The Proposer shall provide the personnel necessary to schedule and deploy drivers and vehicles in accordance with the manifests (service requests) of DART, and be responsible for any add-on, cancel, or no-show of customers on the day of service.



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- The Proposer shall supply a sufficient number of employees to staff the office at all required times to monitor service delivery, and to communicate with drivers. The Proposer shall ensure that the daily dispatch function will be executed to sufficiently support this project, including the handling of emergency situations and customer complaints.
- All management and operations staff including taxi Proposers shall be thoroughly trained in DART's Bus Plus Paratransit policies and procedures, ADA regulations, use of hardware and software appropriate to the job, disability awareness, and quality customer service.
- The Proposer will designate a manager responsible for all aspects of service delivery, employee qualifications, and the day-to-day operations of this overflow service. The manager will be a responsible employee, will be able to make decisions, and will provide coordination of this service.
- The Proposer shall investigate all service complaints associated with DART related service delivery by the Proposer within 72 hours of complaint.
- The Proposer shall immediately notify DART in the event of any interruption or delay in service, regardless of whether same is avoidable or unavoidable.
- Proposers will address all general and reporting requirements in the Requirements Compliance Matrix (Appendix C)

### 2.5 DART REQUIREMENTS

- DART staff shall identify eligible clients, make reservations and schedule trips with the appropriate Proposer.
- DART staff will assign trips to the Proposer and communication to the Proposer.
- Assignment of trips will be provided to the Proposer between 4:00 P.M. and 7:00 P.M. the working day prior to the clients' scheduled trip times.
- DART staff, at times, may assign additional same-day transportation requests to the Proposer. Such requests shall be honored and dispatched for pick up within thirty (30) minutes of said request.
- Establishing service policies and standards and communicating these to the Proposer and riders.
- Overseeing records of no-shows, missed trips, late cancellations, and service incidents to determine and enforce any corrective actions, exclusions, reductions, or suspensions from the services.





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- Monitoring the Proposer's performance and ensuring corrective action measures as needed. The Proposer will meet with DART management on a monthly basis or as needed to review performance expectations.
- DART shall prepare and provide all reports, documentation, and audits required by the Iowa Department of Transportation and the Federal Transit Administration that will include necessary reports from the Proposer.
- DART shall fully cooperate and assist as necessary in the design and scheduling of the services to be provided to meet the needs of the client and service area.

### 2.6 COMPUTER SOFTWARE

- DART currently utilizes Trapeze PASS scheduling and dispatch software. The selected Proposer may be requested to provide a systems interface to transfer trip data between DART and Proposer.
- The Proposer will ensure that service provider staff is trained and proficient in the use of software technology.

### 2.7 RUN MANIFEST DESIGN

Run manifests shall be designed in a way that keeps drivers and riders "on the same page" in terms of pickup times. The run manifests shall be structured to make it clear to drivers what time riders have been promised in terms of pickups, any pertinent appointment times, as well as the times estimated by schedulers and the software system. In addition, when possible, landmarks and destination notes should be placed on manifests to assist drivers in performing duties.

### 2.8 PERFORMANCE STANDARDS

The Proposer will be held to the service standards listed below and will report monthly to DART on each standard.

#### A. Accessibility

Proposer providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 et seq.; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Proposer must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services.

#### B. No-Shows

## SECTION 2: SCOPE OF WORK



Proposer will report no-shows to DART Paratransit Dispatch at 515-283-8118 immediately. When Paratransit Dispatch is not available, Proposer will report no-shows to DART Fixed Route Dispatch at 515-283-8105 immediately. When DART Dispatch is not available, a message should be sent via email to [ptdispatch@ridedart.com](mailto:ptdispatch@ridedart.com). The Proposer's dispatch is responsible for ensuring that the drivers' arrival time and address are correct before authorizing a no-show.

### **C. On-Time Performance**

This is the measure of the Proposer's ability to arrive at the pick-up address as scheduled. DART considers service to be "on-time" when the driver arrives within the 30-minute window given to the passengers at the time they reserve their ride. Proposer will not be paid for any pick-up that is over 30 minutes late.

### **D. Missed Trips**

A missed trip occurs if the Proposer does any of the following:

- Fail to arrive at the pick-up location specified in the reservation.
- Fail to carry out specific instructions included with the reservation, such as arriving at a specific entrance, honking on arrival, meeting a passenger in the lobby, etc.
- Fail to arrive at the pick-up location within the allowed 30-minute time window, with the result that the passenger is not waiting when the driver arrives.

Proposer will incur a \$25 deduction from their monthly bill for each missed trip.

### **E. Ride Time**

Passengers should not be required to take long journeys to reach their destinations. Drivers should always take the quickest route possible.

### **F. Complaints Investigation**

The Proposer will be required to investigate a chargeable complaint within 72 hours.

## **2.9 VEHICLE MARKINGS**

Vehicle markings that may be requested by DART are subject to negotiation before the contract is awarded. The provider must meet state and federal regulations regarding vehicle markings. Any required changes to existing vehicle paint schemes or markings shall be the responsibility of DART.

## **2.10 REPORTING REQUIREMENTS**

The Federal Transit Administration (FTA) and National Transit Database (NTD) require DART to file annual reports that include specific operating, performance, and vehicle data. To

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



assist DART's compliance with FTA and NTD reporting requirements, the Proposer shall provide the information required in a timely manner. DART shall notify the Proposer, in writing, of the required information and the due date for such information. The Proposer shall also provide DART with additional information and with ad hoc reports requested by DART during the term of the Contract.

At a minimum, the Proposer shall provide the following reporting/reports:

### **Local, State, and Federal Reporting**

The Proposer shall maintain all operational records consistent with the FTA's policies for record handling. Such records include trip manifest, driver's trip logs, dispatch records, billing records, accident reports, and any other paper or electronic records relating to the operation of the services. These records shall be surrendered, on demand, and at no additional cost, to DART.

### **Record Retention and Inspection**

The Proposer shall maintain all required operational and financial records, including required reports, as well as original data collection forms (including completed driver's trip logs, incident reports, accident reports, timesheets, etc.), for three (3) years after final payment and all other pending matters are closed. DART, the Iowa Department of Transportation, the FTA, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Proposer that are related to the services.

### **Vehicle Roster**

The Proposer shall maintain a list of all vehicles registered with DART for use in the services. This list shall include the following information about each vehicle: the make and model, date of manufacture, seating capacity, vehicle identification number (VIN), fleet number, and current mileage. On an annual basis (or upon request), Proposer shall reconcile this list with DART's roster.

The Proposer shall maintain a separate file for each DART-registered vehicle, which shall include a complete maintenance and repair history, inspection and licensing information, and documentation of the same.

### **Drug and Alcohol Reporting**

By February 1 of each year, Proposer shall report the prior calendar year's results of its drug and alcohol testing program, per FTA requirements.

### **Billing Statement (by the 15<sup>th</sup> of the following month)**

1. Client Name
2. Client pick-up location, date, time, and mileage
3. Client drop-off location, date, time, and mileage
4. Number of Trips
5. Total Cost
6. On-Time Performance
  - a. List pick-up time for client.

## SECTION 2: SCOPE OF WORK



- b. List actual pick-up time for client.

### **Operational Stats** (by the 15<sup>th</sup> of the following month)

1. Number of Vehicles in Operation
2. Days Operated
3. Total Rides
4. Total Actual Vehicle Miles
5. Total Actual Revenue Miles
6. Total Actual Vehicle Hours
7. Total Actual Revenue Hours
8. Total Passenger Revenue (Fares)

\*Within thirty (30) days after the end of the state fiscal year (June 30), Proposer shall provide a separate year-end summary of the data requested under Section F.

### **Operating Expenses** (by the 15<sup>th</sup> of the following month)

1. Operators' Salaries and Wages
2. Other Salaries and Wages
3. Fringe Benefits
4. Services
5. Materials and Supplies (Itemize "Fuels and Lubricants", "Tires and tubes", "Other")
6. Utilities
7. Casualty and Liability Costs
8. Taxes
9. Miscellaneous

### **Vehicle Stats** (by the 15<sup>th</sup> of the following month)

1. Make, Model, and Year of each vehicle that provided service
2. Seating Capacity
3. Total Miles per Vehicle
4. Total Gallons of Fuel
5. Vehicle Depreciation / Lease Costs

### **Incident Stats** (by the 15<sup>th</sup> of the following month)

1. Incidents involving vehicles owned and/or operated by Proposer
2. Incidents involving vehicles owned by DART (if applicable)
3. Incidents involving passengers transported
4. Cancellations or significant delays in services provided
5. Emergency use of subcontractors to avoid delay or interruption in services that the Proposer is required to perform
6. Customer complaints and resolution of the complaints

## **2.11 Project Status Meetings and Advisory Committee Meetings**

Project status meetings shall be scheduled as needed. The Proposer's staff is expected to attend meetings called by DART that are relevant to the operation

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



of this service. DART anticipates that weekly meetings will be needed in the start-up phase of the contract and that monthly meetings will be held after start-up to discuss current or potential service problems and proposed solutions. The Proposer shall also attend meetings of DART's Transit Riders Advisory Committee as requested. These meetings will also serve to maintain open and frequent communications with riders. Unless otherwise notified, the Project Manager or other employee with decision-making authority shall attend all meetings.

### **2.12 DATA PRIVACY AND SECURITY**

The Proposer will be responsible for compliance with all provisions of Part 20 – DATA PRIVACY AND SECURITY of Section 6 – CONTRACT PROVISIONS.

### **2.13 COMPLIANCE REQUIREMENTS**

Where applicable to the services provided, the Proposer shall comply with all applicable state and federal laws including, but not limited to FTA charter rules, Equal Employment Opportunity Laws, Non-discrimination Laws, Traffic Laws, Motor Vehicle Equipment Laws, Confidentiality Laws, Freedom of Information Laws, and Chapters 325A and 135C of the Iowa Code.

Proposers must supply a list of subcontractors with federal identification numbers or Social Security numbers.

If DART finds that the Proposer has failed to comply with the requirements of this RFP and associated Contract, DART's Contract Administrator must notify the Proposer in writing. The Proposer shall immediately take corrective action. If the Proposer fails or refuses to comply in the time specified, DART will initiate steps regarding Dispute Resolution and/or Termination as cited in Section 6, Contract Provisions.

### **2.14 CONFIDENTIALITY OF CLIENT INFORMATION**

All information regarding any individual served by DART is strictly confidential. Information shall not be released to any party in any form without the authorization of the individual and/or DART.

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



### **3.1. GENERAL GUIDANCE**

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

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

### **3.2. EVALUATION CRITERIA**

The evaluation criteria for this procurement are:

- A. Qualifications, experience, and past performance on similar projects. (20 points)
- B. References. (10 Points)
- C. Ability to provide the required services and required service schedule including responses to Attachment 12 Requirements Compliance Matrix. (20 points)
- D. Drug and Alcohol Workplace Program and Compliance with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655. (20 Points)
- E. Software Integration. (10 points)
- F. The evaluation of the price and price structure. (30 points)

All Respondents will be notified after the Selection Committee has selected the most qualified proposer.

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

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



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

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

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

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

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

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

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

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

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

## SECTION 4: INSTRUCTIONS TO PROPOSERS



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

### 4.5. DART PROTEST PROCEDURES

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

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

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

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



## SECTION 4: INSTRUCTIONS TO PROPOSERS



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.

### 4.6. PRICES, TERMS AND PAYMENT

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

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



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

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

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

### **4.8. TAX EXEMPTION**

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

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

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

A proposal may be withdrawn in person by the proposer or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

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

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

The Proposer affirms and declares:

- The proposer has the capacity to do business within the State of Iowa.
- The proposer has the capability to assure completion of the required services within the time specified under this contract.
- The proposer presently has the necessary facilities, financial resources and licenses to complete the contract in a satisfactory manner and within the required time.

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



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

### **4.11. WITHHOLDING AWARD**

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

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

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

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

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

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

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

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



Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the proposer to DART for each listed subcontractor prior to contract award.

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

### **4.14. DBE PARTICIPATION**

The Contractor, Sub-recipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this (contract or agreement). The requirements of 49 CFR Part 26 and the recipient's U.S. DOT-approved Disadvantaged Business Enterprise (DBE) program are incorporated in this (contract or agreement) by reference. In connection with the performance of this contract, the contractor will cooperate with DART in meeting its DBE goal and shall have the maximum practical opportunity to compete for subcontract work under this contract. The current DART annual DBE goal is 0.53 percent. It is the policy of DART that DBE's shall have the maximum practicable opportunity to participate in DART contracts. In order to insure that a fair proportion of the purchases and contracts are placed with DBE's, the bidder agrees to take affirmative action to the greatest extent practicable including good faith effort to identify qualified DBE firms for supplies and services to this bid, if applicable. Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of the contract, agreement or Purchase Order, which may result in the termination of this (contract or agreement) or such other remedy as DART deems appropriate.

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

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

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

### **4.16. COLLUSION**

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

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



### **4.17. LEGAL REQUIREMENTS**

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

### **4.18. EXCEPTIONS**

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

## SECTION 5: ATTACHMENTS



### ATTACHMENTS

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement On 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

ATTACHMENT 8 - Acceptance of Contract Provisions

ATTACHMENT 9 – Requested Contract Provisions Exceptions (only if requesting)

ATTACHMENT 10 - Certification of Restrictions on Lobbying

ATTACHMENT 11 - Disclosure of Lobbying Activities (only if applicable)

ATTACHMENT 12 – Requirements Compliance Matrix (excel file)

ATTACHMENT 13 – FTA's Assess Your Compliance – Drug and Alcohol  
Program Manager

ATTACHMENT 14 – Certification of 49 U.S.C. Section 5331 and FTA's  
regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in  
Transit Operations, 49 CFR Part 655

**SECTION 5:  
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 5:  
ATTACHMENTS**



**ATTACHMENT 2  
PROPOSAL FORM**

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

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

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

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

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

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

Annual Gross Receipts of the Firm:

\_\_\_\_\_

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

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

\_\_\_\_\_

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

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

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

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

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



**SECTION 5:  
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 5:  
ATTACHMENTS**



**ATTACHMENT 4  
NON-COLLUSION AFFIDAVIT**

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

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

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

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

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 5:  
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

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 6  
CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

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

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

Address \_\_\_\_\_

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

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

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

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

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

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

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

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

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**ATTACHMENT 7  
PRICE PROPOSAL FORM**

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

<b>SERVICE</b>	<b>Per Mile Price Year 1</b>	<b>Per Mile Price Year 2</b>	<b>Per Mile Price Year 3</b>	<b>Optional Year 4 Per Mile Price</b>	<b>Optional Year 5 Per Mile Price</b>	<b>Optional Year 6 Per Mile Price</b>
Ambulatory Transportation	\$	\$	\$	\$	\$	\$
Wheelchair Transportation	\$	\$	\$	\$	\$	\$
Designated Route	\$	\$	\$	\$	\$	\$
No Show* – Metro	\$	\$	\$	\$	\$	\$
No Show* – Outside Metro	\$	\$	\$	\$	\$	\$
Minimum Trip**	\$	\$	\$	\$	\$	\$

\*Only applies to trips in which the Taxi was on time; no charge for no-shows when the Taxi is late (outside of the on-time window of 30 minutes).

\*\*Designate locations where minimum trip amount will apply.

Caravan Service Area/Lanes:

<b>LANE</b>	<b>Per Trip Price Years 1 thru 3</b>	<b>Optional Year 4 Per Trip Price</b>	<b>Option Year 5 Per Trip Price</b>	<b>Option Year 6 Per Trip Price</b>
Des Moines Area to Grinnell	\$	\$	\$	\$
Des Moines Area to Pella	\$	\$	\$	\$
Ottumwa to Pella	\$	\$	\$	\$
Albia to Knoxville	\$	\$	\$	\$

**SECTION 5:  
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Des Moines Area to Ames	\$	\$	\$	\$
Des Moines Area to Adair / Panora	\$	\$	\$	\$
Des Moines Area to Oskaloosa	\$	\$	\$	\$
Des Moines Area to Missouri State Line	\$	\$	\$	\$
Des Moines Area to Marshalltown	\$	\$	\$	\$
Des Moines Area to Tama	\$	\$	\$	\$
Other	\$	\$	\$	\$
Other	\$	\$	\$	\$

Other Rates or Fees not included above:

DESCRIPTION	BASIS	RATE
		\$
		\$
		\$
		\$
		\$
		\$
		\$

**SECTION 5:  
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**ATTACHMENT 8**

**ACCEPTANCE OF CONTRACT PROVISIONS  
FROM SECTION 6 INCLUDING EXHIBITS A AND B**

The undersigned, an authorized official of the Proposer stated below, certifies (check box):

acceptance of all contract provisions from Section 6 including Exhibit A and Exhibit B.

or

request exceptions to contract provisions and have completed Attachment 9 Requested Contract Provisions Exceptions.

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

**SECTION 5:  
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**ATTACHMENT 9**

**REQUESTED CONTRACT PROVISIONS EXCEPTIONS**

*Only complete if requesting exceptions to contract provisions from Section 6 including Exhibit A and Exhibit B (add rows as needed)*

Contract Provision Section 6 Number or Exhibit Section	Reason for Exception	Proposed Specific Contract Language to Replace Provision



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**ATTACHMENT 10**

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

The undersigned (contractor) certifies, to the best of his/her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction as amended by government-wide guidance for new restrictions on lobbying 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, et. seq., apply to this certification and disclosure, if any.

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

Company: \_\_\_\_\_

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

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

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

**SECTION 5:  
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**ATTACHMENT 11**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  Congressional District, <i>if known</i> : 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known</i> :	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

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**ATTACHMENT 12**

Requirements Compliance Matrix (see excel file) complete and submit with  
Proposal

**ATTACHMENT 13**

**FTA's Assess Your Compliance – Drug and Alcohol Program Manager**

**General**

- Do you have access to current versions of 49 CFR Part 655 and 49 CFR Part 40?
- Do you provide your FTA anti-drug and alcohol misuse policy to all covered employees?
  - Does your policy include all elements in §655.15?
- Do you ensure only employees that perform or may be called upon to perform safety-sensitive functions as defined in §655.4 are subject to FTA testing?
- Do you ensure all safety-sensitive employees receive at least 60 minutes on the effects and consequences of prohibited drug use?
- Do you ensure all employees authorized to initiate FTA reasonable suspicion testing receive at least 60 minutes of training on the indicators of probable drug use, and at least 60 minutes of training on the indicators of probable alcohol misuse?
- Do you ensure DOT testing is completely separate from non-DOT testing (if applicable)?
- Do you ensure the DOT CCF and ATF are *only* used for DOT testing, and are *always* used for DOT testing?
- Do you review CCFs and ATFs for errors, and correct, if appropriate?
- Do you inform the employee of the testing authority (i.e., FTA authority, company authority) before performing the test?
- Do you provide all information required by §40.14 to the collection site for each DOT test?
- Do you have a procedure in place to ensure DOT tests can be conducted at all times when safety-sensitive functions may be performed?
- Do you ensure all vendors and contractors (if applicable) are in compliance with Parts 655 and 40?

**Previous Employer Testing History (§40.25) / Pre-Employment Testing  
(§655.41, §655.42)**

- Do you inquire about an applicant's previous employer testing history in accordance with DOT requirements?
- Do you ask applicants if they have failed or refused a DOT pre-employment test in the previous two years?
- Do all applicants for a safety-sensitive position take a pre-employment drug test with a verified negative result before first performing a safety-sensitive function?
- Does pre-employment alcohol testing meet FTA requirements (if applicable)?

## SECTION 5: ATTACHMENTS



- Does any employee who has not performed a safety-sensitive function and has been out of the random pool for at least 90 days take a pre-employment drug test with a verified negative result before resuming safety-sensitive functions?

### Reasonable Suspicion Testing (§655.43)

- Is the decision to conduct reasonable suspicion testing based on specific, contemporaneous, articulable observations made by a trained supervisor/company official?
- Are employees only subject to reasonable suspicion alcohol testing just before, during, or just after the performance of a safety-sensitive function?
- If the reasonable suspicion alcohol test is not conducted within 2 hours, is there a record of the reason for the delay?

### Post-Accident Testing (§655.44)

- Do you and all applicable supervisors understand the post-accident testing thresholds?
- Do you and all applicable supervisors understand the time limits for drug and alcohol post-accident testing?
- Do you and all applicable supervisors understand the documentation requirements for post-accident testing?

### Random Testing (§655.45)

- Do random selections occur at least quarterly?
- Are random selections made by scientifically valid method?
- Do all employees covered have equal chance of being selected?
- Is the random selection list transmitted and maintained in a secure manner?
- Is random testing reasonably spread throughout the calendar year, and across all days of the week and hours of the day that safety-sensitive functions are performed?
- Do you ensure employees notified of selection for random testing proceed immediately to the testing site?
- Are employees only subject to random alcohol testing just before, during, or just after the performance of a safety-sensitive function?
- Do you only excuse employees from random testing for legitimate reasons (i.e., employee is unavailable throughout the remainder of the *entire* selection period) and maintain a record of any excusals?
- Do you meet the minimum annual testing rates (50% drug, 10% alcohol)?

### Non-Negative Test Results (§655.35, §655.46)

- Do you know what action to take upon notification of:

## SECTION 5: ATTACHMENTS



- An employee's alcohol test  $\geq 0.02$ , but  $< 0.04$ ?
  - An employee's alcohol test  $\geq 0.04$ ?
  - An employee's verified positive drug test?
  - An employee's refusal to submit to testing?
- Is a SAP referral provided to any covered employee (including an applicant) who fails or refuses a DOT test?

### Return-to-Duty and Follow-Up Testing (§655.47)

- Do you receive a written evaluation and follow-up testing plan from the SAP?
- Is follow-up testing administered according to the SAP's plan?
- Are return-to-duty and follow-up tests conducted under direct observation?
- Do you know what to do if a return-to-duty or follow-up test is not directly observed?

### Maintenance of Records (§655.71)

- Are drug and alcohol testing records maintained in a secure location with controlled access?
- Are the following records maintained for at least 5 years?
  - Verified positive drug test results
  - Alcohol tests results greater or equal to 0.04
  - Documentation of refusals to test
  - SAP Referrals
  - Copies of annual MIS reports submitted to FTA
  - Return-to-duty and follow-up test results
- Are the following records maintained for at least 3 years?
  - Previous DOT employer records request documentation
- Are the following records maintained for at least 2 years?
  - Random selection lists
  - Reasonable suspicion testing documentation
  - Post-accident testing documentation
  - Employee training documentation
- Are the following records maintained for at least 1 year?
  - Negative test results

### MIS Report (§655.72)

- Do you submit by March 15?
- Does your report contain only FTA drug and alcohol testing information?
- Do you ensure the accuracy and timeliness of reports submitted by contractors/subrecipients (if applicable)?

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**ATTACHMENT 14**

**ALCOHOL AND CONTROLLED SUBSTANCES TESTING ANNUAL  
FEDERAL CERTIFICATIONS AND ASSURANCES**

The Contractor certifies that it and its subcontractors are compliant with 49 U.S.C. Section 5331 and FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.

**AFFIRMATION OF CONTRACTOR**

Name of the Contractor: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Contractor, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the 49 U.S.C. Section 5331 and Federal Transit Administration (FTA) regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655 in the federal fiscal year, irrespective of whether the individual that acted on his or her Contractor’s behalf continues to represent it.

The Contractor affirms the truthfulness and accuracy of the Certifications and Assurances in this document and in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Contractor are true and accurate.

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

Name \_\_\_\_\_ Authorized Representative of  
Contractor

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

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

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

**SECTION 6:  
CONTRACT PROVISIONS**



**CONTRACT [DRAFT]**

**FOR (blank) SERVICES**

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

**RECITALS**

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

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



## SECTION 6: CONTRACT PROVISIONS



### AGREEMENT

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

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

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

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

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

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

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

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

**8. CONTRACT TERM.** Unless terminated earlier in accordance with the provisions of this Contract or extended by mutual agreement of the parties, the term of this Contract shall commence on the Effective Date and shall remain in effect for a period of three (3) years with two (2) individual one (1) year optional periods thereafter (the "Term").

**9. PAYMENT.**

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

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

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

## SECTION 6: CONTRACT PROVISIONS



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

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

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

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

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

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

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

## **SECTION 6: CONTRACT PROVISIONS**



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

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

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

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

Contractor's performance shall be considered acceptable when:

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

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

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

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

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

## SECTION 6: CONTRACT PROVISIONS



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

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

### 11. **SUBCONTRACTING.**

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

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

### 12. **DELAYS.**

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

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

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

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

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

## SECTION 6: CONTRACT PROVISIONS



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

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



## SECTION 6: CONTRACT PROVISIONS



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

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

**20. TERMINATION.**

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

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

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

**21. 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

## SECTION 6: CONTRACT PROVISIONS



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.

**22. 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 the Services pursuant to this Contract is:

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

For Contractor:         [NAME]  
                                      [TITLE]  
                                      [ADDRESS]  
                                      [CITY, ST ZIP]

## SECTION 6: CONTRACT PROVISIONS



Phone:  
Email:  
*[to be updated upon contract execution]*

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

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

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.

**23. 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.

### **24. 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,

## SECTION 6: CONTRACT PROVISIONS



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.

**25. CONTRACTOR'S LIABILITY INSURANCE.** Contractor acknowledges and agrees that DART will not provide any insurance for Contractor, and that Contractor shall be solely responsible for procuring and maintaining any and all insurance required under this Contract or as otherwise necessary to protect Contractor in its operations. At a minimum, Contractor shall maintain insurance of the types set forth below, including such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which

## SECTION 6: CONTRACT PROVISIONS



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.

**26. 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.

**27. 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.

**28. 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

## SECTION 6: CONTRACT PROVISIONS



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.

**29. 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.

**30. 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.

**31. 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.

**32. 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: \_\_\_\_\_

## 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



## EXHIBIT A: FEDERAL CONTRACT CLAUSES



requirements in accordance with 2 C.F.R. § 200.334. Contractor shall 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

## EXHIBIT A: FEDERAL CONTRACT CLAUSES



employees are treated during employment, without regard to their race, 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

## **EXHIBIT A: FEDERAL CONTRACT CLAUSES**



subcontractors of every tier to comply with and include the foregoing clause in all 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.

## **EXHIBIT A: FEDERAL CONTRACT CLAUSES**



### **8. LOBBYING RESTRICTIONS**

Contractor shall provide the following certification required by 49 C.F.R. part 20:

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Further, Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air

## **EXHIBIT A: FEDERAL CONTRACT CLAUSES**



Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

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

### **10. ENERGY CONSERVATION**

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

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

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D (also see Change 1), dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any DART requests which would cause DART to be in violation of the FTA terms and conditions.

### **12. 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.

### **13. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Contractor represents and warrants that it will not provide, use, or incorporate any covered telecommunications equipment or services (defined below) as a part of its offered products or services to DART in the performance of any contract, subcontract, or other contractual instrument. In the event Contractor discovers that any covered telecommunications equipment or services are, have been, or are anticipated to be provided, used, or incorporated in any of Contractor's products or services offered or provided to DART, then Contractor shall immediately, and in any case, within ten (10) business days from the date of such discovery, notify DART, in writing, of such circumstances. Any provision, use, or incorporation of covered telecommunications equipment or services in Contractor's performance shall constitute an event of breach or default by Contractor and shall be grounds for immediate termination by DART for said breach or default. In addition to any other rights and remedies available to DART for Contractor's breach or default, DART, in its sole discretion, may require Contractor to immediately remove and/or replace any such covered telecommunications equipment or services at Contractor's sole cost and expense.

As used in this provision, the following definitions shall apply:

**EXHIBIT A:  
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- 1) The term “covered telecommunications equipment or services” means any of the following:
  - A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - B. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - C. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - D. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
  
- 2) The term “foreign country” means the People's Republic of China. Contractor shall include the foregoing provision in all sub-tier agreements with subcontractors and/or suppliers.

**14. VETERANS PREFERENCE**

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- 1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- 2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



### DATA PRIVACY AND SECURITY

Entering into an agreement to become a 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. 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](mailto: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 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.



# Drug and Alcohol Policy



<b>Scope:</b>	<b>All Employees</b>
<b>Responsible Department:</b>	<b>Human Resources</b>
<b>Effective Date:</b>	<b>January 9, 2018</b>
<b>Approved By:</b>	<b>DART Commission</b>

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## Purpose

This policy is designed to provide safe, dependable, and economical transportation services to our transit system passengers, as well as providing a healthy and satisfying work environment to our employees. It is also designed to assure worker fitness for duty and to protect our employees from risks posed by the misuse of alcohol and use of prohibited drugs.

This policy complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the Drug and Alcohol Program Manager's office and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655.

Portions of this policy are not FTA-mandated, but reflect Des Moines Area Regional Transit Authority's policy. These additional provisions are identified by **bold text**.

In addition, DOT has published 49 CFR Part 29, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

All Des Moines Area Regional Transit Authority employees are also subject to the provisions of the Drug-Free Workplace Act of 1998.

The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. An employee who is convicted under any criminal drug statute for a violation occurring in the workplace shall notify a DART Designated Employer Representative (DER) or the Drug and Alcohol Program Manager (DAPM) no later than five days after such conviction. DART's Designated Employer Representative (DER) and Drug and Alcohol Program Manager (DAPM) are listed in Appendix B

## Policy

### Covered Employees

This policy applies to every person, including an applicant or internally transferee, who performs or will perform a "safety-sensitive function" as defined in Part 655, section 655.4.

You are a covered employee if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver's license
- Controlling movement or dispatch of a revenue service vehicle



**Drug and Alcohol Policy**  
**Effective Date: January 9, 2018**



- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

See Appendix A for a list of covered positions by job title.

Prohibited Behavior

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in Part 40. Prohibited drugs include:

- Marijuana
- phencyclidine (PCP)
- amphetamines
- cocaine
- opioids
- semi-synthetic opioids

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test prior to performance.

All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

Consequences for Violations

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours unless a retest results in the employee's alcohol concentration being less than 0.02.

**Zero Tolerance**

**Per Des Moines Area Regional Transit Authority policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be referred to a Substance Abuse Professional (SAP) and terminated from employment**

**CIRCUMSTANCES FOR TESTING**

Pre-Employment Testing

- A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.



- If a covered employee has not performed a safety-sensitive function for 90 consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.
- A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

#### Reasonable Suspicion Testing

- All covered employees shall be subject to a drug and/or alcohol test when Des Moines Area Regional Transit Authority has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.
- Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

#### FTA Post-Accident Testing

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

- Fatal Accidents - As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by Des Moines Area Regional Transit Authority using the best information available at the time of the decision, will be tested.
- Non-fatal Accidents - As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident, UNLESS it is determined, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident if at least one of the following conditions is met:
  - (1) The accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee may have contributed to the accident
  - (2) One or more vehicles incurs disabling damage and must be towed away from the scene, and the covered employee may have contributed to the accident

In addition, any other covered employee whose performance could have contributed to the accident, as determined by Des Moines Area Regional Transit Authority using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee



from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Employees who are not in covered positions but who have an accident while driving a DART owned vehicle will be subject to the testing guidelines outlined in the Post Accident Testing section of this policy.

#### Other Post-Accident Testing

As outlined in DART's Drug and Alcohol Free Workplace Policy, should an employee be involved in an accident that does not meet the thresholds for a FTA Post-Accident test but meets thresholds set forth in that policy, DART may elect to have the employee tested if it is deemed to be in the best interest of the employee and/or DART. Such a test may not be referred to as a "FTA Post-Accident test" and FTA Post-Accident testing forms may not be used.

#### Random Testing

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at <http://www.dot.gov/odapc/random-testing-rates>.

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee will only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

#### Random Testing – End of Shift

**Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided no later than the beginning of the shift.**

#### TESTING PROCEDURES

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.





Dilute Urine Specimen

**Dilute negative results with a creatinine concentration of greater than 5 mg/dL require an immediate recollection and test.** Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

The results of the second test will be treated as the test of record. If the results of the second test are also negative and dilute, the test results will be documented as negative.

If the employee declines to take a test directed under this policy, the employee has refused the test for purposes of this part and DOT agency regulations.

Split Specimen Test

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. Des Moines Area Regional Transit Authority guarantees that the split specimen test will be conducted in a timely fashion.

Test Refusals

As a covered employee, you have refused to test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Des Moines Area Regional Transit Authority.
- (2) Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
- (3) Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
- (4) In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
- (5) Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
- (6) Fail or decline to take a second test as directed by the collector or Des Moines Area Regional Transit Authority for drug testing.
- (7) Fail to undergo a medical evaluation as required by the MRO or Des Moines Area Regional Transit Authority's Designated Employer Representative (DER).
- (8) Fail to cooperate with any part of the testing process.
- (9) Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
- (10) Possess or wear a prosthetic or other device used to tamper with the collection process.
- (11) Admit to the adulteration or substitution of a specimen to the collector or MRO.
- (12) Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
- (13) Fail to remain readily available following an accident.



As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately terminated from employment, and referred to a SAP.

### **VOLUNTARY SELF-REFERRAL**

**Any employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to a DART Designated Employer Representative (DER) or the DART Drug and Alcohol Program Manager (DAPM), who will refer the individual to a substance abuse counselor for evaluation and treatment.**

**The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance. Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.**

### **PRESCRIPTION DRUG USE**

**The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the employee's supervisor before safety sensitive duties are performed. Medical advice should be sought, as appropriate, while taking such medication and before performing safety-sensitive duties.**

### **CONTACT PERSON**

For questions about Des Moines Area Regional Transit Authority's anti-drug and alcohol misuse program, contact the Drug and Alcohol Program Manager (DAPM) listed in Appendix B of this policy.



## **Appendix A: Safety Sensitive Positions**

This list is not intended to be an all-inclusive list of safety-sensitive positions, and is subject to change without requiring the revision and reapproval of this entire policy. Employees performing safety-sensitive functions as defined in 49 CFR Part 655 are considered to be in safety-sensitive positions, regardless of whether their job title is listed below.

- Assistant Transportation Manager & Lead Dispatcher
- Body Shop Technician
- Buildings and Grounds Person
- Building Supervisor
- Fixed Route Bus Operator (Full-Time)
- Fixed Route Bus Operator (Part-Time)
- Journey Level Technician
- Interior Cleaner
- Maintenance Supervisor
- Maintenance Technician
- Master Technician
- Operations Dispatcher
- Operations Instructor
- Operations Supervisor
- Paratransit Bus Operator (Full-Time)
- Paratransit Bus Operator (Part-Time)
- Service Person
- Service Person Technician (Probation)
- Technician I
- Technician II
- Technician III
- Technician IV
- Tire Person
- Training Manager
- DMPD Police Officer
- Utility Person



**Appendix B: Drug and Alcohol Program Duties**

Des Moines Area Regional Transit Authority's anti-drug and alcohol misuse program is administered by the Drug and Alcohol Program Manager (DAPM) with the assistance of Designated Employer Representatives (DERs). The persons performing these duties are appointed by the Chief Executive Officer. The Chief Executive Officer may change the persons appointed to these duties change without requiring the revision and reapproval of this entire policy.

The following persons administer DART's anti-drug and alcohol misuse program:

Drug and Alcohol Program Manager (DAPM)

Todd Sadler  
Chief HR Officer  
(515)283-5000

Designated Employer Representatives (DERs)

Jamie Wilson  
Human Resources  
Manager (515) 471-8314

Millie Bretl  
Human Resources Specialist  
(515) 283-5004

Patrick Daly  
Safety Manager  
(515) 283-8125



## **Appendix C: Signs and Symptoms of Drug and Alcohol Misuse**

Drugs and alcohol can result in such work-related problems as absenteeism and tardiness, lower productivity, missed deadlines, poor work quality, unsafe driving, and increased injuries and accidents. Problems relating to or communicating with supervisors, co-workers or customers, following directions, concentrating or remembering things may also indicate a drug or alcohol problem.

Drugs and alcohol slow reaction times, cause confusion, harm coordination and motor skills and can impair decision-making and memory. People misusing alcohol and using illegal drugs may be withdrawn, lethargic, depressed, erratic, "hyper" or unusually anxious, hostile or paranoid.

Drugs and alcohol misuse can also result in health problems like chronic gastritis, headaches, chronic respiratory infections and liver problems. They may also show up as poor hygiene, a sloppy appearance, financial problems, DUIs or family problems.

Evidence of use can include paraphernalia such as pipes, syringes, foil packets, pills, powders and empty alcohol containers. Physical symptoms of use can include:

1. Marijuana and alcohol odors
2. Puffy or droopy eyelids, bloodshot eyes, dilated or pinpoint pupils
3. Nosebleeds, excessive sniffing, chronic sinus problems, nasal sores
4. Needle tracks or blood spots on clothing
5. Tremors, racing or irregular heartbeats
6. Slurred or incoherent speech
7. Confusion, anxiety, paranoia
8. Coordination problems
9. Lethargy and sleepiness

### **EFFECTS OF DRUGS AND ALCOHOL**

Drugs and alcohol can harm health and the workplace in a variety of ways.

#### Alcohol

Alcohol is a central nervous system depressant that acts like a poison if used in large quantities. Each year the lives of tens of thousands of Americans are shortened or ended by alcohol misuse.

Alcohol quickly reaches the brain after drinking. It impairs self-control and other learned behaviors. This loss of self-control can lead to aggressive driving (or overly cautious driving), as well as the other kinds of aggressive behaviors associated with drinking. Even small doses of alcohol, i.e. a single drink, can harm driving performance. In large doses, alcohol significantly impairs coordination, memory and judgment.

Over time, alcohol misuse damages the liver, the heart, the digestive system and can cause permanent brain damage. On average, alcoholics shorten their life span by about 10 years. Alcohol misuse harms the ability to think clearly, harms judgment and can affect the ability to get



along with and work constructively with co-workers and customers. Alcoholics often have attendance and work performance problems and get fired because of the consequences of alcohol misuse. Because of its adverse effects on coordination, reflex time, vision, driving ability, judgment and the ability to evaluate and quickly process information, alcohol is especially dangerous for drivers of commercial motor vehicles.

A small glass of wine, a can of beer and a one and one-half ounce shot of liquor all contain about the same amount of alcohol. It takes the body about one hour to metabolize and eliminate each "drink" of alcohol. Coffee, exercise and cold showers do not speed up this process or magically produce sobriety. While individuals differ greatly, each drink on an empty stomach by an average-sized adult male may lead to an alcohol concentration of about .02. Thus, drinking more than two drinks raises a serious risk of having an alcohol concentration in excess of DOT rules, especially for people with low body weights. Any drinking while on duty or during the 4 hours before working violates DOT rules.

### Cocaine

Cocaine is a powerful stimulant that can be inhaled up the nose, injected or smoked. It greatly increases heart rate and blood pressure. Partly because of its effects on the circulatory system, cocaine use can lead to seizures. Every time cocaine is used, there is some unquantifiable risk of a fatal stroke or heart attack. Cocaine can also cause tremors, convulsions, vomiting and raises body temperature to dangerous levels. Repeated snorting damages nasal tissues, sometimes permanently. Needle use carries risks of infection and overdose.

Initially, cocaine use brings a rush of euphoria and exaggerated overconfidence. Sometimes these effects are so strong that safe driving is impossible. Cocaine wears off in about an hour after it is snorted and in just a few minutes after it is smoked. When it wears off, the user may become depressed, anxious, paranoid and exhausted.

Cocaine users may exhibit rapid mood swings and changes in activity level. They may grind their teeth, repeatedly wash their hands or engage in other compulsive behaviors.

### Amphetamines

Amphetamines, also known as "speed," are powerful stimulants that are often abused by truck drivers because they make it easy to stay awake. Amphetamines, however, are dangerous drugs with a high potential for abuse. Amphetamines may also be known as uppers, black beauties, white crosses or dexies.

Use brings feelings of alertness and a loss in appetite. The user may also become very talkative or physically active or feel very strong after ingesting amphetamines. In a few hours however, the amphetamines wear off and restlessness, anxiety, paranoia and headaches set in.

In large doses, amphetamines can produce serious toxic effects. The user's blood pressure can rise to the point where strokes or heart attacks occur. Long-term users often have acne, tooth problems and may exhibit symptoms of permanent brain damage.

### Marijuana

Marijuana is a hallucinogen that alters the user's sense of time and reduces the user's ability to perform tasks requiring coordination, swift reactions and concentration. Taken in large quantities, marijuana can act like a depressant.



While some people may regard marijuana as harmless, there is evidence its use is unhealthy and dangerous for the driver. Marijuana causes significant increases in blood pressure and pulse rate and, thus, can aggravate or cause heart disease. Marijuana smoke also contains a number of known carcinogens. Many experts believe that marijuana is actually unhealthier to smoke than tobacco.

Studies have shown that smoking marijuana affects the ability to perform tasks like driving, which require both thinking and motor skills, for at least 24 hours. Users, however, often believe that all the impairing effects of smoking have worn off after 4 to 6 hours. Marijuana significantly impairs short-term memory and can harm the user's ability to concentrate or plan for and achieve long-term goals. There is also significant evidence that marijuana harms the reproductive systems of men and women and is dangerous for children and non-smokers who live with the user.

### Opiates

Opiates are a class of narcotics and sedatives derived from the opium poppy plant. Heroin is the strongest opiate. Heroin use has been increasing in recent years because of the availability of cheap, strong heroin from Asia. This new stronger heroin can be smoked or snorted. Heroin can also be injected using needles.

Morphine and codeine are opiates that are often used to relieve pain or induce sleep. However, they can be stolen from hospitals or pharmacies and abused.

Opiate misuse causes a number of health problems. Because of variations in dosages and strength, heroin use carries a risk of overdose and death. Addicts who use needles also risk contracting AIDS or hepatitis. Heroin is often contaminated with other drugs or toxins or combined with other narcotics.

Opiate use slows down and depresses a number of body functions, including brain functioning. Heroin users may act sleepy or euphoric for a while and then become anxious or irritated after the heroin wears off. Heroin users tend to have a number of related health problems and tend to also abuse alcohol and tobacco. Together, these drugs and the unhealthy lifestyles of heroin users result in decreased life expectancy.

### PCP

Phencyclidine, or PCP, is also called angel dust or dust. PCP is an extremely dangerous hallucinogen that has unusual and unpredictable side effects. It was developed as an anesthetic in the late 1950's and used for a while as a tranquilizer both for humans and animals. Because of its dangers, it now has no legal uses and is no longer legally manufactured. Rather, PCP is manufactured in underground laboratories. It often contains dangerous adulterants but is very dangerous all by itself.

PCP can produce violence and bizarre behavior in anyone who uses it. Occasionally, PCP users attack nurses and policemen or jump out of windows because they believe they can fly. PCP somehow scrambles the brain's internal stimuli and seriously changes how users feel, see and deal with their environment.

In low doses, PCP produces a feeling of numbness. Increased doses produce excitement, confusion and delirium. The user's body may become rigid or go into convulsions. Routine activities like driving become dangerous and unpredictable.

Users may walk with strange uncoordinated steps. PCP users may have a blank stare, sweat heavily, have thick slurred speech or engage in some of the violent and bizarre behaviors mentioned above.



**Drug and Alcohol Policy**  
**Effective Date: January 9, 2018**



**REVISION LOG:**

DATE: January 2018; February 2022





**ACKNOWLEDGEMENT OF RECEIPT OF POLICY**

I hereby acknowledge that I have received, read, and understand my Company's Drug-Free Workplace Program Policy required by Department of Transportation (DOT) regulations. I understand that I am subject to and must adhere to the DOT regulations, and must abide by the terms of the Company's Policy as a condition of employment.

I understand that during my employment I may be required to submit to drug and/or alcohol tests based on Department of Transportation regulations as directed by the Company. I agree to comply with the Company's Policy on drugs and/or alcohol and understand failure to comply is grounds for disciplinary action, up to and including termination, in addition to any action required by DOT regulations.

I also understand that refusal to submit to a controlled substances or alcohol test is a violation of DOT regulations, as well as the Company's Policy, and may result in disciplinary action, including but not limited to suspension (with or without pay) or termination of employment, in addition to action required by DOT regulations. I further understand the consequences related to controlled substances use or alcohol misuse as prohibited by Company's Policy.

I understand the laboratory test results will be released in accordance with the Company Policy to the selected Medical Review Officer (MRO). In doing so, I understand that I will be given an opportunity to discuss a positive drug test result with the MRO before the result is reported to the Company as a verified positive test result. Furthermore, I authorize the release of the results of a saliva or breath alcohol test by a certified technician to the Company.

I acknowledge that the provisions of Company's Drug-Free Workplace Program Policy are part of the terms and conditions of my employment, and that I agree to abide by them.

THE UNDERSIGNED STATES THAT HE OR SHE HAS READ THE FOREGOING ACKNOWLEDGEMENT AND UNDERSTANDS THE CONTENTS THEREOF.

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

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

Employee Number: \_\_\_\_\_

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

Company Name: Des Moines Area Regional Transportation Authority

*If applicable:*

I am the parent/guardian of \_\_\_\_\_, and I acknowledge that I understand the Company's Drug-Free Workplace Policy. I hereby consent to his/her participation in the Company's drug and alcohol testing program.

Parent/Guardian Signature: \_\_\_\_\_

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

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This content is from the eCFR and is authoritative but unofficial.

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## **Title 49 –Transportation**

### **Subtitle B –Other Regulations Relating to Transportation**

#### **Chapter VI –Federal Transit Administration, Department of Transportation**

##### **Part 655** Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

###### **Subpart A** General

- § 655.1 Purpose.
- § 655.2 Overview.
- § 655.3 Applicability.
- § 655.4 Definitions.
- § 655.5 Stand-down waivers for drug testing.
- § 655.6 Preemption of state and local laws.
- § 655.7 Starting date for testing programs.

###### **Subpart B** Program Requirements

- § 655.11 Requirement to establish an anti-drug use and alcohol misuse program.
- § 655.12 Required elements of an anti-drug use and alcohol misuse program.
- § 655.13 *[Reserved]*
- § 655.14 Education and training programs.
- § 655.15 Policy statement contents.
- § 655.16 Requirement to disseminate policy.
- § 655.17 Notice requirement.
- §§ 655.18-655.20 *[Reserved]*

###### **Subpart C** Prohibited Drug Use

- § 655.21 Drug testing.
- §§ 655.22-655.30 *[Reserved]*

###### **Subpart D** Prohibited Alcohol Use

- § 655.31 Alcohol testing.
- § 655.32 On duty use.
- § 655.33 Pre-duty use.
- § 655.34 Use following an accident.
- § 655.35 Other alcohol-related conduct.
- §§ 655.36-655.40 *[Reserved]*

###### **Subpart E** Types of Testing

- § 655.41 Pre-employment drug testing.
- § 655.42 Pre-employment alcohol testing.
- § 655.43 Reasonable suspicion testing.

§ 655.44 Post-accident testing.

§ 655.45 Random testing.

§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.

§ 655.47 Follow-up testing after returning to duty.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

§ 655.49 Refusal to submit to a drug or alcohol test.

§ 655.50 [Reserved]

#### **Subpart F** Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

§ 655.52 Substance abuse professional (SAP).

§ 655.53 Supervisor acting as collection site personnel.

§§ 655.54-655.60 [Reserved]

#### **Subpart G** Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

§ 655.62 Referral, evaluation, and treatment.

§§ 655.63-655.70 [Reserved]

#### **Subpart H** Administrative Requirements

§ 655.71 Retention of records.

§ 655.72 Reporting of results in a management information system.

§ 655.73 Access to facilities and records.

§§ 655.74-655.80 [Reserved]

#### **Subpart I** Certifying Compliance

§ 655.81 Grantee oversight responsibility.

§ 655.82 Compliance as a condition of financial assistance.

§ 655.83 Requirement to certify compliance.

## **PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS**

**Authority:** 49 U.S.C. 5331 (as amended); 49 CFR 1.91

**Source:** 66 FR 42002, Aug. 9, 2001, unless otherwise noted.

### **Subpart A—General**

### § 655.1 Purpose.

The purpose of this part is to establish programs to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

### § 655.2 Overview.

- (a) This part includes nine subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.
- (b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

### § 655.3 Applicability.

- (a) Except as specifically excluded in paragraphs (b), and (c) of this section, this part applies to:
  - (1) Each recipient and subrecipient receiving Federal assistance under 49 U.S.C. 5307, 5309, or 5311; and
  - (2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.
- (b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.
- (c) A recipient operating a ferryboat regulated by the United States Coast Guard (USCG) that satisfactorily complies with the testing requirements of 46 CFR Parts 4 and 16, and 33 CFR Part 95 shall be in concurrent compliance with the testing requirements of this part. This exception shall not apply to the provisions of section 655.45, or subparts G, or H of this part.

[66 FR 42002, Aug. 9, 2001, as amended at 71 FR 69198, Nov. 30, 2006; 78 FR 37993, June 25, 2013]

### § 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

**Accident** means an occurrence associated with the operation of a vehicle, if as a result:

- (1) An individual dies; or

- (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
- (4) With respect to an occurrence in which the public transportation vehicle involved is a rail car, trolley car, trolley bus, or vessel, the public transportation vehicle is removed from operation.

**Administrator** means the Administrator of the Federal Transit Administration or the Administrator's designee.

**Anti-drug program** means a program to detect and deter the use of prohibited drugs as required by this part.

**Certification** means a recipient's written statement, authorized by the organization's governing board or other authorizing official that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

**Contractor** means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

**Covered employee** means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

- (1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or
- (2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

**Disabling damage** means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) **Inclusion.** Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.
- (2) **Exclusions.**
  - (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.
  - (ii) Tire disablement without other damage even if no spare tire is available.
  - (iii) Headlamp or tail light damage.
  - (iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

**DOT or The Department** means the United States Department of Transportation.

**DOT agency** means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

**Employer** means a recipient or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

**FTA** means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

**Performing (a safety-sensitive function)** means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

**Positive rate for random drug testing** means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positive, negative, and refusals) under this part.

**Railroad** means:

- (1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:
  - (i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and
  - (ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.
- (2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

**Recipient** means a person that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 directly from the Federal Government.

**Refuse to submit** means any circumstance outlined in 49 CFR 40.191 and 40.261.

**Safety-sensitive function** means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

- (1) Operating a revenue service vehicle, including when not in revenue service;
- (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- (3) Controlling dispatch or movement of a revenue service vehicle;
- (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;
- (5) Carrying a firearm for security purposes.

**Vehicle** means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transportation vehicle is a vehicle used for public transportation or for ancillary services.

**Violation rate for random alcohol testing** means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

[66 FR 42002, Aug. 9, 2001, as amended at 68 FR 75462, Dec. 31, 2003; 78 FR 37993, June 25, 2013]

### **§ 655.5 Stand-down waivers for drug testing.**

- (a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down, per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.
- (b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.
- (c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Ave., SE, Washington, DC 20590.
- (d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

[66 FR 42002, Aug. 9, 2001, as amended at 88 FR 27653, May 2, 2023]

### **§ 655.6 Preemption of state and local laws.**

- (a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:
  - (1) Compliance with both the state or local requirement and any requirement in this part is not possible; or
  - (2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.
- (b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

### **§ 655.7 Starting date for testing programs.**

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

## **Subpart B—Program Requirements**

### **§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.**

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

### **§ 655.12 Required elements of an anti-drug use and alcohol misuse program.**

An anti-drug use and alcohol misuse program shall include the following:

- (a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.
- (b) An education and training program which meets the requirements of § 655.14.
- (c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.
- (d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

### § 655.13 [Reserved]

### § 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

- (a) **Education.** The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.
- (b) **Training** –
  - (1) **Covered employees.** Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
  - (2) **Supervisors.** Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

### § 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

- (a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.
- (b) The categories of employees who are subject to the provisions of this part.
- (c) Specific information concerning the behavior and conduct prohibited by this part.
- (d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.
- (e) The procedures that will be used to test for the presence of prohibited drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.
- (f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.



- (g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.
- (h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.
- (i) The consequences, as set forth in § 655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- (j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

[66 FR 42002, Aug. 9, 2001, as amended at 88 FR 27653, May 2, 2023]

### § 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

### § 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

### §§ 655.18-655.20 [Reserved]

## Subpart C—Prohibited Drug Use

### § 655.21 Drug testing.

- (a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.
- (b) When administering a drug test, an employer shall ensure that the following drugs are tested for:
  - (1) Marijuana;
  - (2) Cocaine;
  - (3) Opioids;
  - (4) Amphetamines; and
  - (5) Phencyclidine.
- (c) Consumption of these products is prohibited at all times.

[66 FR 42002, Aug. 9, 2001, as amended at 84 FR 16775, Apr. 23, 2019]

## §§ 655.22-655.30 [Reserved]

### Subpart D—Prohibited Alcohol Use

#### § 655.31 Alcohol testing.

- (a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.
- (b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function.

#### § 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

#### § 655.33 Pre-duty use.

- (a) **General.** Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.
- (b) **On-call employees.** An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:
  - (1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.
  - (2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

#### § 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

#### § 655.35 Other alcohol-related conduct.

- (a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:
  - (1) The employee's alcohol concentration measures less than 0.02; or
  - (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

- (b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

## §§ 655.36-655.40 [Reserved]

### Subpart E—Types of Testing

#### § 655.41 Pre-employment drug testing.

- (a)
  - (1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.
  - (2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in § 655.62.
- (b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.
- (c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.
- (d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

#### § 655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

- (a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others).
- (c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.

- (e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.02.

### § 655.43 Reasonable suspicion testing.

- (a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.
- (b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.
- (c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.
- (d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

### § 655.44 Post-accident testing.

- (a) Accidents.

#### (1) *Fatal accidents.*

- (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the public transportation vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR § 382.303.
- (ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

#### (2) *Nonfatal accidents.*

- (i) As soon as practicable following an accident not involving the loss of human life in which a public transportation vehicle is involved, the employer shall drug and alcohol test each covered employee operating the public transportation vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the

accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

- (ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.
- (b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.
- (c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.
- (d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.
- (e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- (f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section.

[66 FR 42002, Aug. 9, 2001, as amended at 78 FR 37993, June 25, 2013; 88 FR 27653, May 2, 2023]

### § 655.45 Random testing.

- (a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.
- (b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating

the industry's verified positive results and violation rates. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing.

(1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing.

(1)

(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)

(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

- (f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.
- (g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.
- (h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.
- (i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.
- (j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.
- (k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—
  - (1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or
  - (2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

### **§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.**

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

### **§ 655.47 Follow-up testing after returning to duty.**

An covered employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

[66 FR 42002, Aug. 9, 2001, as amended at 88 FR 27653, May 2, 2023]

### **§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.**

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

### **§ 655.49 Refusal to submit to a drug or alcohol test.**

- (a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.
- (b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

### **§ 655.50 [Reserved]**

## **Subpart F—Drug and Alcohol Testing Procedures**

### **§ 655.51 Compliance with testing procedures requirements.**

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

### **§ 655.52 Substance abuse professional (SAP).**

The SAP must perform the functions in 49 CFR Part 40.

### **§ 655.53 Supervisor acting as collection site personnel.**

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine or oral fluid collector, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

*[66 FR 42002, Aug. 9, 2001, as amended at 88 FR 27653, May 2, 2023]*

### **§§ 655.54-655.60 [Reserved]**

## **Subpart G—Consequences**

### **§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.**

- (a)



- (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.
  - (2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.
  - (3) If a covered employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function.
- (b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

[66 FR 42002, Aug. 9, 2001, as amended at 87 FR 27653, May 2, 2023]

### § 655.62 Referral, evaluation, and treatment.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

### §§ 655.63-655.70 [Reserved]

## Subpart H—Administrative Requirements

### § 655.71 Retention of records.

- (a) **General requirement.** An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.
- (b) **Period of retention.** In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule:
  - (1) **Five years.** Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.
  - (2) **Two years.** Records related to the collection process and employee training.
  - (3) **One year.** Records of negative drug or alcohol test results.
- (c) **Types of records.** The following specific records must be maintained:
  - (1) Records related to the collection process:
    - (i) Collection logbooks, if used.
    - (ii) Documents relating to the random selection process.

- (iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.
  - (iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.
  - (v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or oral fluid or breath sample.
- (2) Records related to test results:
- (i) The employer's copy of the custody and control form.
  - (ii) Documents related to the refusal of any covered employee to submit to a test required by this part.
  - (iii) Documents presented by a covered employee to dispute the result of a test administered under this part.
- (3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.
- (4) Records related to employee training:
- (i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.
  - (ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.
  - (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.
  - (iv) Certification that any training conducted under this part complies with the requirements for such training.
- (5) Copies of annual MIS reports submitted to FTA.

[66 FR 42002, Aug. 9, 2001, as amended at 87 FR 27653, May 2, 2023]

### **§ 655.72 Reporting of results in a management information system.**

- (a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.
- (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.
- (c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

- (d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, § 40.25 and appendix H. You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: <http://transit-safety.volpe.dot.gov/DAMIS>.
- (e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.
- (f) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.
- (g) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[66 FR 42002, Aug. 9, 2001, as amended at 68 FR 75462, Dec. 31, 2003]

### § 655.73 Access to facilities and records.

- (a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.
- (b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.
- (c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

- (d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.
- (e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.
- (f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.
- (g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)
- (h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.
- (i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

## §§ 655.74-655.80 [Reserved]

### Subpart I—Certifying Compliance

#### § 655.81 Grantee oversight responsibility.

A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part.

[78 FR 37993, June 25, 2013]

#### § 655.82 Compliance as a condition of financial assistance.

- (a) A recipient shall not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311, if a recipient fails to establish an anti-drug and alcohol misuse program in compliance with this part.
- (b) If the Administrator determines that a recipient that receives Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 is not in compliance with this part, the Administrator may bar the recipient from receiving Federal financial assistance in an amount the Administrator considers appropriate.
- (c) A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.
- (d) Notwithstanding § 655.3, a recipient operating a ferryboat regulated by the USCG who fails to comply with the USCG chemical and alcohol testing requirements, shall be in noncompliance with this part and may be barred from receiving Federal financial assistance in an amount the Administrator considers appropriate.

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**§ 655.83 Requirement to certify compliance.**

- (a) A recipient of Federal financial assistance under section 5307, 5309, or 5311 shall annually certify compliance with this part to the applicable FTA Regional Office.
- (b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.
- (c) Recipients, including a State, that administers 49 U.S.C. 5307, 5309, or 5311 Federal financial assistance to subrecipients and contractors, shall annually certify compliance with the requirements of this part, on behalf of its applicable subrecipient or contractor to the applicable FTA Regional Office. A recipient administering section 5307, 5309, or 5311 Federal funding may suspend a subrecipient or contractor from receiving Federal transit funds for noncompliance with this part.

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