

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ISSUING A REQUEST ) RESOLUTION NO. 05-3610A  
FOR PROPOSALS TO DEVELOP A WORK )  
SCOPE FOR AN EXPANDED 2005-08 ) Introduced by Councilor Rex Burkholder  
REGIONAL TRANSPORTATION PLAN )  
UPDATE THAT INCORPORATES THE )  
"BUDGETING FOR OUTCOMES" APPROACH )  
TO ESTABLISHING REGIONAL )  
TRANSPORTATION PRIORITIES. )

WHEREAS, the Regional Transportation Plan (RTP) is the federally recognized transportation policy for the metropolitan region, and must be updated every four years; and

WHEREAS, the RTP fulfills statewide planning requirements to implement Goal 12 Transportation, as implemented through the Transportation Planning Rule, and must be updated every 5-7 years; and

WHEREAS, the RTP is a central tool for implementing the Region 2040 Growth Concept, and constitutes a policy component of the Regional Framework Plan; and

WHEREAS, it is Metro's intent to consolidate periodic updates to the RTP to meet applicable federal, state and regional planning purposes; and

WHEREAS, the most recent update to the RTP was completed in March 2004; and

WHEREAS, the next federal update must be completed by March 2008 to provide continued compliance with federal planning regulations, and ensure continued funding eligibility of projects and programs using federal transportation funds; and

WHEREAS, the federal update requires the development of a "financially constrained" system of improvements that meet regional travel demand, yet are constrained to anticipated funding levels during the 20-year plan period; and

WHEREAS, the recently adopted RTP contains a large shortfall between the "financially constrained" and "preferred" systems of improvements; and

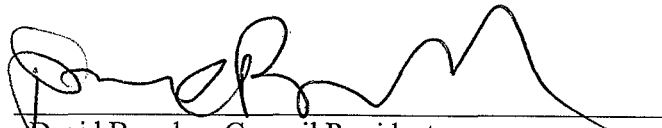
WHEREAS, Metro seeks to create an RTP that focuses on the "financially constrained" system, with a smaller set of illustrative "preferred" improvements than the existing plan; and

WHEREAS, developing this plan will require an extensive public discussion of expectation and priorities for improving the transportation system in the face of continued population and employment growth, coupled with constrained transportation revenue; therefore


BE IT RESOLVED that the Metro Council authorizes staff to develop and execute a work scope for an expanded RTP update that Metro will use to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress in reaching those outcomes with the following actions:

1. Approves the transfer of \$150,000 in federal planning funds from the 2040 Revisited effort to the RTP Update for the purpose of contract services;
2. Authorizes the use of \$34,000 in proposed grant matching excise funds for the purpose of contract services;
3. Authorizes the issue of an RFP substantially similar as the one shown in Exhibit 'A' and execution of a two-step consulting service contract to develop a work scope for an expanded RTP update, and perform the proposed tasks upon satisfactory completion of the scoping phase;
4. Authorizes proceeding with Phase 2 contingent upon Metro Council approval of the work scope developed during Phase 1; and
5. Authorizes the execution of a contract for consulting services needed to complete the two-step expanded RTP work scope.

ADOPTED by the Metro Council this 22nd day of September, 2005

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney





600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## FOR

### Scoping the Regional Transportation Plan Expanded Update

#### I. INTRODUCTION

The Planning Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for scoping an expanded 2005-08 Regional Transportation Plan Update that incorporates the "Budgeting for Outcomes" approach to establishing regional transportation priorities.

#### II. SUBMITTAL REQUIREMENTS

Proposals will be due no later than 5:00 p.m., \_\_\_\_\_, 2005 in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document.

#### III. BACKGROUND/HISTORY OF PROJECT

The proposed expansion of the 2005-08 Regional Transportation Plan (RTP) update will address the disconnect between transportation funding constraints, future system needs and the longstanding fiscal shortfall that results. This effort will set the ground rules for the RTP update by establishing how much citizens are willing to pay for transportation services and infrastructure in the Metro region. Metro will use the expanded outreach to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress. The expanded outreach will involve public opinion surveys, focus groups, town hall meetings, civic journalism and other public outreach strategies designed to provide a very broad sampling of public priorities. The expanded effort would result in an updated 2035 RTP "financially constrained" system by the federally-mandated deadline of March 2008 and an updated regional transportation system plan for purposes of compliance with the Oregon Transportation Planning Rule.

This Request for Proposals (RFP) Resolution 05-3610A authorizes the use of consultant services in scoping and executing the expanded RTP update effort. A detailed work program and deliverables will be developed as part of an initial scoping phase during the first six months of FY 2005-06. During the scoping phase, Metro will work with ~~scoping phase~~ Contractor to develop a detailed work program and budget for the project. The proposed RFP also authorizes ~~the execution of the~~

## Request for Proposals- DRAFT

---

~~subsequent work program developed as part of scoping, including selection of a contract for services required for the expanded RTP update second phase of the contract. The second phase will be the implementation of the scope of work developed in the first phase, and would commence after contractor consultation with the Council and JPACT upon completion of the first phase.~~

The major tasks to be completed in the expanded update include:

~~*Updated 2030 Revenue Forecast:* this component will be largely completed with Metro funds, except for coordination with consultants for public outreach purposes. This task involves an evaluation of transportation revenue streams and trends and analysis of whether the trends are short or long term. The forecast establishes the budget for the RTP "financially constrained" system.~~

~~*Establishing Public Expectations:* this task will be largely completed by consultants, and involves a series of survey and public outreach techniques needed to identify public transportation priorities and willingness to pay. The results of this exercise become the basis for the Council and JPACT to develop an updated RTP. An RTP advisory panel of citizens and business representatives will help facilitate this effort. This component matches public expectation with revenue forecast projections.~~

~~*Setting Transportation Priorities:* the consultant will work with the Council and JPACT to evaluate public priorities and spending constraints, and develop transportation spending allocations for the RTP. This task will involve workshops with individual consultation with Council and JPACT members and represents the most difficult step in the expanded RTP update. An RTP advisory panel of citizens and business representatives will help complete this task. Metro would employ a similar process to that used in the Transportation Priorities process for allocating federal funds in developing the RTP "financially constrained" system.~~

~~Stakeholders in the expanded outreach will include the 25 cities, three counties, five transit districts and port district that service the Metro region; citizen and business advocacy groups; and state and federal regulatory officials. An RTP advisory panel of citizen and business representatives will likely be appointed to help guide the expanded update activities, in accordance with recommendations from the scoping exercise.~~

## Request for Proposals- DRAFT

---

~~The purpose of the expanded update is to complete a large-scale public outreach effort that includes scientific surveys, focus groups and use of an advisory panel to help JPACT and the Council complete the tasks outlined above. A second round of extensive public involvement would occur during the final adoption phase. During the 2000 RTP update, nearly \$1 million was devoted to public involvement and adoption activities, including publication of nearly 500,000 brochures, maps and newsletters, maintenance of web, e-mail and phone comment venues and nearly 100 public meetings and workshops. The expanded update is envisioned to build on this effort.~~

~~The most challenging component of the update will be the front-end exercise of scaling the plan to meet realistic revenue projections for the plan period. This may be controversial with local jurisdictions who have generated many of the "wish list" projects in the 2000 RTP, despite the reality that much of the wish list continues to be unfunded under current revenue forecasts.~~

#### **IV. PROPOSED SCOPE OF WORK/SCHEDULE**

Metro is seeking proposals from qualified firms to perform the following services and to deliver a scope of work that involves developing an expanded outreach plan that addresses the issues outlined in the project background described above, over a timeline that extends from Winter 2005 through Fall 2007. The scoping must be completed by December 20, 2005, and the contractor must present the recommendations for the project scope to JPACT and the Metro Council in January 2006. The scoping shall identify critical contractor tasks and responsibilities, products, desired outcomes and distinguish between Metro agency and contractor roles in all activities. The following are the major tasks involved in this effort:

- ❖ *Updated 2030 Revenue Forecast:* this component will be largely completed with Metro funds, except for coordination with consultants for public outreach purposes. This task involves an evaluation of transportation revenue streams and trends and analysis of whether the trends are short or long term. The forecast establishes the budget for the RTP "financially constrained" system.

## Request for Proposals- DRAFT

---

- ❖ *Establishing Public Expectations:* this task will set the price of regional transportation for the 20-year RTP planning period, and will be largely completed by consultants. This task involves a series of survey and public outreach techniques needed to identify public transportation priorities and willingness to pay through the various revenue sources that make up the transportation funding stream, and the relative tradeoffs as represented by general levels of transportation service. The results of this exercise become the basis for the Council and JPACT to develop a financially constrained RTP. An RTP advisory panel of citizens and business representatives will help facilitate this effort. This component matches public expectation with revenue forecast projections, and will be coordinated through Metro staff with the statewide revenue forecast efforts.
  
- ❖ *Setting Transportation Priorities:* the consultant will work with the Council and JPACT to evaluate public priorities and spending constraints, and develop transportation spending allocations for the RTP. This task will likely involve public workshops, polling, focus groups and individual consultation with Council and JPACT members. This effort represents the most difficult step in the expanded RTP update, and will result in a series of overarching priorities that will shape the development of a detailed RTP. An RTP advisory panel of citizens and business representatives will help complete this task. Metro would employ a similar process to that used in the Transportation Priorities process for allocating federal funds in developing the RTP “financially constrained” system.
  
- ❖ *Set the price of Transportation Priorities:* the consultant will work citizens, stakeholders, public agencies partners, the Council and JPACT and staff to establish the price of the transportation priorities, with the goal of setting a relative value for each priority that will then guide RTP project selection.
  
- ❖ *Develop a Purchasing Plan for the Priorities:* in this step, the consultant will facilitate stakeholders, public agency partners, the Council and JPACT in developing a strategy for delivering the priorities through the best mix of needed transportation investments.

## Request for Proposals- DRAFT

---

- ❖ *Solicit Transportation Solutions*: this step involves soliciting transportation project and program solutions from local government providers that best match regional priorities and purchasing plan for each priority. The consultant will assist in adapting the “Budgeting for Outcomes” approach to this step, since it involves soliciting projects from agencies that already control the revenue for most projects in the RTP. The consultant will be expected to facilitate a process where local government providers participate in this exercise in good faith, with the understanding that it will help advance adopted regional land use and transportation objectives.

The outcome from this exercise will be a ranked array of transportation investments that can be weighed against the “price” of the RTP, with the Council and JPACT adjusting project priorities to establish which investments are within the financially constrained plan, and which are illustrative as placeholders for future revenue.

Stakeholders in the expanded update will include the 25 cities, three counties, five transit districts and port district that service the Metro region; citizen and business advocacy groups; and state and federal regulatory officials. An RTP advisory panel of citizen and business representatives will likely be appointed to help guide the expanded update activities, in accordance with recommendations from the scoping exercise.

The purpose of the expanded update is to complete a large-scale public outreach effort that includes scientific surveys, focus groups and use of an advisory panel to help JPACT and the Council complete the tasks outlined above. A second round of extensive public involvement would occur during the final adoption phase. During the 2000 RTP update, nearly \$1 million was devoted to public involvement and adoption activities, including publication of nearly 500,000 brochures, maps and newsletters, maintenance of web, e-mail and phone comment venues and nearly 100 public meetings and workshops. The expanded update is envisioned to build on this effort.

The most challenging component of the update will be the front-end exercise of scaling the plan to meet public expectations and willingness to pay during the plan period. This may be controversial with local jurisdictions who have generated many of the “wish list” projects in the 2000 RTP, despite the reality that much of the wish list continues to be unfunded under current revenue

## Request for Proposals- DRAFT

---

forecasts. Another challenge will be to ensure that the result of this exercise continues to adequately support the implementation of the Region 2040 Growth Concept and meet state and federal planning requirements. The 2025 RTP identifies a largely unfunded set of investments deemed necessary to implement the 2040 plan, so it will be incumbent on the contractor to assist the Council and JPACT in redefining how to best implement the 2040 plan with a more realistic set of planned transportation investments. In addition, the contractor will need to assist Metro with identifying how the new financially constrained RTP will meet state and federal planning requirements.

Project deliverables shall include:

### Phase I - Scoping

1. A detailed work program for public outreach and RTP update activities, including proposed techniques, concepts for shared public/private staffing, scope of printed and web background materials and summary reports. The Consultant will work with Metro staff to define the timeline, products and deliverables, responsibilities and budget needed to complete the RTP update.
2. A memo documenting how the "Budgeting for Outcomes" concept has been applied in other planning efforts and the results of those efforts.
3. A memo documenting how elected officials on the Council, JPACT and MPAC will be worked with on an individual level to understand the "Budgeting for Outcomes" concept, the results and lessons learned from outreach and public sampling, and a process for bringing the elected and appointed bodies to a decision point that forwards the RTP for adoption by Council. This outline should list specific meeting and discussion techniques that will be used by the consultants to work with individual officials, and a schematic for how they will help the JPACT chair guide the committee through the decision process (e.g., forging compromises to arrive at a consensus decision).



## Request for Proposals- DRAFT

---

4. A memo documenting a proposal for how to develop a survey of citizens' willingness to pay/priorities that will account for the larger funding issues that face the region. The proposal should also identify specific topics to be addressed in the survey.
5. A memo documenting how the consultants will work with Metro staff to coordinate input from the public outreach and sampling with Metro efforts to build a project and financial database. This should identify specific roles that will fall to the consultants, and processes for handing off information to Metro.
6. A memo documenting a proposal for how to explore fundamental questions of how transportation issues are defined and expressed, and how other approaches (such as an integrated, comparative analysis of alternative investments in several corridors and modes) might improve upon the current corridor-based planning approach in implementing the 2040 Growth Concept and Regional Framework Plan.
7. A memo documenting a proposal for how outreach results will be compiled by subarea and demographic stratifications to allow elected officials within the three counties and City of Portland to see how sub-regional perspectives compare to the region as a whole. The purpose of this work is to help illustrate the willingness/unwillingness to pay for transportation at a somewhat localized level, and help the region address the inequity in local efforts to fund transportation.
8. A memo documenting how the expanded RTP update and new financially constrained RTP will meet state and federal planning requirements. The memo should address the connection between the Oregon transportation planning rule and federal planning requirements and implications for using a financially constrained RTP as the basis for local land use plans and comprehensive plan amendments,

### Phase 2 - Expanded RTP Update

1. Implement scope of work activities and deliverables established in products 1 through 8 as defined in Phase 1 of this project.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

### V. FUNDING

The budget for Phase 1 (Scoping) of this contract is \$ \_\_\_\_\_. The contract amount will be finalized based on the Phase 1 (Scoping) activities.

### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

Federal funding requires and Metro has made a commitment to provide opportunities for DBEs in its contracting activities. As such, the successful proposer shall be required to meet a DBE goal of ~~XX~~ which is based on the current availability of DBE's in the market area. If the goal cannot be met, the proposer must demonstrate that a good faith effort has been made to meet the goals. More detailed information on the DBE goals and requirements are included in Attachment X, DBE Guidelines.

### VII. QUALIFICATIONS/EXPERIENCE

Proposers shall have extensive experience in public outreach and survey techniques, public agency budgeting, development of complex work plans and interagency coordination and completion of complex contract duties in a timely and satisfactory manner.

### VIII. PROJECT ADMINISTRATION

The local project manager for this project is Kim Ellis from Metro, who will be responsible for monitoring and coordinating the Contractor's work, reviewing progress reports and approval of billings submitted by the Contractor for payment.

### IX. PROPOSAL INSTRUCTIONS

#### A. Submission of Proposals

- \_\_\_\_ # \_\_\_\_ hard copies and 1 electronic copy of the proposal shall be furnished to Metro, addressed to:  
Tom Kloster, RTP Program Manager  
Metro  
600 NE Grand Avenue  
Portland, OR 97232-2736

#### B. Deadline



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

Proposals will not be considered if received after \_\_\_\_\_ at 5 p.m. pacific standard time.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information that is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed in writing to Tom Kloster at the above mailing address or by e-mail at [klostert@metro.dst.or.us](mailto:klostert@metro.dst.or.us). Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment, will be furnished to all parties receiving this RFP. Metro will not respond to questions received after \_\_\_\_\_, 2005.

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all Proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code provisions 2.04.100.

Copies of that document are available from Purchasing/Contract Office of Metro, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1816.

### X. PROPOSAL CONTENTS

The proposal should contain not more than \_\_\_\_\_ pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

- A. Transmittal Letter: Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for ninety (90) days.

\_\_\_ pages

- B. Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule.

\_\_\_ pages

- C. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract.

- Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any subconsultant work and shall be responsible for the day-today direction and internal management of the consultant effort.

\_\_\_ pages

- D. Experience: Indicate how your firm meets the experience requirements listed in section IV. of this RFP. List projects conducted over the past five years which involved services similar to the services required here. For each of these other projects, include the name of the customer contact person, his/her title, role on the project, and telephone number. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.

Pages



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

- E. Cost/Budget: Present the proposed cost of the project and the proposed method of compensation. List hourly rates for personnel assigned to the project, total personnel expenditures, support services, and subconsultant fees (if any). Requested expenses should also be listed. Metro has established budget not to exceed \$184,000 for this project. Proposals may recommend adjustments to the budget to address specific tasks identified in this request or other related tasks deemed appropriate to complete this request. The proposed adjustments and rationale will be considered by Metro as part of evaluating the proposal.

\_\_\_ pages

- F. Exceptions and Comments: To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

\_\_\_ pages

### XI. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
  
- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
  
- E. Intergovernmental Cooperative Agreement (Requires competitive solicitation) – Pursuant to ORS 279A and Metro procurement rules, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under the terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro. Any estimated purchase volumes listed herein do not include other public agencies and Metro makes no guarantee as to their participation. Any bidder, by written notification included with their solicitation response may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

## XII. EVALUATION OF PROPOSALS

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

C. Percentage of Total Score

Project Work Plan/Approach

- o Demonstration of understanding of the project objectives \_\_\_\_\_
- o Performance methodology \_\_\_\_\_

Project Staffing Experience

- o Project consultant \_\_\_\_\_
- o Commitment to project \_\_\_\_\_

Budget/Cost Proposal

- o Projected cost/benefit of proposed work plan/approach \_\_\_\_\_
- o Commitment to budget and schedule parameters \_\_\_\_\_

100%

### XIII. NOTICE TO ALL PROPOSERS –

**Standard Agreement**

The attached personal services agreement is a standard agreement approved for use by the Office of Metro Attorney. This is the contract the successful Proposer will enter into with Metro; it is included for your review prior to submitting a proposal



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

For Public Contracts \$50,000 & Up

CONTRACT NO. \_\_\_\_\_

## PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and \_\_\_\_\_, whose address is \_\_\_\_\_

\_\_\_\_\_, hereinafter referred to as the "CONTRACTOR."

**Metro** considers **Contractor** to be a sub-recipient to any federal funds identified in this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

#### ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing \_\_\_\_\_, 20\_\_\_\_ through and including \_\_\_\_\_, 20\_\_\_\_.

#### ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

#### ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way





600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

### ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect, consequential damages or any other damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

### ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work

### ARTICLE VII PUBLIC CONTRACTS



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

### ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

### ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

### ARTICLE X OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not

## Request for Proposals- DRAFT

---

limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

- A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
  2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
  3. Any cost and pricing data relating to the contract; and
  4. Payments made to all suppliers and subcontractors.
- B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.
- E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

### ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

### ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

### ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

## ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

## ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

(Requires competitive solicitation) – Pursuant to ORS 279A and Metro procurement rules, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under the terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro. Any estimated purchase volumes listed herein do not include other public agencies and Metro makes no guarantee as to their participation. Any bidder, by written notification included with their solicitation response may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. Will your company participate in Intergovernmental Cooperative Purchasing?  Yes;  No. If No, please explain on a separate sheet of paper



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## ARTICLE XVII ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

\_\_\_\_\_  
CONTRACTOR NAME

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Request for Proposals- DRAFT

---

Attachment 1

## FEDERAL REQUIREMENTS

### Buy America Requirements

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to Metro the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. (See Attachment A)

### Cargo Preference

The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 3. Energy Conservation Requirements

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.

### 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

## Request for Proposals- DRAFT

---

each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (2) 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.

### Lobbying

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Contractors who apply or bid 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. (See Attachment B).

### Access to Records

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 Metro, 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 18.42(i)(11).

### 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 Master Agreement (Form FTA MA (5) dated October, 1998) between Metro 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.

### 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 Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (2) 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.



## Request for Proposals- DRAFT

---

### Recycled Products

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.

### Contract Work Hours and Safety Standards Act (Non-Construction)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

(2) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### No Government Obligation to Third Parties

Metro 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 Metro, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

## Request for Proposals- DRAFT

---

(2) 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.

### Program Fraud and False or Fraudulent Statements

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.

### Termination

a. Termination for Convenience Metro, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Metro shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

b. Termination for Default If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Metro may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Metro that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Metro, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## Request for Proposals- DRAFT

---

c. Opportunity to Cure Metro in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 (ten) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Metro's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Metro setting forth the nature of said breach or default, Metro shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Metro from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Debarment and Suspension

#### Instructions for Certification (See Attachment C)

1. By signing and submitting this bid or proposal, the Contractor is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Metro may pursue available remedies, including suspension and/or debarment.
3. The Contractor shall provide immediate written notice to Metro if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Metro for assistance in obtaining a copy of those regulations.
5. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Metro.
6. The Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

## Request for Proposals- DRAFT

---

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Metro may pursue available remedies including suspension and/or debarment.

### Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### Civil Rights

The following requirements apply to the underlying contract:

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:

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

## Request for Proposals- DRAFT

---

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 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.

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.

### Dispute Resolution

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

Performance During Dispute - Unless otherwise directed by Metro, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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 of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro 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 in a court of competent jurisdiction within the State of Oregon, Multnomah County.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Metro, or

## Request for Proposals- DRAFT

---

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### Patent and Rights in Data

#### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, Metro or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Metro or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and  
2. Any rights of copyright purchased by Metro or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Metro and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing

## Request for Proposals- DRAFT

---

equipment or programs for Metro or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, Metro and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Metro or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither Metro nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Metro or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Metro and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Metro and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### Disadvantaged Business Enterprises

The DBE goal for the personal services contracts under this Agreement shall be \_\_\_%.

Pursuant to 49 CFR Part 26, the following provisions are made a part of this contract:

A. Policy. It is policy of the U.S. Department of Transportation (DOT) and Metro that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

DBE Obligation. Contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

C. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out the applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

This clause language must be used verbatim in every DOT-assisted contract and subcontract.

D. Prime contractors are required to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records will be made available for inspection upon request by an authorized representative of Metro. This reporting requirement also extends to any certified DBE subcontractor.

### Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

### Conflict of Interest



## Request for Proposals- DRAFT

---

Contractor shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the Contractor shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The Contractor's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from potential contractors, or parties to sub agreements. Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Contractor's officers, employees, or agents, or by sub-contractors or their agents.

### 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 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests, which would cause Metro to be in violation of the FTA terms and conditions.

### Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from Metro. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE subcontractors.

### Contract Assurance

The contractor or subcontractor shall not discriminate based on 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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

### 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 subrecipients 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.

### Attachments

Buy America Certification  
Lobbying Certification  
Debarment & Suspension Certification



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## ATTACHMENT A

### BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date

Signature

Company Name

Title

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date

Signature

Company Name

Title

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date

Signature

Company Name

Title



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date

Signature

Company Name

Title



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

## LOBBYING CERTIFICATION

### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name/Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



600 NE Grand Ave.  
Portland, OR 97232-2736  
(503) 797-1700

# Request for Proposals

---

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

The prospective participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

Signature

Company Name

Title

## STAFF REPORT

FOR THE PURPOSE OF ISSUING A REQUEST FOR PROPOSALS TO DEVELOP A WORK SCOPE FOR AN EXPANDED 2005-08 REGIONAL TRANSPORTATION PLAN UPDATE THAT INCORPORATES THE "BUDGETING FOR OUTCOMES" APPROACH TO ESTABLISHING REGIONAL TRANSPORTATION PRIORITIES.

---

Date: August 9, 2005

Prepared by: Tom Kloster

### SUMMARY

The proposed expansion of the 2005-08 Regional Transportation Plan (RTP) update will address the disconnect between transportation funding constraints, future system needs and the longstanding fiscal shortfall that results. This effort will set the ground rules for the RTP update by establishing how much citizens are willing to pay for transportation services and infrastructure in the Metro region. Metro will use the expanded outreach to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress. The expanded outreach will involve public opinion surveys, focus groups, town hall meetings, civic journalism and other public outreach strategies designed to provide a very broad sampling of public priorities. The expanded effort would result in an updated RTP "financially constrained" system by the federally-mandated deadline of March 2008.

### BACKGROUND

This resolution authorizes the use of consultant services in scoping and executing the expanded RTP outreach effort. A detailed work program and deliverables will be developed as part of an initial scoping phase during the first six months of FY 2005-06. During the scoping phase, Metro will work with the contractor to develop a detailed work program and budget for the project. The proposed RFP also authorizes the second phase of the contract. The second phase will be the implementation of the scope of work developed in the first phase, and would commence after contractor consultation with the Council and JPACT upon completion of the first phase.

The major tasks to be completed include:

- ❖ *Updated 2030 Revenue Forecast:* this component will be largely completed with Metro funds, except for coordination with consultants for public outreach purposes. This task involves an evaluation of transportation revenue streams and trends and analysis of whether the trends are short or long term. The forecast establishes the budget for the RTP "financially constrained" system.
- ❖ *Establishing Public Expectations:* this task will set the price of regional transportation for the 20-year RTP planning period, and will be largely completed by consultants. This task involves a series of survey and public outreach techniques needed to identify public transportation priorities and willingness to pay through the various revenue sources that make up the transportation funding stream, and the relative tradeoffs as represented by general levels of transportation service. The results of this exercise become the basis for the Council and JPACT to develop a financially constrained RTP. An RTP advisory panel of citizens and business representatives will help facilitate this effort. This component matches public expectation with revenue forecast projections, and will be coordinated through Metro staff with the statewide revenue forecast efforts.

- ❖ *Setting Transportation Priorities:* the consultant will work with the Council and JPACT to evaluate public priorities and spending constraints, and develop transportation spending allocations for the RTP. This task will likely involve public workshops, polling, focus groups and individual consultation with Council and JPACT members. This effort represents the most difficult step in the expanded RTP update, and will result in a series of overarching priorities that will shape the development of a detailed RTP. An RTP advisory panel of citizens and business representatives will help complete this task. Metro would employ a similar process to that used in the Transportation Priorities process for allocating federal funds in developing the RTP “financially constrained” system.
- ❖ *Set the price of Transportation Priorities:* the consultant will work citizens, stakeholders, public agencies partners, the Council and JPACT and staff to establish the price of the transportation priorities, with the goal of setting a relative value for each priority that will then guide RTP project selection.
- ❖ *Develop a Purchasing Plan for the Priorities:* in this step, the consultant will facilitate stakeholders, public agency partners, the Council and JPACT in developing a strategy for delivering the priorities through the best mix of needed transportation investments.
- ❖ *Solicit Transportation Solutions:* this step involves soliciting transportation project and program solutions from local government providers that best match regional priorities and purchasing plan for each priority. The consultant will assist in adapting the “Budgeting for Outcomes” approach to this step, since it involves soliciting projects from agencies that already control the revenue for most projects in the RTP. The consultant will be expected to facilitate a process where local government providers participate in this exercise in good faith, with the understanding that it will help advance adopted regional land use and transportation objectives.

The outcome from this exercise will be a ranked array of transportation investments that can be weighed against the “price” of the RTP, with the Council and JPACT adjusting project priorities to establish which investments are within the financially constrained plan, and which are illustrative as placeholders for future revenue.

Stakeholders in the expanded update will include the 25 cities, three counties, five transit districts and port district that service the Metro region; citizen and business advocacy groups; and state and federal regulatory officials. An RTP advisory panel of citizen and business representatives will likely be appointed to help guide the expanded update activities, in accordance with recommendations from the scoping exercise.

The purpose of the expanded update is to complete a large-scale public outreach effort that includes scientific surveys, focus groups and use of an advisory panel to help JPACT and the Council complete the tasks outlined above. A second round of extensive public involvement would occur during the final adoption phase. During the 2000 RTP update, nearly \$1 million was devoted to public involvement and adoption activities, including publication of nearly 500,000 brochures, maps and newsletters, maintenance of web, e-mail and phone comment venues and nearly 100 public meetings and workshops. The expanded update is envisioned to build on this effort.

The most challenging component of the update will be the front-end exercise of scaling the plan to meet public expectations and willingness to pay during the plan period. This may be controversial with local jurisdictions who have generated many of the “wish list” projects in the 2000 RTP, despite the reality that much of the wish list continues to be unfunded under current revenue forecasts. Another challenge will be to ensure that the result of this exercise continues to adequately support the implementation of the Region 2040 Growth Concept and meeting state and federal planning requirements. The 2025 RTP identifies a



largely unfunded set of investments deemed necessary to implement the 2040 plan, so it will be incumbent on the contractor to assist the Council and JPACT in redefining how to best implement the 2040 plan with a more realistic set of planned transportation investments. In addition, the contractor will need to assist Metro with identifying how the new financially constrained RTP will meet state and federal planning requirements.

#### **ANALYSIS/INFORMATION**

1. Known Opposition - None
2. Legal Antecedents - The RTP update fulfills both state and federal transportation planning requirements. The 2005-08 update will result in continued compliance with federal regulations that require the RTP to be updated every four years.
3. Anticipated Effects - The resolution will allow staff to issue an RFP to scope the expanded RTP outreach, develop a work plan for completed the expanded outreach, and execute a contract for services to complete the work plan activities.
4. Budget Impacts - Moves \$150,000 in federal planning funds from the 2040 Revisited effort to the RTP update for consultant services; applies \$34,000 in excise funds identified as match money for possible grants for this effort to consultant services.

#### **RECOMMENDED ACTION**

Staff recommends approval of this resolution.

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF ISSUING A REQUEST ) RESOLUTION NO. 05-3610  
FOR PROPOSALS TO DEVELOP A WORK )  
SCOPE FOR AN EXPANDED PUBLIC ) Introduced by Councilor Rex Burkholder  
OUTREACH FOR THE 2005-08 REGIONAL )  
TRANSPORTATION PLAN UPDATE. )

WHEREAS, the Regional Transportation Plan (RTP) is the federally recognized transportation policy for the metropolitan region, and must be updated every four years; and

WHEREAS, the RTP fulfills statewide planning requirements to implement Goal 12 Transportation, as implemented through the Transportation Planning Rule, and must be updated every 5-7 years; and

WHEREAS, the RTP is a central tool for implementing the Region 2040 Growth Concept, and constitutes a policy component of the Regional Framework Plan; and

WHEREAS, it is Metro's intent to consolidate periodic updates to the RTP to meet applicable federal, state and regional planning purposes; and

WHEREAS, the most recent update to the RTP was completed in March 2004; and

WHEREAS, the next federal update must be completed by March 2008 to provide continued compliance with federal planning regulations, and ensure continued funding eligibility of projects and programs using federal transportation funds; and

WHEREAS, the federal update requires the development of a "financially constrained" system of improvements that meet regional travel demand, yet are constrained to anticipated funding levels during the 20-year plan period; and

WHEREAS, the recently adopted RTP contains a large shortfall between the "financially constrained" and "preferred" systems of improvements; and

WHEREAS, Metro seeks to create an RTP that focuses on the "financially constrained" system, with a smaller set of illustrative "preferred" improvements than the existing plan; and

WHEREAS, developing this plan will require an extensive public discussion of expectation and priorities for improving the transportation system in the face of continued population and employment growth, coupled with constrained transportation revenue; therefore

BE IT RESOLVED that the Metro Council authorizes staff to develop and execute a work scope for an expanded RTP update that Metro will use to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress in reaching those outcomes with the following actions:

1. Approves the transfer of \$150,000 in federal planning funds from the 2040 Revisited effort to the RTP Update for the purpose of contract services;

2. Authorizes the use of \$34,000 in proposed grant matching excise funds for the purpose of contract services;
3. Authorizes the issue of an RFP substantially similar as the one shown in Exhibit 'A' and execution of a two-step consulting service contract to develop a work scope for an expanded RTP update, and perform the proposed tasks upon satisfactory completion of the scoping phase; and
5. Authorizes the execution of a contract for consulting services needed to complete the two-step expanded RTP work scope.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2005

---

David Bragdon, Council President

Approved as to Form:

---

Daniel B. Cooper, Metro Attorney

# Request for Proposals- DRAFT

---

## FOR

### Scoping the Regional Transportation Plan Expanded Outreach

#### I. INTRODUCTION

The Planning Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for scoping an expanded outreach effort for the 2005-08 Regional Transportation Plan Update.

#### II. SUBMITTAL REQUIREMENTS

Proposals will be due no later than 5:00 p.m., September 30, 2005 in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document.

#### III. BACKGROUND/HISTORY OF PROJECT

The proposed expansion of the 2005-08 Regional Transportation Plan (RTP) update will address the disconnect between transportation funding constraints, future system needs and the longstanding fiscal shortfall that results. This effort will set the ground rules for the RTP update by establishing how much citizens are willing to pay for transportation services and infrastructure in the Metro region. Metro will use the expanded outreach to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress. The expanded outreach will involve public opinion surveys, focus groups, town hall meetings, civic journalism and other public outreach strategies designed to provide a very broad sampling of public priorities. The expanded effort would result in an updated RTP "financially constrained" system by the federally mandated deadline of March 2008.

This Request for Proposals (RFP) authorizes the use of consultant services in scoping and executing the expanded RTP outreach effort. A detailed work program and deliverables will be developed as part of a scoping phase during the first six months of FY 2005-06. Metro will work with the scoping phase contractor to develop a detailed work program and budget for the expanded outreach.

## Request for Proposals- DRAFT

---

The proposed budget amendment also authorizes the execution of the subsequent work program developed as part of scoping, including selection of a contractor and execution of a contract for services required for the expanded RTP update.

The major tasks to be completed in the expanded update include:

*Updated 2030 Revenue Forecast:* this component will be largely completed with Metro funds, except for coordination with consultants for public outreach purposes. This task involves an evaluation of transportation revenue streams and trends and analysis of whether the trends are short or long term. The forecast establishes the budget for the RTP “financially constrained” system.

*Establishing Public Expectations:* this task will be largely completed by consultants, and involves a series of survey and public outreach techniques needed to identify public transportation priorities and willingness to pay. The results of this exercise become the basis for the Council and JPACT to develop an updated RTP. An RTP advisory panel of citizens and business representatives will help facilitate this effort. This component matches public expectation with revenue forecast projections.

*Setting Transportation Priorities:* the consultant will work with the Council and JPACT to evaluate public priorities and spending constraints, and develop transportation spending allocations for the RTP. This task will involve workshops with individual consultation with Council and JPACT members and represents the most difficult step in the expanded RTP update. An RTP advisory panel of citizens and business representatives will help complete this task. Metro would employ a similar process to that used in the Transportation Priorities process for allocating federal funds in developing the RTP “financially constrained” system.

Stakeholders in the expanded outreach will include the 25 cities, three counties, five transit districts and port district that service the Metro region; citizen and business advocacy groups; and state and federal regulatory officials. An RTP advisory panel of citizen and business representatives will likely be appointed to help guide the expanded update activities, in accordance with recommendations from the scoping exercise.

## Request for Proposals- DRAFT

---

The purpose of the expanded update is to complete a large-scale public outreach effort that includes scientific surveys, focus groups and use of an advisory panel to help JPACT and the Council complete the tasks outlined above. A second round of extensive public involvement would occur during the final adoption phase. During the 2000 RTP update, nearly \$1 million was devoted to public involvement and adoption activities, including publication of nearly 500,000 brochures, maps and newsletters, maintenance of web, e-mail and phone comment venues and nearly 100 public meetings and workshops. The expanded update is envisioned to build on this effort.

The most challenging component of the update will be the front-end exercise of scaling the plan to meet realistic revenue projections for the plan period. This may be controversial with local jurisdictions who have generated many of the "wish list" projects in the 2000 RTP, despite the reality that much of the wish list continues to be unfunded under current revenue forecasts.

#### **IV. PROPOSED SCOPE OF WORK/SCHEDULE**

##### To be expanded before release

Metro is seeking proposals from qualified firms to perform the following services and to deliver a scope of work involves developing an expanded outreach plan that addresses the issuance outlined in the project background described above, over a timeline that extends from Winter 2005 through Fall 2007. The scoping must be completed by December 20, 2005, and the contractor must present the recommendations for the project scope to JPACT and the Metro Council in January 2006. The scoping shall identify critical contractor tasks and responsibilities, products, desired outcomes and distinguish between Metro agency and contractor roles in all activities.

#### **V. FUNDING**

##### To be outlined before release

#### **VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

Federal funding requires and Metro has made a commitment to provide opportunities for DBEs in its contracting activities. As such, the successful proposer shall be required to meet a DBE goal of XX which is based on the current availability of DBE's in the market area. If the goal cannot be met, the proposer must demonstrate that a good faith effort has been made to meet the goals. More

## Request for Proposals- DRAFT

---

detailed information on the DBE goals and requirements are included in Attachment X, DBE Guidelines.

### VII. QUALIFICATIONS/EXPERIENCE

To be determined before release

Proposers shall have extensive experience in public outreach and survey techniques, public agency budgeting, development of complex work plans and interagency coordination and completion of complex contract duties in a timely and satisfactory manner.

### VIII. PROJECT ADMINISTRATION

To be determined before release

### IX. PROPOSAL INSTRUCTIONS

To be determined before release

A. Submission of Proposals

- copies of the proposal shall be furnished to Metro, addressed to:

Metro

600 NE Grand Avenue

Portland, OR 97232-2736

B. Deadline

Proposals will not be considered if received after

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information that is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Tom Kloster at (503) 797-1832. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment, will be furnished to all parties receiving this RFP. Metro will not respond to questions received after September 23, 2005.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all Proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code provisions 2.04.100.

Copies of that document are available from Purchasing/Contract Office of Metro, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1816.

### X. PROPOSAL CONTENTS

To be determined before release

The proposal should contain not more than \_\_\_\_\_ pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested, as outlined below. The proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.

- A. Transmittal Letter: Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for ninety (90) days.

pages

- B. Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule.

pages





600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

## Request for Proposals- DRAFT

---

C. Staffing/Project Manager Designation: Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project. Include resumes of individuals proposed for this contract.

- Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any subconsultant work and shall be responsible for the day-today direction and internal management of the consultant effort.

pages

D. Experience: Indicate how your firm meets the experience requirements listed in section IV. of this RFP. List projects conducted over the past five years which involved services similar to the services required here. For each of these other projects, include the name of the customer contact person, his/her title, role on the project, and telephone number. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.

Pages

E. Cost/Budget: Present the proposed cost of the project and the proposed method of compensation. List hourly rates for personnel assigned to the project, total personnel expenditures, support services, and subconsultant fees (if any). Requested expenses should also be listed. Metro has established budget not to exceed \$\_\_\_\_\_ for this project.

pages

F. Exceptions and Comments: To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to

## Request for Proposals- DRAFT

---

document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

pages

### XI. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
  
- B. Billing Procedures: Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.
  
- C. Validity Period and Authority: The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
  
- D. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

- E. Intergovernmental Cooperative Agreement (Requires competitive solicitation) – Pursuant to ORS 279A and Metro procurement rules, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under the terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor’s obligation to Metro. Any estimated purchase volumes listed herein do not include other public agencies and Metro makes no guarantee as to their participation. Any bidder, by written notification included with their solicitation response may decline to extend the prices and terms of this solicitation to any and/or all other public agencies.

## XII. EVALUATION OF PROPOSALS

### To be determined before release

- A. Evaluation Procedure: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.
- B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.
- C. Percentage of Total Score
  - Project Work Plan/Approach
    - Demonstration of understanding of the project objectives \_\_\_\_\_
    - Performance methodology \_\_\_\_\_
  - Project Staffing Experience
    - Project consultant \_\_\_\_\_
    - Commitment to project \_\_\_\_\_



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## Budget/Cost Proposal

- Projected cost/benefit of proposed work plan/approach \_\_\_\_\_
  - Commitment to budget and schedule parameters \_\_\_\_\_
- 100%

### XIII. NOTICE TO ALL PROPOSERS –

#### **Standard Agreement**

The attached personal services agreement is a standard agreement approved for use by the Office of Metro Attorney. This is the contract the successful Proposer will enter into with Metro; it is included for your review prior to submitting a proposal



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

For Public Contracts \$50,000 & Up

CONTRACT NO. \_\_\_\_\_

## PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and \_\_\_\_\_, whose address is \_\_\_\_\_

\_\_\_\_\_, hereinafter referred to as the "CONTRACTOR."

**Metro considers Contractor** to be a sub-recipient to any federal funds identified in this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

#### ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing \_\_\_\_\_, 20\_\_\_\_ through and including \_\_\_\_\_, 20\_\_\_\_.

#### ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

#### ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way

# Request for Proposals- DRAFT

---

connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

## ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect, consequential damages or any other damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

## ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work

## ARTICLE VII PUBLIC CONTRACTS

## Request for Proposals- DRAFT

---

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

### ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

### ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

### ARTICLE X OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not

## Request for Proposals- DRAFT

---

limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

- A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
  2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
  3. Any cost and pricing data relating to the contract; and
  4. Payments made to all suppliers and subcontractors.
- B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.
- E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.



## Request for Proposals- DRAFT

---

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

### ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

### ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

### ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

## ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

## ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

(Requires competitive solicitation) – Pursuant to ORS 279A and Metro procurement rules, other public agencies shall have the ability to purchase the awarded goods and services from the awarded Contractor(s) under the terms and conditions of the resultant contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro. Any estimated purchase volumes listed herein do not include other public agencies and Metro makes no guarantee as to their participation. Any bidder, by written notification included with their solicitation response may decline to extend the prices and terms of this solicitation to any and/or all other public agencies. Will your company participate in Intergovernmental Cooperative Purchasing?  Yes;  No. If No, please explain on a separate sheet of paper



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

## ARTICLE XVII ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

\_\_\_\_\_  
CONTRACTOR NAME

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Request for Proposals- DRAFT

---

Attachment 1

## FEDERAL REQUIREMENTS

### Buy America Requirements

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to Metro the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. (See Attachment A)

### Cargo Preference

The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 3. Energy Conservation Requirements

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.

### 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

## Request for Proposals- DRAFT

---

each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (2) 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.

### Lobbying

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Contractors who apply or bid 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. (See Attachment B).

### Access to Records

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 Metro, 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 18.42(i)(11).

### 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 Master Agreement (Form FTA MA (5) dated October, 1998) between Metro 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.

### 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 Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (2) 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.

## Request for Proposals- DRAFT

---

### Recycled Products

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.

### Contract Work Hours and Safety Standards Act (Non-Construction)

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

(2) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

### No Government Obligation to Third Parties

Metro 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 Metro, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

## Request for Proposals- DRAFT

---

(2) 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.

### Program Fraud and False or Fraudulent Statements

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.

### Termination

a. Termination for Convenience Metro, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Metro shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

b. Termination for Default If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Metro may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Metro that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Metro, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## Request for Proposals- DRAFT

---

c. Opportunity to Cure Metro in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 (ten) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Metro's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Metro setting forth the nature of said breach or default, Metro shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Metro from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Debarment and Suspension

#### Instructions for Certification (See Attachment C)

1. By signing and submitting this bid or proposal, the Contractor is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Metro may pursue available remedies, including suspension and/or debarment.
3. The Contractor shall provide immediate written notice to Metro if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Metro for assistance in obtaining a copy of those regulations.
5. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Metro.
6. The Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



## Request for Proposals- DRAFT

---

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Metro may pursue available remedies including suspension and/or debarment.

### Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### Civil Rights

The following requirements apply to the underlying contract:

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:

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

## Request for Proposals- DRAFT

---

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 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.

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.

### Dispute Resolution

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

Performance During Dispute - Unless otherwise directed by Metro, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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 of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Metro 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 in a court of competent jurisdiction within the State of Oregon, Multnomah County.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Metro, or

## Request for Proposals- DRAFT

---

Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### Patent and Rights in Data

#### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, Metro or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Metro or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use; and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by Metro or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Metro and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing

## Request for Proposals- DRAFT

---

equipment or programs for Metro or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, Metro and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Metro or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither Metro nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by Metro or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Metro or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Metro and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Metro and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Metro and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

## Request for Proposals- DRAFT

---

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

### Disadvantaged Business Enterprises

The DBE goal for the personal services contracts under this Agreement shall be \_\_\_\_%.

Pursuant to 49 CFR Part 26, the following provisions are made a part of this contract:

A. Policy. It is policy of the U.S. Department of Transportation (DOT) and Metro that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 26 apply to this contract.

DBE Obligation. Contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

C. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out the applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

This clause language must be used verbatim in every DOT-assisted contract and subcontract.

D. Prime contractors are required to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records will be made available for inspection upon request by an authorized representative of Metro. This reporting requirement also extends to any certified DBE subcontractor.

### Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

### Conflict of Interest

## Request for Proposals- DRAFT

---

Contractor shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the Contractor shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The Contractor's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from potential contractors, or parties to sub agreements. Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Contractor's officers, employees, or agents, or by sub-contractors or their agents.

### 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 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests, which would cause Metro to be in violation of the FTA terms and conditions.

### Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from Metro. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payments from the above referenced time frame may occur only for good cause following written approval of Metro. This clause applies to both DBE and non-DBE subcontractors.

### Contract Assurance

The contractor or subcontractor shall not discriminate based on 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 DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

## Request for Proposals- DRAFT

### 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 subrecipients 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.

### Attachments

Buy America Certification  
Lobbying Certification  
Debarment & Suspension Certification

# Request for Proposals- DRAFT

---

## ATTACHMENT A

### BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date

Signature

Company Name

Title

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date

Signature

Company Name

Title

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date

Signature

Company Name

Title





600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

---

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date

Signature

Company Name

Title



600 NE Grand Ave.  
Portland, OR 97232-  
2736  
(503) 797-1700

# Request for Proposals- DRAFT

## LOBBYING CERTIFICATION

### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name/Title of Contractor's Authorized Official

\_\_\_\_\_ Date

# Request for Proposals

---

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

The prospective participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date

Signature

Company Name

Title

## STAFF REPORT

FOR THE PURPOSE OF ISSUING A REQUEST FOR PROPOSALS TO DEVELOP A WORK SCOPE FOR AN EXPANDED PUBLIC OUTREACH FOR THE 2005-08 REGIONAL TRANSPORTATION PLAN UPDATE.

---

Date: August 9, 2005

Prepared by: Tom Kloster

### SUMMARY

The proposed expansion of the 2005-08 Regional Transportation Plan (RTP) update will address the disconnect between transportation funding constraints, future system needs and the longstanding fiscal shortfall that results. This effort will set the ground rules for the RTP update by establishing how much citizens are willing to pay for transportation services and infrastructure in the Metro region. Metro will use the expanded outreach to create an RTP that delivers the outcomes that matter most to citizens, along with indicators to measure progress. The expanded outreach will involve public opinion surveys, focus groups, town hall meetings, civic journalism and other public outreach strategies designed to provide a very broad sampling of public priorities. The expanded effort would result in an updated RTP “financially constrained” system by the federally-mandated deadline of March 2008.

### BACKGROUND

This resolution would authorize the use of consultant services in scoping and executing the expanded RTP outreach effort. A detailed work program and deliverables will be developed as part of a scoping phase during the first six months of FY 2005-06. Metro will work with the scoping phase contractor to develop a detailed work program and budget for the expanded outreach. The proposed RFP also authorizes the second phase of the contract. The second phase will be the implementation of the scope of work developed in the first phase.

The major tasks to be completed include:

- ❖ *Updated 2030 Revenue Forecast:* this component will be largely completed with Metro funds, except for coordination with consultants for public outreach purposes. This task involves an evaluation of transportation revenue streams and trends and analysis of whether the trends are short or long term. The forecast establishes the budget for the RTP “financially constrained” system.
- ❖ *Establishing Public Expectations:* this task will be largely completed by consultants, and involves a series of survey and public outreach techniques needed to identify public transportation priorities and willingness to pay. The results of this exercise become the basis for the Council and JPACT to develop an updated RTP. An RTP advisory panel of citizens and business representatives will help facilitate this effort. This component matches public expectation with revenue forecast projections.
- ❖ *Setting Transportation Priorities:* the consultant will work with the Council and JPACT to evaluate public priorities and spending constraints, and develop transportation spending allocations for the RTP. This task will involve workshops with individual consultation with Council and JPACT members and represents the most difficult step in the expanded RTP update. An RTP advisory panel of citizens and business representatives will help complete this task. Metro would employ a similar

process to that used in the Transportation Priorities process for allocating federal funds in developing the RTP “financially constrained” system.

Stakeholders in the expanded outreach will include the 25 cities, three counties, five transit districts and port district that service the Metro region; citizen and business advocacy groups; and state and federal regulatory officials. An RTP advisory panel of citizen and business representatives will likely be appointed to help guide the expanded update activities, in accordance with recommendations from the scoping exercise.

The purpose of the expanded update is to complete a large-scale public outreach effort that includes scientific surveys, focus groups and use of an advisory panel to help JPACT and the Council complete the tasks outlined above. A second round of extensive public involvement would occur during the final adoption phase. During the 2000 RTP update, nearly \$1 million was devoted to public involvement and adoption activities, including publication of nearly 500,000 brochures, maps and newsletters, maintenance of web, e-mail and phone comment venues and nearly 100 public meetings and workshops. The expanded update is envisioned to build on this effort.

The most challenging component of the update will be the front-end exercise of scaling the plan to meet realistic revenue projections for the plan period. This may be controversial with local jurisdictions who have generated many of the “wish list” projects in the 2000 RTP, despite the reality that much of the wish list continues to be unfunded under current revenue forecasts.

#### **ANALYSIS/INFORMATION**

1. Known Opposition - None
2. Legal Antecedents - The RTP update fulfills both state and federal transportation planning requirements. The 2005-08 update will result in continued compliance with federal regulations that require the RTP to be updated every four years.
3. Anticipated Effects - The resolution will allow staff to issue an RFP to scope the expanded RTP outreach, develop a work plan for completed the expanded outreach, and execute a contract for services to complete the work plan activities.
4. Budget Impacts - Moves \$150,000 in federal planning funds from the 2040 Revisited effort to the RTP update for consultant services; applies \$34,000 in excise funds identified as match money for possible grants for this effort to consultant services.

#### **RECOMMENDED ACTION**

Staff recommends approval of this resolution.