

Project title: HVAC – System Services  
Project Number: NE-90-X125 SPEC 16-22

# HVAC System Services

## RFP SOLICITATION

Prepared by: Metro

September 22, 2022



Regional Metropolitan Transit Authority of Omaha, d/b/a/ Metro  
2222 Cuming Street  
Omaha, NE 68102

## NOTICE OF REQUEST FOR PROPOSALS (RFP)

### HVAC System Services ("Project")

The Regional Metropolitan Transit Authority of Omaha, d/b/a Metro ("**Metro**") is requesting proposals from qualified responsible contractors for the performance of Work in conformity with the Contract Documents for HVAC System Services for two years under Time and Material Contract. Metro will receive sealed proposals, until **October 17, 2022, 2:00 p.m.** Central Time, ("**Submission Deadline**") for the purposes of HVAC System Services for two years that will meet present and future Metro needs. The provider must specify all required professional services offered for the proposal. Proposals not received by Metro as of the Submission Deadline will not be considered responsive and will not be opened. Proposals not meeting specified delivery and methods of submittal will not be considered responsive and will not be opened. Metro reserves the right to extend the Submission Deadline by issuing an Addendum.

Proposers shall refer to the RFP Documents for detailed deliverables. For this Proposal, there are various elements and services associated with the Scope of Work. Metro's intent is to select Proposers for consideration of awarded contract who demonstrate qualified and affirmed capabilities, resources, staffing, scheduling and delivery capabilities for HVAC System Services and all associated equipment and work to be provided for the Scope of Work.

#### 1.1 ORGANIZATION BACKGROUND

The Regional Metropolitan Transit Authority of Omaha, d/b/a Metro, an independent political subdivision of the State of Nebraska created on May 30, 1972, is solely responsible for the administration, financing, maintenance, planning and operation of public transit services within the City of Omaha and by contract for agencies and contiguous political jurisdictions. Current services include fixed, Bus Rapid Transit, express and ADA-compliant paratransit van services within Omaha's city limits. Contracted bus services are operated for the cities of Ralston, Bellevue, and Papillion-LaVista in Nebraska and the city of Council Bluffs in Iowa.

Collectively, the Omaha and contracted bus services are the "Metro System" encompassing 100 square miles (85%) of the Omaha – Council Bluffs Urbanized Area. Omaha's population is approximately 466,903 with the Urbanized Area population approximately 931,667. Bus service includes 28 routes: 19 fixed and one (1) rapid transit line (operating at various levels of service seven (7) days a week) and weekday rush-hours, seven (7) express/commuter and one (1) downtown weekday, rush-hour circulator. There three (3) transit centers affording multi-directional travel, free parking at 14 park and ride lots and 24 stations serving ORBT.

Capital, operating and non-operating revenues occur from passenger fares, service contracts, rental of property, sale of advertising space, United States Department of Transportation Federal Transit Administration (FTA) and State of Nebraska grants and City of Omaha and Douglas County Property Tax levies. The Revenue Fleet includes 114 heavy-duty buses, ten (10) articulated buses, 23 paratransit vans and four (4) paratransit sedans. Metro administration and maintenance operate at a single, central facility located at 2222 Cuming Street, Omaha, Nebraska.

#### Organizational Statements

Purpose: The Omaha area needs reliable, quality public transportation to grow sustainably and serve the diverse needs of our residents.

Mission: Together, Metro connects our community, through quality transit services, to the people and places that matter most.

Vision: Metro is a valued transportation choice for all members of our community and a vital partner in Omaha's future

Values:

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Unity – we are a team with a common purpose

Responsibility – we take pride in our work and are committed to going above and beyond

Care – we care about our customers and each other

Resourcefulness – we are adaptable and driven to overcome challenges

Learning – we are always training for tomorrow

Appreciation – we are motivated to provide a quality of life for those we love through competitive wages and compensation

## 1.2 PROJECT OVERVIEW

Metro is seeking a qualified contractor to provide an approved solution to HVAC System Services for two years that will meet present and future Metro needs. The provider must specify all required professional services offered for the proposal.

Metro intends to award to a single/ multiple proposals based on need.

The current forms of the RFP and all issued Addenda are available for inspection at Metro’s Administrative Offices located at 2222 Cuming Street in Omaha, Nebraska (“**Administrative Offices**”) and online at the following link [www.ometro.com](http://www.ometro.com). Metro reserves the right to modify all or any of the same at any time prior to the Submission Deadline through an Addendum.

Proposals are subject to all terms, conditions, and provisions of this document, including Affirmative Action and Equal Employment Opportunity regulations. Proposers shall read and understand the requirements of this RFP.

The requirements of 49 Code of Federal Regulations (CFR) Part 26 applies to the Contract. It is the policy of Metro to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of the Contract. Metro encourages participation under this solicitation by all qualifying and responsible firms regardless of business size or ownership, whether as the prime contractor or a subcontractor. There is no established Disadvantaged Business Enterprise participation goal for the Contract, but participation is highly encouraged.

Requests for Approved Equals, Clarification and Questions shall be done in writing or through electronic correspondence prior to the submission deadline, of **October 12, 2022, by 4:00p.m. using Exhibit G.**

All proposals must be made in the form and on the forms (and contain all certificates, documentation, and information) required by the RFP Documents. Any proposal that does not fully comply with any requirement of the RFP Documents will be considered non-responsive, and Metro shall be entitled to reject any such proposal at any time. Metro reserves the right to waive any minor informality or mere irregularity contained in any proposal.

No proposal will be construed to be binding on Metro unless (i) a Contract has been awarded by its Board of Directors at a public meeting, (ii) the Contract has been duly executed by each of the Contractor and Metro, and (iii) all conditions applicable to such award of the Contract and as otherwise may be set forth in the Contract Documents have been fully satisfied.

Proposals must be received with all required submittals as stated in the RFP, no later than **Monday, October 17, 2022, at 2:00 p.m. Central Time.** Each Proposal must make reference to the Project by name in the upper left-hand corner and shall identify the contents of the package as a “Sealed Proposal for HVAC System Services” and identify the name and address of the Proposer.

Proposals received after the time specified shall not be considered for award. Proposals received via facsimile (fax) or electronic mail (e-mail) shall not be considered. Proposals not meeting specified delivery and method of submittal will not

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be opened nor considered responsive.

Proposals must be addressed and delivered to Metro at the following address. This is also the address to be used for all communication in connection with this RFP:

Regional Metropolitan Transit Authority of Omaha d/b/a Metro  
HVAC System Services  
ATTN: Fawad Yusufi, Manager of Procurement and Contracts  
2222 Cuming Street  
Omaha, Nebraska, 68102-4392

For information regarding this proposal, contact Fawad Yusufi at (402) 341-7560 EXT. 2273 phone, or [procurement@ometro.com](mailto:procurement@ometro.com). Any questions or requests for clarification are due from Proposers before **Monday, October 12, 2022, 4:00 p.m. Central Time** and must be submitted in writing to using Exhibit "G" to [procurement@ometro.com](mailto:procurement@ometro.com). If required, Metro's response to these submissions will be in the form of an Addendum. **All proposals must be complete and submitted by Monday, October 17, 2022, by 2:00pm Central Time.**

*No person or entity submitting a proposal in response to this RFP, nor any officer, employee, agent, representative, relative or consultant representing such a person (or entity) may contact through any means or engage in any discussion concerning the award of this contract with any member of Metro's Board or any employee of Metro (excluding Procurement staff) during the period beginning on the date of proposal issue and ending on the date of the selection of Contractor. Any such contact would be grounds for disqualification of the Proposer.*

By: Mr. Fawad Yusufi, Manager of Procurement and Contracts  
Dates of Publication: September 22, 2022

**REQUEST FOR PROPOSALS (RFP) INFORMATION AND GUIDELINES**

HVAC System Services

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**SECTION 1 – PROJECTED PROPOSAL CALENDAR**

Proposal Advertised and Issued	September 22, 2022
Deadline for Questions, Comments, & Requests for Clarification	October 12, 2022, by 4:00 p.m.
Metro’s Response to Questions/Requests for Clarifications (Anticipated)	October 13, 2022, by 4:00 p.m.
Proposal Closing	October 17, 2022, at 2:00 p.m.
Interviews (Tentative, if Required)	Week of October 25, 2022
Notice of Intent to Award Contract (Anticipated)	Week of November 05, 2022
Notice to proceed	November 25, 2022
Contract Start	December 01, 2022

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## SECTION 2 – PROJECT SUMMARY

### 2.1 Summary

Metro intends to award the contract for the acquisition of the HVAC System Services. This contract will allow Metro to ensure stability for the HVAC System Services for a 2-year period. The service provider must specify all required professional services offered for the proposal. Complete Specifications are listed in **Section 2 – Scope and Technical Specifications**.

The intent of The Scope of Work and Technical Specifications is to describe The Work which the Contractor undertakes to do, in full compliance with the Contract, and it is understood that the Contractor will furnish, all materials, machinery, equipment, tools, supplies, transportation, labor, supervision and all other incidentals necessary to the satisfactory completion of the Scope of Work. The Technical Specifications are complementary, and what is called for is binding.

The cost proposal shall include all permits and fees, as required, to perform the project, unless otherwise noted in the RFP Documents.

### 2.2 Proposal Information

A. Contacts.

#### Owner(s)

Regional Metropolitan Transit Authority of Omaha d/b/a Metro  
2222 Cuming Street  
Omaha, NE 68102

#### Project Manager-

Sander Scheer  
402-341-7560 ext. 2811  
[sscheer@ometro.com](mailto:sscheer@ometro.com)

#### Procurement-

Fawad Yusufi  
402-341-7560 ext. 2273  
[procurement@ometro.com](mailto:procurement@ometro.com)

RFP Documents are available for review at:

1. Metro Administrative Office  
2222 Cuming Street  
Omaha, Ne 68102  
402-341-7560
2. Metro's Website  
[www.Ometro.com](http://www.Ometro.com)

All Requests for Substitutions, Approved Equals, Clarification and Questions must be submitted using Exhibit G. All requests and questions MUST BE received by **Monday October 12, 2022, by 4:00pm, Central Time.**

## SECTION 3 – PROPOSAL STANDING REQUIREMENTS

### 3.1 Definitions

In addition to any other term that may be defined in the RFP Documents, whenever used in the RFP Documents, the following terms shall have the following meanings:

- (a) **“RFP” (Request for Proposal)** means and refers to the response and offer of a Proposer submitted on the prescribed forms and in the prescribed manner setting forth, among other matters, the prices for the Work to be performed. The RFP includes the completed proposal together with all other attachments, documents, instruments, forms, submissions, exhibits and schedules attached thereto or referenced therein or that is otherwise submitted or furnished (or is required to be submitted or furnished) to Metro at any time by a Proposer in furtherance of its RFP in accordance with the RFP Documents or that a Proposer is required by the RFP Documents to submit or furnish to Metro, including the Proposal Security;
- (b) **“Proposer”** means and refers to a responsible Proposer that has submitted a responsive RFP to Metro.
- (c) **“RFP Documents”** means and refers to all documents issued by Metro in furtherance of the solicitation of RFPs for the Project. The RFP Documents include: (i) the Notice of Solicitation (including any other advertisement or invitation to RFP and any related published information), (ii) the RFP Documents together with all attachments, documents, instruments, forms, submissions, exhibits, and schedules attached thereto or referenced therein, including any Supplemental Conditions, Construction Drawings, and the Technical Specifications. (iii) all Addenda, (iv) all inquiries, notices, requests, forms, requests, documentation, and other matters that a prospective Proposer is required or permitted to submit in furtherance of any communication with Metro pursuant to paragraph 2(m) of the Instructions to Proposer, (v) the Proposer’s List Data Form,
- (d) **“business day”** means Monday through Friday of a calendar week other than a day that is recognized by Metro as a holiday for Metro’s administrative personnel.
- (e) **“Contract”** means and refers to the entire integrated written agreement between Metro and Contractor concerning the Work and the Project. The Contract includes (i) all exhibits and schedules attached to the Contract, and (ii) all agreed to Change Orders (as defined in the Contract), each of which is or will be integrated into and made a part of the Contract. The Contract constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between Metro and Contractor as to the subject matter of the Contract.
- (f) **“Contract Documents”** means and refers to (i) the RFP Documents, (ii) the RFP, (iii) the Contract and any documents, information or other items or matters designated as such in the Contract,
- (g) **“Contractor”** means and refers to the Proposer that has been awarded the Contract by Metro, but only if the Contract has been entered into by both Metro and Contractor and all conditions applicable to the award of the Contract and as otherwise may be set forth in the Contract Documents have been fully satisfied.
- (h) **“include”, “included”, “including”** and words of similar import shall be construed as if followed by the phrase “without limitation”.
- (i) **“Governmental Authority”** means and refers to any governing bodies (including any governmental (and quasi-governmental), federal, state, and local subdivision or unit of such governing body, together with their respective officials, authorities, agencies, departments, and divisions) that has jurisdiction, whether in whole or in part, over any matter that, at any time, may relate to or pertain to any matter to which any Governmental Requirement may govern or apply. Governmental Authority includes the United States Department of Transportation (“DOT”) and the Federal Transit Administration (“FTA”).
- (j) **“Governmental Requirement”** means any requirement of any Governmental Authority that is, or that may become, effective or applicable at any time to the any of the RFP Documents, the Contract Documents, the Project, the Work or Contractor’s performance under and in respect of the Contract, including all Laws and Regulatory Approvals of any Governmental Authority and all regulations, rules, orders, directives and standards and other requirements all regulations, rules, orders, directives and standards and other requirements issued or promulgated thereunder that Metro may be at any time be required to implement, observe, execute, follow or adhere to, whether by application of the provisions of the applicable Master

Agreement between Metro and the FTA (“Master Agreement”), any Laws or Regulatory Approvals or otherwise;

(k) “**Law(s)**” means all statutes, laws, codes, ordinances, regulations, rules, orders, directives and standards of any Governmental Authority, that may be in effect or that may be or that may become applicable at any time to the any of the any of the RFP Documents, the Contract Documents, the Project, the Work, the Contract or Contractor’s performance under and in respect of the Contract. Laws includes all Environmental Regulations and the Federal Transportation Act and all regulations, rules, orders, directives and standards and other requirements issued or promulgated thereunder;

(l) “**Metro**” Refers to the Regional Metropolitan Transit Authority of Omaha d/b/a/ Metro.

(m) “**Project**” means HVAC System Services; “Project” is sometimes used interchangeably with “Work” and, if so, shall be ascribed that definition;

(n) “**Regulatory Approval**” means any and all approvals, licenses, permits, consents, registrations or authorizations, certificates, forms and licenses of any Governmental Authority that may be in effect or that may be or that may become applicable at any time to the RFP Documents, the Contract Documents, the Work, the Project or Contractor’s performance under or in respect of the Contract;

(o) “**Representative**” means designated individuals of Metro ; and

(p) “**Work**” means and refers to all supervision, direction, employees and other labor, all materials, supplies, services, work, machinery, transportation, tools, equipment, and all other tasks and incidentals necessary to fabricate, assemble, install and otherwise perform and complete the Project, the Work and the Contract as and when required and otherwise in conformity with the Contract Documents.

### 3.2 Reservations

- A. Metro reserves the right to waive informalities or irregularities in proposals, to accept or reject any or all proposals, to cancel this RFP in part or in its entirety, and to re-advertise for proposals if it is in the best interest of the Authority.
- B. Metro also reserves the right to award a contract solely on the basis of the initial proposal without any interviews or negotiations. Therefore, proposals should be submitted to Metro on the most favorable terms possible, from a cost or price and technical standpoint.
- C. This solicitation for RFPs shall not be considered to be an offer to award the Contract. This solicitation may be amended, modified, withdrawn or canceled by Metro at any time for any reason or for no reason. Whether not Metro amends, modifies, withdraws or cancels this solicitation, Metro is not responsible for any cost or expense that may be incurred by any prospective proposer, or any proposer incurred prior to the execution of the Contract, including any costs associated with preparing a Proposal. No Proposal shall be considered binding upon Metro unless (i) a Contract first has been awarded by its Board of Directors at a public meeting, (ii) the Contract has been duly executed by each of the Contractor and Metro, and (iii) all conditions applicable to such award of the Contract and as otherwise may be set forth in the Contract Documents have been fully satisfied. Metro reserves the right to withdraw or cancel the award of the Contract for any reason or no reason without liability. In the event of the withdrawal or cancellation of this solicitation or the award of the Contract, the Proposal Security of each Proposer shall be released and returned by Metro.

### 3.3 Proposer’s Responsibilities

- A. Without prejudice or limitation to any other representation required to be made or otherwise made by Proposer with its Proposal, the submission of its Proposal constitutes a representation by Proposer that,
  - 1) Proposer has read and understands the RFP Documents and the Proposal is made in accordance with all requirements of the RFP Documents;
  - 2) Proposer possesses the capabilities, resources, and personnel necessary to perform the Work in accordance with the Contract Documents;

- 3) Proposer is duly organized and existing under and by virtue of the Laws of the state of its organization and has the power to transact business in the State of Nebraska;
- 4) Proposer has all power, authority and capacity under all applicable Laws and under its organizational and constituent documents to enter into and to perform under and in respect of the Contract;
- 5) The Proposal has been duly authorized, executed and delivered by Proposer;
- 6) Proposer has read and thoroughly examined the RFP Documents and has a complete understanding of the terms and conditions required for the full and complete performance of the Work in conformity with the Contract Documents;
- 7) Before submitting its Proposal, Proposer has made all investigations and examinations necessary to ascertain the character, location and other conditions and requirements pertaining to the Work site and the Work that it has determined may affect in any way its full and complete performance of the Work in conformity with the Contract Documents;
- 8) Proposer has found no errors, conflicts, ambiguities or omissions in any of the RFP Documents;
- 9) Proposer is familiar with all Governmental Requirements applicable to the Project, the Work, the Contract and Proposer's required performance (as Contractor) under and in respect of the Contract;
- 10) To the best of Proposer's knowledge, after due and diligent investigation and inquiry,
  - a. No member of Metro's Board of Directors nor any of Metro's officers or employees is employed by, or has a financial interest, direct or indirect, in the Proposer, the contemplated Contract, or the Proposer,
  - b. No gratuities have been offered or given by or on behalf of Proposer with an intent to secure the Contract, and
  - c. Neither the award of the Contract to the Proposer nor its performance (as Contractor) under or in respect of the Contract will result in any conflict of interest that is prohibited under any Governmental Requirement, including any such conflict referenced or described in the Master Agreement or in Section 7 or Section 8(a)(5) of FTA Circular 4220.1E.

### **3.4 Identification of Proposer**

With its Proposal, Proposer must separately be identified fully and completely in an attachment to its Proposal referencing this Paragraph 3.4, whether a natural person/individual, partnership (general or limited), corporation, limited liability company, association or other form of business organization (whether or not regarded as a legal entity under Applicable Law), trust, estate or any other entity. If an individual doing business under a fictitious name submits a Proposal, the Proposal should so state. If a Proposal is made by a partnership or a limited liability company, the full names and addresses of all members of the partnership or limited liability company must be given. In the case of a partnership, a general partner must sign the Proposal. In the case of a limited liability company, the manager or authorized member must sign the Proposal. If a corporation makes the Proposal, an authorized officer must sign the Proposal. If the Proposal is made by a joint venture, the full names and addresses of all members of the joint venture must be given and one authorized member should sign the Proposal. If applicable, a copy of the partnership/joint-venture agreement/operating agreement shall be included as an attachment to the Proposal. Each Proposal shall be made in the name of the Proposer, dated and signed with an ink pen by the appropriate individual, whose name and title also shall be printed or legibly written. Signatures shall be accompanied by the address (including city, State and zip code) and the telephone number of the Proposer. If the Proposal has been submitted by an agent of Proposer, evidence of the power of attorney must be attached to the Proposal. Metro reserves the right to verify the status of the signatory.

### **3.5 Contractor Responsible for All Work/Performance**

Contractor shall be responsible for all performance undertaken or required under or in respect of the

Contract, including the performance of all Work and providing all services, equipment, facilities, and functions which are necessary for the safe, reliable, efficient, and well-managed operation of the Project, the Work and the Contract consistent with established industry practices, whether or not those services, equipment, facilities, and functions are specifically required by the terms of the Contract or in any RFP Document.

### 3.6 Communication with Metro

- A. General Inquiry. Other than as otherwise expressly required in this paragraph 3.7(A) any inquiry relating to the RFP Documents, the Project or the Work must be made in writing using Exhibit G to the Manager of Procurement and Contract and must be received by Metro no later than **4:00 p.m. on Monday, October 12, 2022**. Each inquiry must refer to the Project by name and submitted on the Request for Clarification Form Provided in the RFP Documents as Exhibit G. Metro will issue a response to any such request by written Addendum.
- B. Errors and Discrepancies in RFP Documents. If a Proposer believes that there may exist an error, discrepancy, ambiguity, or omission in any RFP Document, then prior to the submission of its Proposal, Proposer must notify the Manager of Procurement and Contracts of the same by written notice on the Request for Clarification Form. By submission of its Proposal, Proposer represents there exists no error, discrepancy, ambiguity, or omission in any of the RFP Documents that would change the cost, progress or performance of the Work. Metro will review, evaluate and respond in the same manner as any other inquiry made pursuant to the RFP Documents. Whether or not approved, Metro will issue a response to Proposer's inquiries by written Addendum.

Requests for Approved Equals, Product Options and Substitutions. Wherever brand, manufacturer, or product names are used in respect of the Work, they are included only for the purpose of establishing a description of minimum quality of the requested item unless otherwise specified in the specifications or other RFP Documents. This inclusion is not to be considered as advocating or prescribing the use of any particular brand or item or product. Prospective Proposers may discuss the specifications and related matters with the Manager of Procurement and Contracts; however, any requests for approved equals or other substitutions must be made to the Manager of Procurement and Contracts in writing by use of the Requests for Substitutions, Approved Equals, Clarification and Questions submitted using Exhibit G. All requests and questions MUST BE received by **Monday October 12, 2022, 4:00 pm, Central Time.**

- C. When an approved equal is requested, the prospective proposer must demonstrate the quality of its alternative product to Metro and furnish sufficient technical data, test results, etc., to enable Metro to determine whether the product is or is not equal to specification required by the RFP Documents. Whether or not approved, Metro will issue a response to a Request for Substitutions/Approved Equals by written Addendum. The Contract will provide that Metro may reject any request by Contractor following the award of a Contract for a substitute or qualified equal, in its Metro's sole judgment and absolute discretion.
- D. Modifications to Proposals; Withdrawal of Proposals. Any Proposer that has submitted a Proposal may modify or withdraw its Proposal at any time prior to the Submission Deadline. Withdrawal of a Proposal may be made only with written confirmation under signature of the Proposer. Withdrawal of a Proposal will not prejudice the right of any Proposer to submit a new Proposal in its own name or in combination with another Proposer, provided that the new Proposal is received by Metro as of the Submission Deadline. Modifications to a Proposal and requests to withdraw a Proposal received by Metro after the Submission Deadline will have no effect and will be returned unopened.
- E. Submission by Prospective Proposers. For avoidance of any doubt, all inquiries, notices, requests, forms, documentation and other matters that a prospective proposer is required or permitted to submit in furtherance of any communication with Metro pursuant to this paragraph 3.7(E) must be made in the name of the prospective proposer or Proposer, as may be applicable.

- F. Addendum: Metro Initiated Addendum; Proposer Responsibility. No verbal or written instructions or interpretations in respect of the RFP Documents, the Contract Documents or the Project will have effect or validity regardless of source unless made in the name of the Grant Administrator in the form of a written Addendum. Complete copies of each related form, inquiry, request or submission etc. made pursuant to this paragraph 3.7(F), together with the corresponding Addendum (and any other Addendum contemplated by the RFP Documents) will be available for inspection at Metro’s Administrative Offices and online at the following link [www.ometro.com](http://www.ometro.com). Nothing in the RFP Documents shall be construed to restrict Metro from issuing any Addendum at any time or at its own initiation. Notwithstanding anything contained in the RFP Documents to the contrary, it is the responsibility of the Proposer to obtain copies of all issued Addenda. Proposer is required to acknowledge on the form Exhibit H supplied in the RFP Documents and manner required by the RFP Documents that it has received all issued Addenda, and failure to do so will cause the Proposal to be deemed non-responsive.

### 3.7 Protests

- A. Pre-Submittal Protests. A pre-submittal protest is protest received prior to the Submission Deadline. This protest must be made in writing and received by no later than 2:00 pm. on the date that is not later than three (3) business days prior to the Submission Deadline. This protest must be addressed as follows: Protest, HVAC System Services, Manager of Procurement and Contract, 2222 Cuming St, Omaha NE 68102.
- B. Post-Submission Deadline/Pre-Award Protests. A Post-Submission Deadline/pre-award protest is a protest against making an award of the Contract, must be made in writing and received by the procurement contact not later than 2:00 p.m. on the date that is not later than five (5) days after the submission date. This protest must be addressed as follows: HVAC System Services, Manager of Procurement and Contracts, 2222 Cuming St, Omaha NE 68102.
- C. Post-Award Protests. A Post-Award protest is a protest against making an award of the Contract to the successful Proposer as determined by Metro. This protest must be made in writing and received by the procurement contact not later than 2:00 p.m. on the date that is five (5) business days after the date of the Notice of Intent to Award the Contract. This protest must be addressed as follows: Protest, HVAC System Services, Manager of Procurement and Contracts, 2222 Cuming St, Omaha NE 68102.
- D. Protest Limitations and Requirements. Protests are limited to those allowable by, and made in compliance with, the protest procedures currently established by Metro (“Protest Procedures”), a copy of which are available for inspection at the Administrative Offices. All protests must be concise, direct and sufficient to permit Metro to determine the full and complete basis therefor and shall be fully supported by all current, accurate, relevant, objective information, documentation and other support considered necessary by the prospective proposer or Proposer, as may be applicable. Metro reserves the right to request additional support from the protester. In the event of an appeal from the award of a Contract, the award shall not be considered final or binding upon Metro unless the Contract award is thereafter confirmed to the successful Proposer in writing by the Chief Executive Officer.
- E. Metro Response. The Manager of Procurement and Contracts will respond to the protest no later than five (5) days after the protest has been received by the Manager of Procurement and Contracts. Appeals from the Manager of Procurement and Contracts’ determination must be made to the Chief Executive Officer as, when and in the manner required by the Protest Procedures. The Chief Executive Officer will decide if the protest and the appeal (if any) have been given fair and reasonable consideration, or if additional consideration is warranted. The Chief Executive Officer decision will be provided within ten (10) days after receipt of protester’s appeal from request. Chief Executive Officer’s decision is final, and no further action on the protest will be taken by Metro.

- F. Extensions of Time and other Effects of Protest. Without limitation to any other provision in the RFP Documents, if deemed appropriate to resolve any protest Metro may extend the Submission Deadline and the award of the Contract, issue an Addendum or withdraw this solicitation, or postpone, reconsider any award of a Contract or cancel this solicitation, all as determined in the sole judgment and absolute discretion of Metro.
- G. Appeals to FTA. For information purposes only, protesters should be aware of the Federal Transit Administration's protest procedures with the FTA Regional Office (ref: FTA Circular 4220.1F). If Federal funding is involved, the FTA will review protests from a third party only when a grantee does not have a written protest procedure or fails to follow its procedure or fails to review a complaint or protest; or violations of specific federal Governmental Requirements have occurred. A protester must exhaust all administrative remedies with Metro before pursuing a protest with the FTA. An appeal to the FTA by the protester must be received by the appropriate FTA regional or Headquarters Office within five (5) working days of the date the Proposer knew or should have known of Metro's final decision in respect of the protest. Such protests shall be addressed to: Regional Administrator, FTA Region 7, 901 Locust, Room 404, and Kansas City, MO, 64106.

### **3.8 Disclosure of Proprietary Information**

- A. By submission of its Proposal, a Proposer acknowledges that Metro is a public body to which Laws of the State of Nebraska governing the disclosure of public records (Neb. Rev. Stat. 84-712 to 84-712.09, inclusive; "Public Records Statutes") have application. A Proposer may attempt to restrict the disclosure of scientific and technological innovations in which it has a proprietary interest, or other information that is protected from public disclosure by Law contained in the Proposal by:
  - 1) marking each page of each such document prominently in at least 16-point font with the words "Proprietary Information",
  - 2) printing each page of each such document in a different color paper than the paper which the remainder of the proposal is printed; and
  - 3) segregating each page of each such document in a sealed envelope, which shall prominently display, on the outside, the words "Proprietary Information" in at least 16-point font, along with the name and address of the Proposer.

If access to documents marked "Proprietary Information" (and otherwise complying with (1) through (3) above), is requested pursuant to the Public Records Statutes, Metro will notify the Proposer of the request. The Proposer shall have the burden to establish that such documents are exempt from disclosure under the Public Records Statutes, and Metro shall not be responsible to undertake any act or action to prevent any such disclosure. Notwithstanding the foregoing, Metro reserves the right to release any documents requested pursuant to the Public Records Statutes if Metro determines that such information is a public record under the Public Records Statutes.

### **3.9 Disadvantaged Business Enterprise (DBE) Requirements**

- A. The requirements of 49 Code of Federal Regulations ("CFR") Part 26 shall apply to the Contract. It is the policy of Metro to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this Contract. Metro encourages participation under this solicitation by all responsible and qualifying firms regardless of business size or ownership. Metro has established a specific Disadvantaged Business Enterprise ("DBE") participation goal for the Contract in the amount of 0% of the Contract Amount ("DBE Participation Goal") through race/gender neutral means. Metro's overall DBE participation goal for all contracts for FFY 2017 – 2022 is 9.87%. In order to receive the award of the Contract, Title 49 Code of Federal Regulations (CFR) Part 26, requires the apparent low Proposer must establish either (i) that it has met the DBE Participation Goal through race/gender neutral means; or (ii) that it has made adequate good faith efforts to meet the DBE Participation Goal. This requirement is in

addition to all other pre-award requirements.

1. Attaining DBE Contract Goals

- a. Prime contractors shall, at a minimum, seek certified DBE Subcontractors in the same geographic area in which they generally seek subcontractors for a given solicitation. If the Proposer cannot meet the DBE goals using certified DBEs from the same geographic area, the Proposer may expand its search to a reasonably greater geographic area.
- b. Prime contractors are required to make good faith efforts to replace a DBE Subcontractor that is unable to perform with another certified DBE Subcontractor. In order to ensure compliance with this requirement, any substitution of DBE Subcontractors after execution of the Contract must be approved by Metro as outlined in 49 CFR Part 26.
- c. Metro encourages prime contractors on DOT assisted contracts to investigate to the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and to make reasonable efforts to use these institutions.

2. Soliciting DBEs

**All Proposers should make every reasonable effort to subcontract work to DBEs through Good Faith Negotiations and solicitations in advance of the dates specified in this solicitation for submitting and opening of proposals.**

Only those DBEs who are currently certified through the Nebraska Department of Transportation (NDOT) Civil Rights Office or DBEs having certification that can be made final through the NDOT Civil Rights Office in accordance with applicable provisions of 49 CFR Part 26 before the due date for this solicitation on which a firm seeks to participate as a DBE will be considered in meeting the DBE contract goal for this project. For a listing of Nebraska certified DBEs see:  
<http://dot.nebraska.gov/business-center/civil-rights>.

3. Evaluation of Proposals for DBE Participation

- a. Meeting DBE Project Goal Criteria: The Proposer must either meet or exceed the established DBE goal(s) for the project or submit documentary evidence with their Proposal substantiating that good faith efforts were made to meet the established DBE goal(s). **DBE Goal for this solicitation is 0%**
- b. Required DBE Information as a matter of Proposer responsiveness:  
The award of this Contract by Metro is conditioned upon the Proposer satisfying the good faith effort requirements of 49 CFR 26.53. Proposers must present all of the required DBE information with their proposal as a matter of responsiveness for consideration of the proposal, as follows:
  - i. All Proposing firms are required to include a completed *DBE Participation Form* (included in this solicitation) and *DBE Confirmation Form* (included in this solicitation); and
  - ii. All Proposing firms are required to include a completed ***Bidder's List Form***.
  - iii. If the DBE goal(s) is/are not met, documentary evidence of good faith efforts.

4. Small Business Enterprise (SBE) Participation Program.

Metro has incorporated as an element of its DBE program, reasonable steps to eliminate obstacles for small business enterprises (SBEs), both DBE and non-DBE, in order to facilitate their competition on DOT assisted contracting opportunities, as provided by 49 CFR 26.39, as amended October 2, 2014.

- a. **Purpose/Objectives.** The purpose of Metro’s Small Business Enterprise Participation Program is to foster race-neutral small business participation in DOT assisted projects. Since small business elements developed by Metro will be a part of its approved DBE program plan. Metro will use the definition of “small business concerns” set out in 49 CFR §26.5, as amended, in administering its program. This will ensure that all small businesses allowed to participate in the program (DBEs and non-DBEs) are subject to the same size standards and, consequently compete with similarly-sized businesses. By facilitating participation for small businesses, Metro believes that establishing program elements that pull together various ways for reaching out to small businesses, makes it easier for the small businesses to compete for DOT-assisted contracts, thus fostering the objectives of Metro’s DBE program.
- b. **Definitions of Terms.** The definitions of terms contained in 49 CFR § 26.5, as amended October 2, 2014, shall be used as definitions in Metro’s Small Business Enterprise Participation Program and are hereby incorporated by reference.
- c. **Fostering Small Business Participation.** As part of accomplishing this program element, Metro will actively use the following strategies to foster small business participation:
  - i. Metro will consider unbundling contracts on a case-by-case basis. The DBELO will review all scopes of work to determine if there are sections of work where there are definitely separable items that can be unbundled. Thus, when practical, on large scope contracts containing work involving different disciplines or trades, such contracts will be divided into potentially smaller contracting opportunities.
  - ii. On prime contracts exceeding \$100,000 not having DBE contract goals, Metro will require the prime contractor to provide subcontracting opportunities of a size that small business concerns, including DBEs, could reasonably perform, rather than self-performing all the work. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE/DBE participation, even when the prime contractor might have the ability and otherwise prefer to perform these work items with its own forces.
  - iii. Generate awareness of Metro’s procurement opportunities to small businesses by utilizing broader advertising in print and electronic media, and advertisement circulation to small business representatives and stakeholder groups.
  - iv. Participate in business development meetings and other stakeholder group hosted events intended to enhance procurement opportunities for small businesses.
  - v. Identify DBEs, non-DBE and SBEs in the local market area using Metro’s Proposers list.
- d. **Eligibility Standards.** To ensure the eligibility of a small business concern, Metro will take steps to verify eligibility of a small business concern to participate in its Small Business Participation Program. Metro’s Small Business Enterprise Participation Program prohibits small business concerns to self-certify/verify as small businesses.

**Therefore, only those currently certified SBEs or SBEs that can be certified by the City of Omaha prior to a contract award are eligible for participation in Metro’s Small Business Enterprise Participation Program. See: <http://www.cityofomaha.org/humanrights/contract-compliance> for a listing of City of Omaha eligible SBCs.**

- e. **Goal Setting/Reporting Requirements:** Metro’s Small Business Enterprise Participation Program

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is intended to facilitate compliance with the 49 CFR §26.51, as amended October 2, 2014, (1) to meet the maximum feasible portion of Metro’s overall DBE goals by using race-neutral means of obtaining DBE participation; and (2) to implement race-conscious measures by establishing goals that apply only to DOT-assisted contracts with subcontracting opportunities to meet any portion of the overall goal Metro is unable to meet using race-neutral means alone. The use of race-neutral small business goals on the same contracts that have DBE contract goals is difficult to administer. Therefore, Metro will not establish small business participation project goals in any contract solicitation that has a specified DBE goal.

Pursuant to 49 CFR §26.11(a), as amended October 2, 2014, Metro is required to track DBE project participation and transmit data via the Uniform Report of DBE Awards or Commitments and Payments to the applicable DOT operating administration. See: [http://www.transportation.nebraska.gov/letting/DBE/Certified\\_DBEs\\_4-25-16.pdf](http://www.transportation.nebraska.gov/letting/DBE/Certified_DBEs_4-25-16.pdf) for the *Directory of Nebraska of Department of Roads (NDOR) Certified Disadvantaged Business Enterprises*.

Therefore, race-neutral participation of DBEs certified through the NDOT achieved through the Small Business Enterprise Participation Program shall be counted towards attainment of Metro’s overall DBE project goal established for any DOT-assisted contracts.

## **SECTION 4 – FEDERAL CLAUSES FOR PROCUREMENT OF PROFESSIONAL SERVICES**

**The following clauses shall be incorporated into any contract which results from this RFP. These clauses are required by Federal regulations and are not subject to change or negotiations.**

### **4.1 No Obligation by the Federal Government**

The Purchaser 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 the Purchaser, 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 FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **4.2 Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 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, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to 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, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The 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.

### **4.3 Access to Records**

Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

#### **4.4 Federal Changes**

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 current Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **4.5 Termination**

##### Termination for Convenience by Authority.

Any Contract, or any part thereof, awarded by the Authority shall be subject to termination at any time by the Authority upon notice in writing to be effective as of the date of receipt of such notice. Upon receipt of such notice, Contractor shall, unless otherwise specified in the notice, immediately stop all Work and, to the extent permitted under each applicable subcontract or agreement, give prompt written notice to Subcontractors to cease all related Work. In the event this Agreement is terminated by application of this Section, Contractor shall have no claim, right, remedy or entitlement for damages, compensation or equitable relief for early termination other than as provided in Section (2). Contractor waives any other right, remedy or recourse of any nature whatsoever it may have now or at any other time against the Authority and the FTA.

In the event of termination for convenience, the Authority shall be responsible to pay the Contractor only for all authorized Work performed up to the date of termination and conforming to the Contract, without allocation of profit for unperformed, remaining or incomplete Work. In no event shall the aggregate charges to be paid by Authority pursuant to the preceding sentence exceed the Contract price. In the event of such termination, Contractor shall have no recourse against Authority except as earlier stated in this Section (b) and as follows: Contractor shall be entitled to receive reimbursement from Authority an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Contractor in withdrawing its equipment and personnel from the Work and otherwise demobilizing; (ii) the actual, reasonable and necessary costs reasonably incurred by Contractor in terminating those contracts, not assumed by Authority, for Subcontractors; (iii) provided, however, Contractor shall not be paid for any Work after receipt of such notice or for any costs incurred by Subcontractors after receipt of Customer's termination notice, or for Work which Contractor could reasonably have avoided Contractor. Contractor shall document any cost claimed by it to Authority's reasonable satisfaction and shall supply Authority with copies of all invoices for Subcontractors covering the amounts claimed as costs for such purpose. Contractor shall submit an invoice to Authority for the amount of reimbursement claimed by Contractor with all supporting information and requisite documents. Unless disputed in good faith by the Authority, Customer shall be paid such amounts within thirty (30) business days after Customer delivers all Work, completed or not completed, in its then current form, free and clear of all liens and assigns to Authority together with any subcontracts, duly assigned, that Authority is willing to assume.

##### Suspension by Authority.

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Upon seven (7) days' prior notice, the Authority may suspend, delay, or interrupt for up to six (6) months the Work or the Project for the convenience of the Authority. In the event such suspension, delay, or interruption causes a change in Contractor's cost or time required for performance of the Work, the Parties will agree on an equitable adjustment through a written amendment to the Contract to be signed by Authority and Contractor. Authority may withdraw a suspension upon five- (5) days' written notice to Contractor. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Authority and Contractor shall be compensated by Authority as if this were a termination for convenience.

Termination for Default by Authority.

Without prejudice to any other remedy or recourse, including its right to seek damages, the Authority may:

- (a) Terminate the Contract effective immediately upon Contractor's receipt of written notice from Authority specifying any of the following events:
  - (i) Insolvency of Contractor.
  - (ii) The filing of a meritorious petition of bankruptcy by or against Contractor or the filing of any petition by Contractor seeking protection under Chapters 7, 11 or 13 of the United States Bankruptcy Code.
  - (iii) The conviction of Contractor of a felony in connection with the Work.
  - (iv) Failure to materially comply with any of the Laws.
  - (v) Any attempt to evade any material provision of the Contract or to practice any fraud or deceit upon Authority.
  - (vi) The failure of Contractor or any of its Subcontractor's to fully comply with the lawful directives or cooperate with requests of Authority inspectors or other officials administering or monitoring Work, including any federal, state, or other public authority.
  - (vii) The failure to provide any required bond within ten (10) days of notice of the award of the Contract.
  - (viii) Any material misrepresentation by Contractor made at any time.
  - (ix) Contractor improperly assigns or attempts to assign the Contract or any of the Work.
  - (x) The failure to properly maintain, provide or permit Authority access to any books, records, bank accounts or documentation related to the Contract.
  
- (b) Terminate the Contract, if any of the following (which shall also constitute a material default or breach of the Contract) is not cured to the satisfaction of the Authority within the earlier of thirty (30) days or the time prescribed therefor, in either event from the receipt of written notice from the Authority specifying such breach or default:
  - (i) Contractor fails to conform operations, which are in violation of the Laws because of a change in the Laws within 30 days following the effective date of such change.
  - (ii) The failure to promptly pay any sums due to Authority within 5 days of notice.
  - (iii) Contractor refuses or fails to timely commence or perform the Work.
  - (iv) Contractor refuses or fails to supply enough properly skilled workers, or proper materials or Subcontractors to timely perform the Work.
  - (v) Contractor fails to comply promptly with rejection notices or notices to correct defects in the Work.
  - (vi) Contractor causes or permits any repudiation, lapse or cancellation of required insurance or bonds.
  - (vii) Any other materially breach or default of any covenant, term, condition, or provision the Contract, whether or not specified in this Section.

Termination under this Section (b) shall be effective as of the expiration of the period so

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specified without the necessity of further action by the Authority.

Wrongful Termination by Authority.

In the event the Authority shall wrongfully terminate the Contract, unless otherwise agreed by the Parties in writing, to re-instate or otherwise continue the Contract in accordance with its terms, the Authority's termination shall be construed to be a termination for convenience.

Future Breach not Waived.

No waiver by Authority of any breach or default by Contractor under the Contract shall operate or be construed to operate as a waiver of any other existing or future breach or default, whether of a similar or different character. Failure of the Authority to insist upon strict performance of any provision under this Agreement shall not constitute a waiver of, or estoppel against asserting the right to require strict performance of any other provision of this Agreement or the same provision in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later default or breach. No waiver by any Person of any default by any Party in the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release of, said Party from performance of any other provision, condition or requirement herein; nor shall such waiver be deemed to be a waiver of, or in any manner a release of, said Party from future performance of the same provision, condition or requirement. Any delay or omission of any Party to exercise any right hereunder shall not impair the exercise of any such right, or any like right, accruing to it thereafter. No waiver of a right created by this Agreement by one or more Parties shall constitute a waiver of such right by the other Parties except as may otherwise be required by law with respect to Persons not parties hereto. The failure of one or more Parties to perform its or their obligations hereunder shall not release the other Parties from the performance of such obligations.

Contractor's Right to Terminate.

Contractor shall not be entitled to terminate the Contract for any reason except as provided in this Section. In the event that the Authority fails to timely pay to Contractor any undisputed amounts due pursuant to the terms of the Contract, Authority shall be in default under this Contract and Authority shall be allowed thirty (30) days from receipt of a written notice of such default from Contractor in which to cure such default, after which Seller may immediately terminate this Contract by written notice to Buyer. Any amount disputed by Authority to be due under this Contract must be disputed in good faith.

Waiver of Contractor's Other Remedies. Except as provided in Section (6), Contractor waives any claim or other right it may have to proceed in law or equity against Authority or to otherwise obtain any money or any damages under or in respect to this Contract for any wrongful or other termination or for any default or breach in the keeping or performance of any warranty, covenant or obligation under or in respect to this Contract by Authority or for any other act, operation or omission of Authority in respect to the Contract, under any theory whatsoever.

#### **4.6 Civil Rights**

The Authority is an Equal Opportunity Employer. As such, the Authority agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Authority agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

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

**Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of Race, Color, Creed, Religion, Sex (including pregnancy), Mental/Physical Disability, Age (40 or over), National Origin, Genetic Information or any other

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basis prohibited by law. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**Race, Color, Creed, Religion, Sex (including pregnancy), Mental/Physical Disability, Age (40 or over), National Origin, Genetic Information or any other basis prohibited by law** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, the Americans With Disabilities Act of 1990, as amended, 42 USC 12101 *et seq*, the Architectural Barriers Act of 1968, as amended, 42 USC 4151 *et seq*, and Federal Transit Law at 49 USC 5332, the Contractor agrees it will not discriminate against individuals on the basis of disability. IN addition, the contractor agrees to comply with any implementing requirements the FTA may issue.

The Contractor also agrees to include these requirements in each subcontract ` d in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### **4.7 Disadvantaged Business Enterprise (DBE)**

The Regional Metropolitan Transit Authority of Omaha d/b/a Metro has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Metro has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Metro has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Metro to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Director of Legal/Human Resources has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the Director of Administration/Human Resources is responsible for implementing all aspects of the DBE

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program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Metro in its financial assistance agreements with the Department of Transportation.

The Metro Board of Directors has adopted a formal Operating Policy demonstrating the company's commitment to implementing all aspects of the DBE program which has been disseminated to managers and officials responsible for procurement of goods and services. The Policy Statement is posted on company Bulletin Boards. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by posting the statement on the company's website and including the Statement of Policy in solicitation documents.

The (Contractor, Sub-recipient, or Sub-contractor) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the (Contract or Agreement). The requirements of 49 C.F.R. Part 26 or at another Part if reissued and the Recipient's U.S. DOT-Approved Disadvantaged Business Enterprise (DBE) Program (where required) are incorporated in this (Contract or Agreement) by reference. Failure by the (Contractor, Sub-recipient, or Sub-contractor) to carry out these requirements is a material breach of the (Contract or Agreement), which may result in the termination of the (Contract or Agreement) or such other remedy as the Recipient deems appropriate.

The prime contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract within thirty (30) days following satisfactory performance of the sub-contractor's work. The prime contractor further agrees to return any retainage payments to each subcontractor within thirty (30) days upon satisfactory completion of the sub-contractor's work. Any delay or postponement of payment may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE sub-contractors.

Failure by the contractor to carry out these requirements is a material breach of contract, which may result in termination of the contract or other such remedy as the Authority deems appropriate, which may include, but is not limited to: withholding monthly progress payment, assessing sanctions, applying liquidated damages or disqualifying the contractor from future bidding opportunities as a non-responsible contractor.

#### **4.8 Incorporation of Federal Transit Administration (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 4220.1F, March 18, 2013 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 of The Authorities requests, which would cause The Authority to be in violation of the FTA terms and conditions.

#### **4.9 Government-Wide Debarment and Suspension**

The Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in federally funded contracts and are not presently declared by any Federal Department or agency to be: Debarred from participation in any federally assisted Award, Suspended from participation in any federally assisted Award, Proposed for debarment from participation in any federally assisted Award, Declared ineligible to participate in any federally assisted Award, Voluntarily excluded from participation in any federally assisted Award, or Disqualified from participation in any federally assisted Award.

The contractor certifies the following by submitting a bid or agreeing to these clauses; The certification in this clause is a material representation of fact relied upon by the Authority. If it is later determined by the Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Authority, 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,

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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.

**The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.**

#### **4.10 Dispute / Continuing Performance**

In the event of any dispute between Authority and Contractor with respect to the interpretation of this Contract, any required payment under or the performance required by this Contract, including any dispute which may result in a claim, (a "Dispute"), the aggrieved Party shall notify the other in writing of the Dispute then existing (the "Dispute Notice"). In order for a Party to proceed under this Section, the Dispute Notice must specifically state that the aggrieved Party is invoking the Dispute procedure of this Section. The Parties shall then make a good faith attempt to resolve the Dispute, first through direct discussions between their respective designated representatives. In the event the designated representatives are unable to reach agreement then upon the written request of either Party, each of the Parties will appoint a designated executive whose task it will be to meet for the purpose of endeavoring to resolve such dispute. The designated executives shall meet in Omaha Nebraska as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the problem and/or negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. No action for the resolution of such dispute outside of these procedures shall be taken by either Party until one of the designated executives concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other designated executive in writing either party in its sole discretion may invoke litigation, provided that failure to invoke litigation shall not be a waiver of any such Dispute except as otherwise provided in the Contract. During any mediation or litigation which arises out of a Dispute, all parties will continue to perform pursuant to the Contract, without prejudice to the express rights of Authority or Contractor set forth in this Section to terminate the Contract. In addition to the specific rights of termination and suspension as set forth, Authority and Contractor shall have also available the remedy of specific performance, which may be raised as a defense in any action commenced prior to the Parties' compliance with this Section

#### **4.11 Lobbying**

Contractors who apply or bid for an award of \$100,000 or more shall execute and submit with their bid or offer, the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

#### **4.12 Clean Air**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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#### **4.13 Clean Water**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **4.14 Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### **4.15 Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### **4.16 Recycled Products (EPA Selected Items over \$10,000)**

These requirements apply to contractors and sub-contractors at all tiers. The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### **4.18 Energy Conservation**

The 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.

#### **4.19 National Intelligent Transportation Systems Architecture and Standards**

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

#### **4.20 ADA Access**

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement

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that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project

#### **4.21 Federal Participation**

In the announcement of any third-party contract award for goods or services (including construction services), having an aggregate value of \$500,000 or more, The Authority will specify the amount of Federal assistance to be used in financing that acquisition of goods and services, and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

#### **4.22 State and Local Law Disclaimer**

All regulations listed in this document apply to the Third-Party Contractor in the same manner as they apply to The Authority. Offers will be received and reviewed, but no contract shall be awarded until all applicable Federal, State and Local Government regulations have been complied with.

#### **4.23 New Employee Work Eligibility Status**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

#### **4.24 Veterans Preference**

Contractors working on a capital project funded using FTA assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who

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is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **4.25 Special Provision – Text Messaging While Driving**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Grantee is encouraged to comply with the terms of the following Special Provision.

A. Definitions - As used in this Special Provision:

1) Driving

Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. Driving does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

2) Text Messaging

Means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

B. Safety - The Grantee is encouraged to:

- 1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-
  - a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
  - b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
  - c) Any vehicle, on or off duty, and using an employer supplied electronic device.
- 2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:
  - a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- 3) Include this Special Provision in its sub-agreements with its sub-recipients and third-party contracts and also encourage its sub-recipients, lessees, and third-party contractors to comply with the terms of this Special Provision, and include this Special Condition in each sub-agreement, lease, and third-party contract at each tier financed with Federal assistance provided by the Federal Government.

## **SECTION 5 – PROPOSAL SUBMISSION, EVALUATION AND AWARD**

### **5.1 Proposal Copies – Completed Proposals are due to Metro by October 17 by 2:00 p.m. Central Time**

- A. The proposal package consists of one (1) sealed package containing four (4) physical copies and one (1) electronic copy of the complete proposal on an USB drive.
- B. The sealed package should contain an original proposal (marked as such) and four (4) bound, full, complete, and exact copies of the Proposal. The package should be clearly labeled “HVAC System Services”.
- C. Proposers are asked to submit a complete set of their Proposal Documents in an electronic format (flash drive.)
- D. Pages in the Proposal document shall be numbered. The Proposer shall ensure that all copies and all electronic media are identical to the Proposer’s hardcopy, original submission. In case of a discrepancy, the hard copy shall govern.

### **5.2 Proposal Format**

- A. The Proposal page limit is 50 pages. The Proposer may choose to allocate pages between any of the criteria as long as the proposal does not exceed 50 pages. If a Proposer submits a proposal exceeding this limit, Metro will consider the pages up to the allowable number and discard all subsequent pages.
- B. The following are excluded from the page count:
  - Title Page
  - Table of Contents
  - Letter of Transmittal
  - Tabs or Indices
  - Additional lists of references
  - Résumé/background information (please restrict to a maximum of three (3) pages per individual)
  - Required forms such as certifications, financial data
  - Required Submittal Forms
- C. One page is defined as one side of a single, 8-1/2 x 11” page, with 11-point minimum font size for the substantive text. Any page over this size will be counted as two (2) pages. Any page or partial page with substantive text, tables, graphics, charts, résumés, etc. will be counted as one (1) page. Proposers may use their discretion for the font size of other materials (e.g. graphics, charts).

### **5.3 Proposal Content**

- A. Each Proposal should enable the evaluation committee to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal will meet Metro’s requirements. The Proposal must be specific, detailed, and complete as to clearly and fully demonstrate that the Proposer has a thorough knowledge and understanding of the Scope of Work and technical Specifications and has valid and practical solutions in response to this RFP. Statements which paraphrase the requirements or attest that “standard procedures will be employed” are inadequate to demonstrate how the Proposer will comply with the requirements of this procurement.
- B. To achieve a uniform review process and obtain the maximum degree of compatibility, technical proposals must be organized as follows:

1. Title Page

Show the RFP title, the name of the firm, address, telephone number(s), name and title of contact person, telephone number(s), email address, facsimile number, and date.

2. Table of Contents

Clearly identify the materials by section and page number.

3. Letter of Transmittal

The letter should be addressed to the Manager of Procurement and Contracts, Fawad Yusufi, and signed by a corporate officer with authority to bind the firm. The letter must contain the following:

- a. Identification of proposing firm(s), including name, address, DUNS#/TINS#, telephone number(s) and email addresses of the Prime Contractor and each subcontractor,
- b. Proposed working relationship among proposing firms (e.g., prime, subcontractor), if applicable,
- c. Acknowledgement of receipt of RFP addenda, if any,
- d. Name, title, address, telephone number and email address of the contact person for this project,
- e. Brief statement of the firm's understanding of the services to be performed, with a positive commitment to provide the services as specified.

4. Experience and Qualifications

- a. Provide a brief synopsis of the firm, including when and where incorporated, major business activities, and a listing of officers of the company. State whether the firm is local, regional, or national and how long the firm has been in existence under current ownership/management.
- b. Describe in detail the solution the proposer will provide to fulfill the scope of work outlined in the RFP. Include implementation and timeline.
- c. This section should demonstrate the Proposer's experience, skills, and qualifications. Identify the Project Manager and other key personnel in providing professional services in accordance with the Scope of Work and Technical Specifications, and meeting the goals and objectives outlined in this RFP.

5. Production Capability

- a. This section should describe and specifically demonstrate the experience, skills and qualifications of key personnel and team to perform the required services. Present the work and project management approach and techniques required for quality control of the Work including quality oversight and shipping.
- b. Provide an organizational chart showing how the project will be staffed in all functional areas.
- c. Provide a list of contracts in progress or anticipated contracts which may run concurrent with this proposed Work.

6. Proposed Service

- a. Provide details on your approach to the HVAC System Services.
- b. Provide a proposed timelines and describe your process.

7. Exceptions and Omissions

- a. Exceptions. The proposal should clearly identify any exceptions to the requirements set forth in this RFP.
- b. Omissions. The Contractor will be responsible for providing all services, equipment, facilities, and functions which are necessary for the safe, reliable, efficient, and well-managed operation of the program, within the general parameters described in this RFP, and consistent with established industry practices, regardless of whether those services, equipment, facilities, and functions are specifically mentioned in this RFP or not. The Proposer should clearly identify any omissions to the requirements set forth in the RFP.

8. Disclosure of Investigations/Actions. Proposer must provide a detailed description of any investigation or litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, the disposition.

9. Debarment

- a. Proposer must certify that the Proposer is not included in the “U. S. General Services Administration’s List of Parties Excluded from Federal Procurement or Non-Procurement Programs.” Proposer must include a completed certification in the form attached in Division 2 of the RFP Documents.
- b. Proposer agrees to provide Metro with a copy of each conditioned debarment or suspension certification provided by a prospective Subcontractor at any tier, and to refrain from awarding a subcontract with any party that has submitted a conditioned debarment or suspension certification until FTA approval is obtained.

**5.5 Basis for Contract Award**

- A. This is a “Best Value,” competitive, negotiated source selection. Award of contract, if made, will be made to the responsive and responsible Proposer whose offer conforming to the solicitation is judged by an integrated assessment of the evaluation criteria to be the most advantageous to Metro, price/cost and other factors considered.
- B. Prior to the issuing Notice of Intent to Award the Contract, Metro will review and evaluate each of those Proposals applying the criteria and requirements of the RFP Documents. Without limitation to any other Governmental Requirement, to be determined “responsible”, a Proposer must possess at the time of the award of the Contract the ability to perform successfully and a willingness to comply with the terms and conditions of the Contract, including (i) the financial resources adequate to perform the Contract, or the ability to obtain them; (ii) the ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; (iii) a satisfactory performance record; (iv) a satisfactory record of integrity and business ethics; (v) the necessary

organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them; (vi) compliance with applicable licensing and tax laws and regulations; (vii) the necessary production, technical equipment and facilities, or the ability to obtain them; (viii) compliance with Affirmative Action and Disadvantaged Business Program requirements (if applicable); and (ix) any other qualifications and eligibility criteria necessary to receive an award under any Governmental Requirement.

Notwithstanding anything contained in the RFP Documents to the contrary and without limitation to any additional right of Metro in respect of such matters, Metro reserves the right to deem any Proposer as not responsible if: such Proposer has failed to comply with any requirements of the RFP Documents, including any pre-qualification requirements cited therein as a requirement or condition of the submission of a Proposal; whether the Proposer has failed to pay, or satisfactorily settle, any amount due for labor and materials in connection with a current contract with Metro as of the Submission Deadline; or the Proposer was declared to be in default in any previous contract with Metro that was not resolved to the reasonable satisfaction of Metro or whose work in a prior contract with Metro was otherwise found by Metro to be deficient or otherwise not satisfactory, as reasonably determined by Metro.

- C. Metro may select other than the lowest cost/priced, technically acceptable offer if it is determined that the additional technical merit offered is worth the additional cost in relation to other proposals received. Metro is more concerned with obtaining excellent technical features than with making an award at the lowest overall cost/price to the Authority. However, Metro will not make an award at a significantly higher overall cost to achieve only slightly superior technical features.
- D. Proposers are further cautioned that Metro may not necessarily make an award to the Proposer with the highest technical ranking if doing so would not represent the best value to Metro. For evaluation purposes, if proposals become more technically equivalent, then cost/price becomes more important and may be the deciding factor.

## **5.6 Proposal Evaluation Criteria**

Proposals will be evaluated by an Evaluation Committee on the basis of the following weighted criteria. Only firms meeting the competitive range will be requested to provide samples for the interview/presentation phase of the evaluation process, if needed. Criteria are arranged in order of importance.

## **5.7 Evaluations**

Evaluations will be completed by three to five members of Metro's Administrative Team. This team would include members of the finance department and executive team.

## **5.8 Evaluation Process**

- A. All proposals are first evaluated for compliance with Pass/Fail of minimum requirements outlined in the Technical Specifications. Proposals achieving a "Pass" rating will be evaluated further on responses to Technical and other elements.
- B. All proposals are evaluated and ranked on the evaluation criteria specified in the RFP. Evaluation is an assessment of the proposal and the Proposer's ability to accomplish the Scope of Work in accordance with the Contract terms and conditions.
- C. The total evaluation points, as separately determined by each Evaluation Committee member, will be added and each Proposer will be ranked in numerical sequence from the highest to the lowest score.
- D. Metro will then conduct interviews/presentation with all responsible Proposers in the competitive

range, or award without discussion.

- E. Metro may present a Best and Final Offer (BAFO) opportunity to Proposers in the competitive range, which would then be scored again using the same criteria as for the initial proposals and ranking will be adjusted to determine the best overall proposal.
- F. Metro will determine whether to hold discussions with Proposers who are in the competitive range or to award the contract without discussion based on the evaluation criteria and on the initial cost proposal.
- G. If Metro's staff is unable to negotiate a satisfactory contract with the first ranked Proposer at a fair and reasonable price, negotiations will be formally terminated. Negotiations would be undertaken with the second-ranked Proposer, and so on, until a satisfactory contract could be negotiated.
- H. As noted, Metro reserves the right to award without negotiation. Therefore, Metro will award to the firm whose proposal is most advantageous to Metro with cost and other factors considered.
- I. The negotiated contract recommendations would then be presented to Metro's Board of Directors for approval.
- J. Finally, Metro reserves the right to conduct no-notice site visits, if deemed necessary by the Metro Evaluation Committee.

#### **5.9 Presentations/Interviews/Written Responses**

- A. After the submission of proposals, selected Proposers with the highest evaluation score(s) may be invited to interview with the evaluation committee concerning its technical proposal. The evaluation committee may also require Proposer(s) to submit written responses to questions regarding its proposal.
- B. Firms within the competitive range will be asked to make an oral presentation/interview of their proposal. During this process, firms will be required to present their professional Services and demonstrate their proposed Response to the Scope of Work and Technical Specifications, but in no way will change the original proposal submitted. Presentations will allow the proposer 10 minutes of set up time, 60 minutes of presentation time and 10 minutes for questions and answers from the evaluation committee and 10 minutes to tear down and clean up.

#### **5.10 Negotiations & Best and Final Offers**

- A. Additional contract negotiations may be required with the highest ranked Proposers prior to final contract award. Metro may solicit a Best and Final Offer (BAFO) from one or more Proposers. Metro may or may not contact all Proposers to negotiate and/or to submit a BAFO.
- B. After receipt of the results of the proposal evaluations, interviews, and BAFO(s), if applicable, the evaluation committee will complete its evaluation and recommend for award to the responsive and responsible Proposer(s) judged to provide the best value to Metro.
- C. Metro reserves the right to award without negotiations. Therefore, potential contractors are encouraged to submit their best offer initially. Metro will award to the contractor whose proposal is most advantageous to Metro, with cost and other factors considered.

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### **5.11 Award**

Metro reserves the right to:

1. Reject any and all proposals.
2. Withdraw or cancel all or part of this RFP at any time without prior notice, and reissue a subsequent RFP as considered necessary by Metro.
3. Waive any minor irregularities, technical errors, or information in the procurement process.
4. Verify all information submitted in a proposal submission.
5. Award without negotiation, written or oral discussions.
6. Make award to a Proposer with a responsive proposal which is the most advantageous to Metro, providing the best overall value consistent with the RFP, evaluation criteria, and award methodology.
7. Notify unsuccessful Proposers in a timely manner once Metro has made the award. Upon submittal, all proposals will be retained by Metro.

Issuance of the RFP does not commit Metro to issue an award of contract or to pay costs incurred in proposal preparation or presentation. Therefore, Proposers are encouraged to submit their best offer initially.