

**North Front Range Transportation &  
Air Quality Planning Council**

**DBA North Front Range Metropolitan Planning Organization  
(NFRMPO)**

**Request for Proposals  
For  
Permanent Electronic Bicycle and Pedestrian Counter**

June 2020



North Front Range  
**Metropolitan  
Planning  
Organization**

**RFP NO. P2020-001**

**Proposals Due July 10, 2020**

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## REQUEST FOR PROPOSALS

### #P2020-001- PERMANENT ELECTRONIC BICYCLE AND PEDESTRIAN COUNTER

**PROPOSALS DUE: 3:00 P.M. Mountain Daylight Time (MDT), Friday, July 10, 2020**

## SECTION A: REQUEST FOR PROPOSALS

The North Front Range Metropolitan Planning Organization (NFRMPO) is requesting proposals (RFP) from a qualified vendor to provide one (1) permanent electronic bicycle and pedestrian counter and associated software in accordance with the specifications provided within this request.

The North Front Range Metropolitan Planning Organization (NFRMPO) posts current bid, quote, and proposal opportunities on the Rocky Mountain E-Purchasing System (RMEPS) website. We encourage vendors and contractors to take advantage of free registration with RMEPS to see all of our available opportunities. If you need help registering, please call the Rocky Mountain E-Purchasing Group support department toll free 1-800-835-4603.

Link to North Front Range Metropolitan Planning Organization Open Solicitations:

[Rocky Mountain E-Purchasing Group](#)

[www.BidNetDirect.com/colorado](http://www.BidNetDirect.com/colorado)

A copy of the RFP may also be downloaded from the NFRMPO website: <http://nfrmpo.org/rfps-rfqs>.

**This request for proposal must be received prior to 3:00 P.M. MDT (our clock), on July 10, 2020.**

All proposals should be emailed to Merideth Kimsey, Accounting clerk III at [mkimsey@nfrmpo.org](mailto:mkimsey@nfrmpo.org) or through the RMEPS website prior to the deadline as a single PDF document.

The NFRMPO is covered under the Colorado Department of Transportation (CDOT) Disadvantaged Business Enterprise (DBE) program. CDOT has an overall DBE goal of 2.5 percent for FTA-funded projects and 11.55 percent for FHWA-funded projects. There is no specific contract goal for this project, but the NFRMPO encourages all disadvantaged business enterprises to submit a response to all invitations.

The NFRMPO does not discriminate against anyone or firm on the grounds of race, color, national origin or other protected status.

Questions concerning the proposal submittal or process should be directed, in writing via email, to Merideth Kimsey at [mkimsey@nfrmpo.org](mailto:mkimsey@nfrmpo.org).

Questions concerning technical aspects of the bicycle and pedestrian counter and associated software should be directed, in writing via email, to Ryan Dusil [rdusil@nfrmpo.org](mailto:rdusil@nfrmpo.org).

No questions will be accepted after July 2, 2020. Answers to questions received will be posted on Rocky Mountain E-Purchasing System (RMEPS) and <http://nfrmpo.org/rfps-rfqs/> and sent out via email to any vendor who indicates an intention to participate in the RFP and provides a valid email address no later than July 7, 2020.

## SECTION B: INSTRUCTIONS FOR PROPOSAL SUBMISSION

All proposals must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement. Proposals may be withdrawn up to the date and hour set for closing. Once proposals have been accepted by the NFRMPO and closing has occurred, failure to enter into contract or honor the purchase order will be cause for removal of supplier's name from the NFRMPO approved vendors list for a period of 24 months from the date of the opening. The NFRMPO may also pursue any remedies available at law or in equity. Proposal prices must be held firm for a period of sixty (60) days after proposal openings.

Submission of a proposal is deemed as acceptance of all terms, conditions and specifications contained in the NFRMPO's specifications initially provided to the vendor. Any proposed modification must be accepted in writing by the NFRMPO prior to proposal close date.

Only proposals properly received by the NFRMPO will be accepted. All proposals should be clearly identified by the proposal number and proposal name contained in the RFP.

No proposal will be accepted from, or any purchase order awarded, to any person, firm or corporation in default on any obligation to the NFRMPO.

No proposal will be accepted from or any purchase order awarded, to any person, firm or corporation who has been debarred from doing business with the federal government.

The NFRMPO is tax exempt. Proposals must be furnished exclusive of any federal excise tax, wherever applicable.

Vendors must be properly licensed and secure necessary permits, wherever applicable.

The NFRMPO may elect, where applicable, to award proposals on an individual item/group basis or on a total proposal basis, whichever is most beneficial to the NFRMPO. The NFRMPO reserves the right to accept or reject any and all proposals, and to waive any irregularities or informalities.

Sales prohibited/conflict of interest: no officer, employee, or member of the NFRMPO Council shall have a financial interest in the sale to the NFRMPO of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the NFRMPO. Soliciting or accepting any gift, gratuity, favor, entertainment, kickback or any items of monetary value from any person who has done or is seeking to do business with any NFRMPO employee or NFRMPO Council member is prohibited.

Freight terms: Unless otherwise noted, all freight is Free on Board (F.O.B.) Destination, Freight Prepaid. All freight charges must be included in prices submitted on proposal.

Discounts: Any discounts allowed for prompt payment, etc., must be reflected in proposal figures and not entered as separate pricing on the proposal form.

Collusive or sham proposals: Any proposal deemed to be collusive or a sham proposal will be rejected and reported to authorities as such. Your authorized signature on this quote assures that such proposal is genuine and is not a collusive or sham proposal.

## SECTION C: OVERVIEW

The NFRMPO requires the services of a qualified vendor to provide one (1) permanent electronic bicycle and pedestrian counter and associated software in accordance with the scope of services provided within this proposal.

**When responding to this RFP, notice the purpose for this proposal is:**

### Criteria I

All proposals must include submission pricing for the NFRMPO's requirements for a permanent electronic bicycle and pedestrian counter and associated software, per the proposal invitation and any referenced specifications contained within this document. Pricing must include all available incentives, transportation, and delivery fees. Pricing must include a list of individual item prices.

### Criteria II

Counter must be compatible with existing bicycle and pedestrian counter software in use in the NFRMPO region and the State of Colorado (Drakewell C2-Cloud, Eco-Visio, DataNet, TraxPro, STARnext).

## SECTION D: SPECIFICATIONS

### 1.0 - Scope

**1.1 - This specification establishes the requirements for the purchase of up to **one (1) permanent electronic bicycle and pedestrian counter and associated software****

**1.2 - Should the manufacturer's current published data or specifications exceed specifications; they shall be considered minimum and furnished.**

### 2.0 - Clarification of specifications

**2.1 - Clarification regarding these specifications may be obtained from Ryan Dusil prior to July 2, 2020. Any specification changes must be made by a written addendum issued by Merideth Kimsey and shall be provided to all suppliers who have provided an email and intent to respond by July 7, 2020.**

**2.2 - For questions concerning specifications contact: Ryan Dusil via email at [rdusil@nfrmpo.org](mailto:rdusil@nfrmpo.org)**

### 3.0 - Delivery

**3.1 - Delivery of equipment shall be made to:**

North Front Range MPO  
419 Canyon Avenue, Suite 300  
Fort Collins, CO 80521

All NFRMPO employees are authorized to sign delivery documents.

**3.2** - The word “delivery” encompasses delivery of the actual equipment, as specified, complete with all necessary papers such as Manufacturer’s Statement of Origin, invoice, warranty, operator’s manuals, and software as applicable.

**3.3** – Delivery shall be completed within forty-five (45) calendar days from issuance of purchase order. All units to be new and of the manufacturer’s latest model in production at the time of delivery, complete with all standard equipment and options specified herein, unless otherwise agreed upon in writing.

**3.4** - If delivery of the electronic bicycle and pedestrian counter is delayed because of strike, injunctions, governmental controls, or by reason of any cause or circumstances beyond the control of the manufacturer or supplier, the time of completion of delivery may be extended upon written request for a time extension from the vendor. This request must be received by the purchaser prior to the scheduled delivery date. The request for an extension must include detailed justification for the time extension and its length. The supplier shall provide a proposed new delivery date, not to exceed 45 days, as part of the extension request. The delivery date will be delayed by the number of days agreed upon by the purchaser and the supplier. In the absence of such an extension being requested and granted, which shall not be unreasonably denied, the purchase price of the electronic bicycle and pedestrian counter will be reduced by \$10 for each day beyond the delivery deadline as liquidated damages if the extension was not requested or the delay cannot be justified as being beyond the vendor’s control.

#### **4.0 – Warranty**

The manufacturer shall unconditionally warrant the entire electronic bicycle and pedestrian counter for a minimum warranty period of two (2) years. Additionally, the Vendor shall furnish the NFRMPO or receiving community a fully priced copy (parts and labor) of any warranty or commercial cost repair order which originates in the repair facility, subsequent to delivery, during or after the warranty period. No charge for service calls, travel time, travel expenses, mileage, or per diem will be allowed by the NFRMPO or receiving community in connection with the performance of any warranty repairs.

#### **5.0 - Specifications**

Equipment listed on this proposal must meet or exceed minimum requirements. A checklist has been provided in **Section H-Specifications Checklist** to ensure minimum requirements are met. **Failure to submit this checklist may cause your proposal to be considered ‘unresponsive’.**

#### **6.0 - Freight Terms**

FOB destination, freight prepaid. All freight charges must be included in proposal pricing

## SECTION E: SUBMITTALS

Proposals **must** include the following documents and be submitted in digital form:

- Current published data or specifications
- Completed Section H: Specification Checklist
- Completed Section I: Proposal - Pricing must include all available incentives, transportation, and delivery fees
- Completed Section J: Vendor's Signature. Proposals must be properly signed by an authorized representative of the company with the legal capacity to bind the company to the agreement.
- Completed W-9
- Lobbying Certification – Appendix A
- Debarment and Suspension Certification – Appendix B

## SECTION F: PROPOSAL EVALUATION AND AWARD

Proposal will be awarded to the lowest responsible, responsive vendor for the electronic bicycle and pedestrian counter. Staff from the NFRMPO and regional partner agencies will evaluate the quotes on cost, warranty, function, data collection and analysis, and compatibility with existing regional and statewide counting systems.

As part of the award process, the successful firm must acknowledge the NFRMPO purchase order within seventy-two (72) hours, or three (3) business days after notification of award.

## SECTION G: PROTEST PROCEDURES

### 1.0 – Filing of Protest

**1.1- When to File:** Protest must be submitted in writing via e-mail to the Executive Director at [smallette@nfrmpo.org](mailto:smallette@nfrmpo.org) within seven (7) working days after the aggrieved person knows or should have known of the facts giving rise thereto.

Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to the closing date for receipt of initial proposals, must be filed no later than three (3) working days prior to closing date for receipt of proposals.

**1.2- Subject of Protest:** Protestors may file a protest on any phase of solicitation or award, including but not limited to specification or award.

**1.3-Form:** The protest must be in writing and include, as a minimum, the following:

- (a) The name and address of the protestor.
- (b) Appropriate identification of the procurement by RFP number.

(c) A statement of the reasons for the protest.

(d) Any available exhibits, evidence or documents substantiating the protest.

## **2.0 – Decision**

The Executive Director or his/her designee will decide and inform in writing on a protest within seven (7) working days after receiving all relevant, requested information. The decision of the Executive Director or his/her designee is final.

## **3.0 – Withholding of Award**

When a protest has been filed before award, the North Front Range Transportation & Air Quality Planning Council will not make an award prior to the resolution of the protest, and when a protest has been filed before the closing date for receipt of proposals, the North Front Range Transportation & Air Quality Planning Council will not open proposals prior to the resolution of the protest, unless the North Front Range Transportation & Air Quality Planning Council determines that:

(a) The items to be procured are urgently required.

(b) Delivery or performance will be unduly delayed by failure to make the award promptly.

(c) Failure to make prompt award will otherwise cause undue harm to the North Front Range Transportation & Air Quality Planning Council.



## SECTION H: SPECIFICATIONS CHECKLIST

**General:** The following specifications describe an electronic bicycle and pedestrian counter and associated software consisting of one (1) permanent combined bicycle and pedestrian counter and associated software equipped as follows. Place a check mark in each box to indicate the electronic bicycle and pedestrian counter and software in your proposal is so equipped:

### Permanent Combined Bicycle and Pedestrian Counter

- Self-contained unit using a combination of an infrared counter and a series of electromagnetic loops or piezoelectric strips placed in the travel surface .....
- Ability to distinguish between bicyclists and pedestrians .....
- Ability to distinguish bicyclist and pedestrian direction .....
- Ability to be installed on hard- or soft-surface trail .....
- Minimum expected battery life of two years .....
- Capability of a 15-minute recording interval .....
- Ability to adjust counter sensitivity .....
- Ability to be installed permanently or mounted with a secure lock .....
- Ability to cover a 15-foot-wide multi-use trail .....
- Temperature resistance between -40 degrees centigrade to 40 degrees centigrade .....
- Waterproof .....
- Ability to automatically upload count data to a secure server for management and analysis .....
- Ability to manually collect and analyze data through free or non-proprietary software ...

### Software / Support

- Web-based software to view, manage, analyze, and present counter data .....
- Uses a secure username and password interface .....

- User interface supports common web browsers including Google Chrome, Microsoft Internet Explorer, Mozilla Firefox, etc.....
- Allows two or more users on the system at a time .....
- Ability to show bicyclist and pedestrian count trends longitudinally .....
- Ability to generate various count/trend reports and export raw or summarized data for use in Microsoft Excel .....
- Ability to compare historical weather conditions with counts .....
- Ability to automatically flag atypical counts and data transmission failures and communicate them to users.....
- On a typical workday (Monday-Friday), users have access to telephone technical support within a minimum four-hour window between 8:00AM – 5:00PM MDT, email support within 24 hours of a request, and free access to users guides and training manuals.....

**FAILURE TO COMPLETE AND SUBMIT THIS FORM SHALL BE CAUSE FOR PROPOSAL REJECTION**

## SECTION I: PROPOSAL

We hereby enter the following pricing for the NFRMPO's requirements for one (1) permanent electronic bicycle and pedestrian counter and associated software, per the proposal invitation and any referenced specifications.

### **Pricing for electronic bicycle and pedestrian counter to be purchased:**

New electronic bicycle and pedestrian counter equipped as specified in RFP: \$ \_\_\_\_\_

Estimated annual maintenance cost (automatic data upload, battery replacement, etc.):

\$ \_\_\_\_\_

Normal electronic bicycle and pedestrian counter lead (delivery) time: \_\_\_\_\_ days

### **Electronic Bicycle and Pedestrian Counter Warranty**

Term: \_\_\_\_\_

Coverage: \_\_\_\_\_

Location where warranty repairs can be performed: \_\_\_\_\_

### **Software and Support**

Phone Number: \_\_\_\_\_ Hours (MDT): \_\_\_\_\_

Email: \_\_\_\_\_

### **Freight Terms**

F.O.B. destination, freight prepaid. All freight charges must be included in quote pricing.

**FAILURE TO COMPLETE AND SUBMIT THIS FORM SHALL BE CAUSE FOR PROPOSAL REJECTION**

## SECTION J: VENDOR'S SIGNATURE PAGE

By signature below, the vendor certifies that the specifications and general provisions have been carefully examined. If the proposal is accepted, Vendor agrees to furnish the goods in the manner and time herein prescribed and according to all the requirements set forth.

Complete, sign and return the attached proposal documentation:

- Cover Title/Page
- Current Published Data or Specifications
- Section H -Specifications Checklist
- Section I -Proposal
- Section J– Vendor's Signature Page
- Completed W-9
- Completed Lobbying Certification – Appendix A
- Completed Debarment and Suspension Certification – Appendix B

Vendor will be subject to and must abide by the federal requirements/clauses included in Appendix C.

The vendor may withdraw a proposal at any time prior to the solicitation opening by providing written request via email to the Executive Director or designee. However, all proposals shall be irrevocable for sixty (60) calendar days from the day of the solicitation opening.

The vendor agrees and warrants that the undersigned certifies that neither he/she nor anyone associated with vendor's company listed below has directly, or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive competition in connection with the procurement.

**NAME/TITLE** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

**FEDERAL TAX ID:** \_\_\_\_\_

**NAME OF FIRM:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**FAILURE TO SIGN AND SUBMIT THIS FORM SHALL BE CAUSE FOR PROPOSAL REJECTION**

## **APPENDIX A: CERTIFICATION REGARDING LOBBYING**

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

***[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]***

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

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**Signature of Contractor's Authorized Official**

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**Name and Title of Contractor's Authorized Official**

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

## **APPENDIX B: DEBARMENT AND SUSPENSION CERTIFICATION**

Choose one alternative:

The Proposer, \_\_\_\_\_, certifies to the best of its knowledge and belief that it and its principals:

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

**OR**

The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of Title 31 USC § Sections 3801 are applicable thereto.

Executed in (City) \_\_\_\_\_, state of \_\_\_\_\_

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

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Authorized Signature

Date

## **APPENDIX C: FEDERALLY REQUIRED CONTRACT CLAUSES**

- A. CIVIL RIGHTS REQUIREMENTS**
- B. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**
- C. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**
- D. LOBBYING**
- E. NO OBLIGATION BY THE FEDERAL GOVERNMENT**
- F. TERMINATION**
- G. BREACHES AND DISPUTE RESOLUTION**
- H. GOVERNING LAW**
- I. SEVERABILITY**

## **A. CIVIL RIGHTS REQUIREMENTS**

**Civil Rights** – The following requirements apply to the underlying contract:

- (1) *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, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) *Equal Employment Opportunity* – The following equal employment opportunity requirements apply to the underlying contract:
  - a) *Race, Color, Creed, National Origin, Sex* – 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.
  - b) *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.
  - c) *Disabilities* – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.



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

- (1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%. A separate contract goal has not been established for this procurement.
- (2) The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NFRMPO deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). The successful vendor/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- (3) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the NFRMPO.
- (4) The contractor must promptly notify the NFRMPO whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the NFRMPO.

## **C. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its quote or proposal, the vendor or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the NFRMPO. If it is later determined that the vendor or proposer knowingly rendered an erroneous certification, in addition to remedies available to the NFRMPO, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The vendor or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The vendor or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**\*\* MUST COMPLETE AND SUBMIT APPENDIX B: DEBARMENT AND SUSPENSION  
CERTIFICATION \*\***

#### **D. LOBBYING**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** – Contractors who apply or quote for an award of \$100,000 or more shall file 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.

**\*\* MUST COMPLETE AND SUBMIT APPENDIX A: 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING \*\***

#### **E. 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.

#### **F. TERMINATION**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provision of this contract, the MPO may terminate this contract for default. The MPO shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contract will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performances set forth in this contract.

#### **G. BREACHES AND DISPUTES**

- (1) *Disputes* – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the NFRMPO’s Executive Director. This decision shall be final and conclusive unless within then (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transportation Planning Director. In connection with any such appeal, the Contractor shall be afforded and opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision
- (2) *Performance During Dispute* – Unless otherwise directed by the NFRMPO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- (3) *Claims for Damages* – Should either party to the Contract suffer injury or damage to

person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

- (4) *Remedies* – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the NFRMPO and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or if a court of competent jurisdiction with the State in which the NFRMPO is located.
- (5) *Right and Remedies* – The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of and duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the NFRMPO or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, no shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **H. GOVERNING LAW**

The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement.

#### **I. SEVERABILITY**

In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.