

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 96-2388
RELEASE OF A REQUEST FOR PROPOSAL)
(RFP) TO DEVELOP AND DESIGN AN INTER-) Introduced by
ACTIVE MULTI-MEDIA ENVIRONMENT FOR A) Mike Burton,
MOBILE INFORMATION SYSTEM, ALSO KNOWN) Executive Officer
AS METRO INFORMATION ON LONG-RANGE)
TRANSPORTATION (MILT), AUTHORIZING THE)
EXECUTIVE OFFICER TO ENTER INTO A)
MULTI-YEAR CONTRACT)

WHEREAS, The Transportation Planning Public Involvement Policy requires the provision of complete information, timely public notice, full public access, and early and continuing involvement; and

WHEREAS, The Metro Information on Long-Range Transportation (MILT) project will provide innovative and accessible transportation planning education and public participation; and

WHEREAS, Consultants' services are deemed to be the most efficient means by which to manage the work needed and provide technical expertise; and

WHEREAS, The project is listed in the 1996-97 fiscal year budget as a "Significant Impact" contract which, pursuant to Metro Code Provision 2.04.026(a)(1), requires authorization by Metro Council prior to the award of a multi-year contract for consultant services; now, therefore,

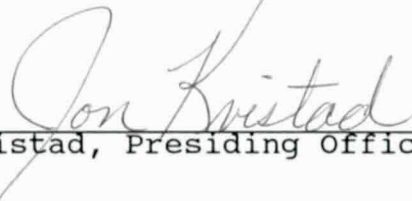
BE IT RESOLVED,

1. That the Metro Council hereby approves release of the Request for Proposals for the development of a multi-media project including a computer program, troubleshooting and bus design, attached to this Resolution as Exhibit A.


2. That the Council authorizes the Executive Officer to enter into a multi-year contract, subject to the final contract not

substantially differing from the original RFP and not exceeding the funds budgeted to this project.

ADOPTED by the Metro Council this 17th day of October, 1996.


Jon Kvistad, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 96-2388 FOR THE PURPOSE OF AUTHORIZING THE RELEASE OF A REQUEST FOR PROPOSAL (RFP) TO DEVELOP AND DESIGN AN INTERACTIVE MULTI-MEDIA ENVIRONMENT FOR A MOBILE INFORMATION SYSTEM, ALSO KNOWN AS METRO INFORMATION ON LONG-RANGE TRANSPORTATION (MILT), AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A MULTI-YEAR CONTRACT

Date: September 5, 1996

Presented by: Andrew Cotugno

PROPOSED ACTION

Adoption of this resolution would authorize the release of a Request for Proposal (RFP) for the purpose of the development and design of an interactive multi-media environment, including a computer program, for Metro Information on Long-Range Transportation (MILT). MILT is a public outreach project designed to heighten the ability of Public Involvement staff to communicate information on transportation-related activities and programs with members of the community. MILT is proposed to be housed in a retrofitted Tri-Met bus. The bus will be designed to accommodate an interactive computer program and various multi-media exhibits. The three main elements of this RFP include: development of an interactive environment which will include design and maintenance of a computer program, training and trouble-shooting on the computer program, and structural/artistic design of the interior and exterior of the bus. This resolution would authorize approval of the final contract upon selection of the preferred vendor.

FACTUAL BACKGROUND AND ANALYSIS

Metro is continually pursuing public involvement in regional planning activities and is committed to develop increasingly better, more effective and responsive methods of communication that enable us to reach a greater, more broadly diverse percentage of the community. MILT is a new program element that will allow us to greatly expand our ability to reach the regional community. This mobile information system will allow us to meet a number of objectives.

- ◆ Expand our ability to reach into the community. It will be scheduled at key business, community and retail locations enabling people to conveniently gain access and input into the South/North Transit Corridor Study and other transportation programs. MILT is anticipated to have the ability to be expanded to incorporate other Metro programs and services as new projects and funds are identified.
- ◆ Incorporate user-friendly computer interactive elements including touch screens and statistical displays, where citizens can choose the program they wish to know more about. It will include: computer visualizations of the South/North corridor alignments; interesting graphics to describe the Regional Transportation Plan; and information about transportation funding, the interrelationship of growth, land use and transportation and other concepts that are oftentimes confusing and difficult to communicate.

- ◆ Enable us to change information as needed, provide information and/or gain insight including the ability to add names to mailing lists or conduct informational surveys on a number of programs or projects simultaneously.
- ◆ Attract children and a growing more technologically-oriented community.
- ◆ Provide opportunities for public/private partnering (coop advertising, major employer promotion, positive public relations).
- ◆ Stretch and enhance public involvement investment without significant increase to staff FTE.

This project is included in the Adopted Metro Budget for Fiscal Year 1996-97. The entire project budget is \$150,000 and is budgeted within the Materials and Services budget of three transportation project areas: Regional Transportation Plan (\$37,500), Congestion Pricing (\$37,500), and South/North HCT (\$75,000). This RFP, for the initial project design elements only, is for \$70,000 and includes funds from each project area. Remaining project elements include up to \$30,000 for hardware and up to \$50,000 for ads, mailings, and outreach which will be taken up by separate approval.

This Public Involvement contract for the project is included in the Contracts List with a significant impact designation. In addition, the MILT project is described in detail in the Transportation Planning Section of the Fiscal Year 1996-97 Program Narrative.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2388.

REQUEST FOR PROPOSAL

MILT- Metro Information on Long-range Transportation

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Attachment A: DBE Requirements

- A1: Disadvantaged Business Enterprise Guidelines
- A2: Disadvantaged Business Program Compliance Form
- A3: Disadvantaged Business Program Utilization Form

Attachment B: Contract Requirements

Personal Services Agreement

- Exhibit A: Scope of Work
- Exhibit B: MILT Budget
- Exhibit C: Federal Requirements

**REQUEST FOR PROPOSALS
FOR
MILT: METRO INFORMATION ON LONG-RANGE TRANSPORTATION
(RFP#96R-22-TR)**

I. INTRODUCTION

Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for a consultant to create an interactive multi-media environment complete with touch-screen computer program technology housed on a Tri-Met bus.

The project is known as MILT, for Metro Information on Long-range Transportation. The consultant will maintain the multi-media environment, including the computer program, for one year and provide training to personnel responsible for operating and updating exhibits and computer programs.

Proposals are due no later than 4 p.m. on October 28, 1996 in Metro's Transportation Department office, attn. Gina Whitehill-Baziuk, 600 NE Grand Ave., Portland, OR 97232-2736. Details concerning the project and proposal are contained in this document. For questions, contact the Administrative Secretary Jan Faraca at (503) 797-1756.

II. HISTORY AND BACKGROUND

MILT is modeled after Tri-Met's "Bus School," an educational forum used in the early 1980s to explain changes in the bus fare collection system. Tri-Met used three buses that were distinctively painted and retrofitted to house educational programs. Short sessions were given to explain the changes in service. Lessons were informative, convenient, and fun for a diversity of audiences. The buses made scheduled appearances around the community, seven days a week, for a four-month period. The program was well covered by the press and made scheduled, advertised stops at convenient locations such as Fred Meyer, Lloyd Center, Rose Festival and others.

Bus School was an efficient means of exposing a major change in Tri-Met's operating procedures. MILT will be implemented in a similar manner as Bus School and will give Metro the ability to announce and inform people about various transportation-related programs, primarily the South/North Light Rail project. MILT will be housed inside a Tri-Met bus, which must be renovated to meet the needs of the project.

Metro is continually pursuing public involvement in regional planning activities and is committed to developing more effective and responsive methods of communication. MILT will provide an alternative means to public information dissemination. The MILT bus will make visits to various sites covering the entire region with an emphasis on the planned South/North Light Rail Corridor and ethnically diversified areas.

The goal of the project is to increase public understanding, involvement and input for the

Transportation Department's programs. Visitors will walk through the bus, access information in a variety of multi-media and static environments including an interactive touch-screen computer program, and leave with information they acquired through their experience. MILT will allow users to gather data, link users to additional resources of information, leave comments and add their names to Metro's mailing list.

III. SCOPE OF WORK

Metro is seeking proposals from qualified firms to perform the services and to deliver the products described in the Scope of Work; Exhibit of Personal Services Agreement

Consultants will provide a cohesive team of experts to create a unified product as described in the Scope of Work. All MILT components must be appealing and produced with a unifying theme.

IV. PROJECT SCHEDULE

Schedule

- | | | |
|-----|---|------------------------|
| 1. | RFP documents available at Metro Regional Center/
advertised | September 27, 1996 |
| 2. | Pre-proposal informational meeting at Metro Regional
Center; contact Gina Whitehill-Baziuk, 797-1746 | October 16, 1996 |
| 3. | Proposals due back to Metro, 4 p.m.
(Submit 6 copies) | October 28, 1996 |
| 4. | Consultant interviews | November 4-6, 1996 |
| 5. | Consultant selected, notified | November 11, 1996 |
| 6. | Consultant contract negotiated/Project begins | November 18, 1996 |
| 7. | Meet with Metro staff | Periodically |
| 8. | Approve design concept and proceed with development | December 11, 1996 |
| 9. | Project completion and installation of computer program | December - early April |
| 10. | Project kick off | April 14, 1997 |
| 11. | Computer education of Metro staff | May 1997 |
| 12. | Continual computer troubleshooting | 1 year |

V. QUALIFICATIONS/EXPERIENCE

Proposers should have the following experience:

- 1) designing and producing interactive environment including: multi-media displays; computer programs; educational materials and low-tech information displays;
- 2) designing and producing a touch-screen interactive computer program compatible with an IBM PC;
- 3) demonstrating management of a project of a similar magnitude as MILT; and

4) designing interiors.

VI. PROJECT ADMINISTRATION

Vendor shall designate one project manager to work with Metro. The project manager will also be the team leader of any subcontractors included in the RFP.

Metro's project manager is Gina Whitehill-Baziuk. Consultants may be working with other pre-designated members of the Metro staff.

VII. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

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

Gina Whitehill-Baziuk
Metro Transportation Department
600 N.E. Grand Avenue
Portland, OR 97232-2736

B. Deadline

Proposals will not be considered if received after 4 p.m. October 28, 1996.

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 which 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 Gina Whitehill-Baziuk at (503) 797-1746. 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 October 22, 1996.

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. Disadvantaged Business Enterprise Program

Metro and its contractors will not discriminate against any person or firm based on race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political

affiliation or marital status.

Metro extends equal opportunity to all persons and specifically encourages disadvantaged, minority and women-owned businesses to access and participate in this and all Metro projects, programs, and services.

Metro has established a DBE goal of 12 percent for this project. Metro's DBE Program is outlined in Metro Code Section 2.04.300 to 2.04.390. Detailed information on the DBE goal and requirements are included in Attachment A.

Metro's Minority, Women-owned and Disadvantaged Business Advocate is Berthe' Carroll. Ms. Carroll may be reached at (503)797-1714 during regular business hours should consultant/subconsultants have questions regarding the DBE program and/or the goal for this project.

VIII. PROPOSAL CONTENTS

The proposal should contain not more than 17 pages of written material (excluding resumes, drawings and samples, 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. The proposal should describe the ability of the vendor/subcontractors to perform the work requested, as outlined below:

- A. Transmittal Letter: Indicate who will be assigned to the project, who will be the project manager, and that the proposal will be valid for ninety (90) days.
1 page
- B. Approach/Project Work Plan: Describe how the work will be done within the given time frame and budget. In the appendix, include a proposed work plan and schedule for parts A and B in Attachment A, Scope of Work. State your understanding of the goals of this project, possible challenges, and how you would overcome these challenges.
1 page
- 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. In the appendix, include the resumes of any individuals who will work on 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-to-day direction and internal management of the consultant effort.
1 page

- D. Experience: Indicate how your firm meets the experience requirements listed in section V of this RFP. Describe in detail projects conducted over the past five years which involved

services similar to the services required here. For each project, include the name of the customer contact person, his/her title, role on the project, and telephone number. These contacts will serve as references. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.

Maximum 10 pages (2 per project)

- E. **Cost/Budget:** Metro has established a budget not to exceed \$70,000 for this project. Metro estimates the following expenditures for each major element of the work plan:
- \$60,000 for design, development, coordination, and writing of the multi-media environment including a computer program; computer program training and troubleshooting and associated static displays; and
 - \$10,000 for interior and artistic design of the bus.

Propose a breakdown in costs, detailed by parts A and B of the Scope of Work. The consultant may redistribute the way the budget is allocated.

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, subconsultant fees (if any), direct expenses (if any) and a description of future costs that the MILT project may incur after the completion of the contract.

1- 2 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.

2 pages

- G. **DBE GOAL:** All responding firms will outline how the 12 percent DBE goal will be met. This includes identifying the DBE subconsultant(s), the tasks they will perform and the dollar amount to be subcontracted (see attachment A, Program Requirements). All firms must complete DBE forms and include them in the appendix of the application.

IX. 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.

X. 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. Metro shall interview the most qualified applicant firms. The most qualified firm will be selected.
- 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 (100 points total).

40 - project work plan/approach

demonstration of understanding of the project goals/objectives
 proposed work plan for project accomplishment
 performance methodology and procedure
 creativity, ease and flexibility of use, diverse appeal, sensitivity to disabled persons
 ability to expand and change the program, ability to put on the World Wide Web

50 - project staffing/references/experience

firm/project manager experience
 staff and or subcontractor experience
 quality of previous projects

10- budget allocation

allocation of costs to accomplish project

XI. NOTICE TO ALL PROPOSERS - STANDARD AGREEMENT

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

Attachment A

Disadvantaged Business Enterprise (DBE) Requirements

ATTACHMENT A-1

DISADVANTAGED BUSINESS ENTERPRISE (DBE) GUIDELINES

In accordance with Title 49, Code of Federal Regulations, Part 23, or as may be amended (49 CFR 23), Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE Policy Statement

It is the policy of Metro and the Oregon Department of Transportation (ODOT) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements of 49 CFR 23 apply to this contract.

DBE Obligations

Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 23 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts.

To determine whether a Contractor who has failed to meet the assigned DBE goal may receive award of this contract, Metro must determine whether the efforts put forth by the Contractor were good faith efforts, as outlined in Metro Code Section 2.04.360 (a), toward meeting the goal.

The Disadvantaged Business Enterprises *Compliance Form* shall be completed, signed and included with the bid/proposal documents. The *Utilization Form* must be completed, signed and submitted by the close of business the next working day following the bid opening/proposal submission.

The Disadvantaged Business Enterprises Guidelines shall be included in all subcontracts entered into under this contract.

Records and Reports

Contractor shall provide monthly documentation to Metro that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Metro and obtain its written approval before replacing a DBE or making any change in the DBE participation identified. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Metro good faith effort steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items.

Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of Metro Code Chapter 2.04.300, Disadvantaged Business Enterprise Program (DBE Program) for Federally-Funded Contracts, Findings, Purpose and Authority, and the contract with any representation made by a Contractor prior to contract award pertaining to DBE participation in the contract. As well, the Liaison Officer may require, at any stage of contract completion, documented proof from the Contractor of actual DBE participation.

DBE Definition

Only firms certified by the State of Oregon Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Businesses, may be utilized to satisfy the DBE obligation.

DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM
(To be completed, signed and submitted with proposal)

Name of Metro Project: _____

Name of Contractor: _____

Address: _____

Phone: _____

In accordance with Metro's Disadvantaged Business Enterprises (DBE) Program, the above-named Contractor has fully met Metro's DBE Utilization Goal of ____% and will subcontract \$ _____ to DBE(s).

or

The above named Contractor will not meet Metro's Disadvantaged Business Enterprises (DBE) goal. Attached is written and signed evidence of good faith efforts.

Contact Metro's Risk & Contract Management division at (503) 797-1714 for good faith effort criteria.

Authorized Signature

Date

DISADVANTAGED BUSINESS PROGRAM UTILIZATION FORM

Name of Metro Project: _____

Name of Contractor: _____

Address: _____

Phone: _____

The above-named Contractor intends to subcontract _____% of the total contract amount to the following Disadvantaged Business Enterprises (DBEs):

Name, Contact Person, Address & Phone of DBE Firms Contractor Anticipates Utilizing	Nature of Participation	Dollar Amount of Anticipated Subcontract
1.		\$
2.		\$
3.		\$
4.		\$

Total: \$ _____

Amount of Total Contract: \$ _____

DBE Percent of Total Contract: % _____

Authorized Signature

Date

THIS FORM MUST BE COMPLETED, SIGNED AND SUBMITTED AT BID OPENING/PROPOSAL SUBMISSION

Attachment B
Contract Requirements

Project
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and _____, referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed _____ AND _____/100THS DOLLARS (\$_____).
4. **Insurance.**
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
 - c. Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSURED**S. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
 - d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit D, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Project Records. The Contractor shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. To facilitate the administration of the Project, separate accounts shall be established and maintained within the Contractor's existing accounting system or set up independently. Such accounts are referred to herein collectively as the "Project Account." The Contractor shall charge to the Project Account all eligible costs of the Project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of Metro, shall not be considered eligible costs. All costs, charged to the Project, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

7. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

8. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

9. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

10. Audits, Inspections and Retention of Records. Metro, the Oregon Department of Transportation, the State Auditors, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the Contractor's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and

make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, accounting records and other materials pertaining to costs incurred in connection with the project shall be retained by the Contractor for three years from the date of completion of the project to facilitate any audits or inspections. If any litigation, claim, or audit is commenced, the records along with supporting documentation shall be retained until any litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

11. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

12. Right to Withhold Payments. Metro shall have the right to withhold from payments due to 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.

13. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

14. Equal Employment Opportunity. The Contractor agrees to abide by all state and federal laws and regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records.

15. Federal Funds Provision

a. If this payment is to be charged against federal funds, the Contractor certifies that it is not currently employed by the federal government. Contractor further certifies that it is not currently employed by the State of Oregon.

b. If federal funds are involved in this Agreement, Exhibit "C" Federal Requirements are incorporated into this Agreement by reference.

c. Contractor shall not be compensated for work performed under this Agreement by any other federal, state or local agency.

d. This agreement may be terminated by Metro upon 30 days notice, in writing and delivered by certified

mail or in person, if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The Agreement may be modified to accommodate a reduction in funds.

16. **Situs.** The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

17. **Assignment.** This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

18. **Termination.** This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

19. **No Waiver of Claims.** The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

20. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

21. **Modification.** Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

By: _____
Title: _____
Date: _____

METRO
By: _____
Title: _____
Date: _____

- Exhibits: A. Scope of Work
 B. Budget
 C. Federal Requirements

SCOPE OF WORK

MILT - Metro Information on Long-range Transportation

A. MILT MULTI-MEDIA PROJECT DEVELOPMENT

TASK 1: Coordinate and develop an educational and user friendly multi-media environment complete with an interactive computer program

a) Develop a multi-media environment including low and high-tech components. Included should be a computer program that is capable of running an interactive learning session.

The main purpose of the multi-media program is to teach citizens about the South/North Transit Corridor Study. Other transportation issues to be included are: the Regional Transportation Plan, Transportation Improvement Program, the Traffic Relief Options Study and other regional transportation activities. The design of the multi-media program should include all of the transportation programs.

The goal for the consultant team is to develop an educational environment using high and low-tech, hands-on tools using a comprehensive design. The multi-media display will occur on and around the MILT bus. The interior and exterior must be designed to foster and maintain the educational value of MILT. The consultant's task will be to recommend and, upon approval, develop the multi-media environment using both low and high-tech components. It also requires the design of the bus' interior layout and interior and exterior graphic elements (see Scope of Work, B). This environment should allow users to enter the bus to use and learn from all pieces of the display.

A high-tech element of the multi-media environment will be an interactive multi-media computer program. The consultant will be expected to design and create this program in an IBM PC compatible format. A user-friendly format should include touch-screen monitors and a program structure that allows users to explore different screens, all containing new information. An estimated 225 separate screens will be needed. The consultant must provide the architecture and graphic design for the program. The consultant will be provided with existing technical and public information documents containing introductory and factual content. The consultant must use this information to write a script to accompany the program. Duties include formatting, writing, editing, graphics and design of the program.

Low-tech elements may include blackboards, printed materials, maps, and other innovative educational tools. Many similar tools exist at Metro and the consultant should contact Metro before developing new educational tools. Low-tech elements may be an appealing and low-cost option for child education. Duties include artistic and graphic design, formatting, writing, editing, and coordination with Metro.

b) The multi-media environment must be user friendly for people of all ages, races, and diverse backgrounds.

The content must be easy to read and understand. The computer program must be simple to navigate. Users of both the computer program and the low-tech displays must be able to provide written comments and sign up for mailing lists. All programs and displays should be designed for use by the

disabled and those using English as a second language.

c) The computer program must be easy for Metro to update and amend as changes and new programs are added.

The computer program must be easy for Metro to update and amend allowing for the addition of screens and the manipulation of existing screens. Metro may introduced other programs later, which are not part of this RFP, including: Growth Management Services; Regional Parks and Greenspaces; and Regional Environmental Management.

d) Information must be collected by the computer program, saved and transmitted to a remote site.

The computer program will allow users the opportunity to key in personal comments and addresses for mailing lists. Information must be downloadable and compatible with Microsoft Excel and Word. Information must be transmitted to a remote site using virtual connections, free of any physical exchange of disks.

f) The computer program must be navigable on a touch-screen monitor, a laptop with a mouse and in HTML for the World Wide Web.

(Metro's home page can be found at "<http://www.multnomah.lib.or.us>")

TASK 2: Recommend needed computer software, hardware and other capital items which will be used for low-tech displays and high-tech elements of the multi-media project

a) Consultants must list all software, hardware and other items that Metro must obtain to operate and manipulate the computer program, to make remote connections, and to use for other MILT purposes. Consultants must list any items needed for the other elements of the low and high-tech projects.

Software and hardware will be needed for at least: the bus computer terminals, existing remote sites, a laptop computer and transmission hardware. Metro, at its discretion, will purchase the hardware and software needed to implement this project. Metro, at its discretion, will purchase all other materials for both high and low-tech elements of the multi-media project.

TASK 3: Provide initial training and continuing maintenance of multi-media program

a) Provide training which will be needed by Metro employees to operate the MILT computer program.

Metro employees will be trained by the consultants so they may skillfully operate and amend the MILT program.

b) Provide continuing maintenance of the multi-media program.

The consultants must provide a one-year service contract for all elements of the multi-media project which it designs, including the computer program.

B. DESIGN OF BUS RETROFIT

TASK 1: Create a floor plan to retro a Tri-Met bus for use of MILT

a) MILT will be held in a standard two-door Tri-Met bus with some seats intact and the space for a driver. The floor plan design will be used when retrofitting the bus. The bus must be designed to accommodate 70 people per hour walking through, sitting at computer terminals, listening to a short presentation, and collecting written materials. The bus will require: storage space; an area where literature may be obtained; an area for a slide, T.V., or other presentation material; and will hold 3-4 computer terminals. The consultant should propose the design which they feel uses the space in an efficient and practical way. The design may mitigate the removal of seats and other existing structures. The consultant should coordinate the design of the floor plan with the multi-media display. The consultant will also coordinate interior and exterior graphic elements with the architectural floor plan (see task 2). Upon completion, a cohesive multi-media environment will be created encompassing the bus' floor plan, the interior and exterior graphic design, and all static and interactive user elements. The design must meet ADA (American with Disabilities Act, 1990) standards. The design should have a wide appeal to all ages and ethnic groups.

Purchasing capital items for the remodeling of the bus are duties not included in this RFP.

TASK 2: Interior and exterior graphic design

a) The consultant team must create the internal and external graphic design.

The consultant team will design the graphic elements including: design of interior and exterior appeal, graphic images, color and painting schemes, and other design work. All designs must be consistent with and able to change with the scope of the project and Metro's transportation programs. The design should be consistent with Metro's desire to maintain a sustainable community through regional issues. These graphics should be removable and replaceable with new graphics as Metro's programs change.

The design should attract users.

TASK 3: Specifics mitigating the computer design

a) Computer terminals.

Each terminal must be able to hold 2-6 people standing or sitting. Furniture must be appropriate to fit the computer hardware needed. Space must be allocated for the remote sending devices.

b) Power connections and concerns must be mitigated.

All hardware requiring electricity will be wired for an external power source connection. These connections must be mitigated for the placement of hardware requiring electricity.

TASK 4: Structural changes to the Tri-Met bus

a) Structural and physical changes may be planned.

Consultants will be required to plan for and address all interior structural components which will be needed. Concerns regarding structural changes and relative cost must be negotiated with and approved by Metro's Project Manager.

TASK 5: Other

a) Address other elements needed including safety features and security features.

The consultant team must address all other concerns regarding the development and retrofit of a Tri-Met bus to MILT. Consultants must identify all items to be acquired not yet addressed.

C. PROJECT MANAGER

The overall coordination and direction of the Project shall be provided by Metro's Project Manager. Metro's Project Manager is Gina Whitehill-Baziuk.

D. NOTICES

All notices provided for hereunder shall be in writing and sufficient if deposited in the United States mail, postage prepaid, to the party addressed and indicated below:

Gina Whitehill-Baziuk
Metro Transportation Department
600 NE Grand Avenue
Portland, OR 97232-2736

Exhibit B

MILT RFP BUDGET				
	South/North	RTP	Cong. Pricing	Totals
Software Design/Program	39,200.00	7,200.00	3,600.00	50,000.00
Bus Graphics/Design	7,900.00	1,400.00	700.00	10,000.00
Training & Trouble-shooting	7,900.00	1,400.00	700.00	10,000.00
Totals	55,000.00	10,000.00	5,000.00	70,000.00

EXHIBIT C

FEDERAL REQUIREMENTS

1. Disadvantaged Business Enterprises (DBE)

The DBE goal for the personal services contract under this Agreement shall be 12%.

Pursuant to 49 CFR 23.43(a), 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 DBEs as defined in 49 CFR Part 23 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 23 apply to this contract.
- B. DBE Obligation. Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 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 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.
- C. Contractor's failure to carry out the requirements set forth herein shall constitute a breach of contract, and may result in termination of the contract by Metro or such other remedy as Metro deems appropriate.

2. Equal Employment Opportunity

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontract for standard commercial supplies or raw materials.

3. Title VI Compliance

During the performance of this contract, Contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as "Contractor"), agrees as follows:

- A. Compliance with Regulations: Contractor shall comply with Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- B. **Nondiscrimination:** Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. **Information and Reports:** Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Metro or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Metro, or the FTA, as appropriate, and shall set forth what effort it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Metro shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to Contractor under the contract until Contractor complies, and/or,
 - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- F. **Incorporation of Provisions:** Contractor shall include the provisions of subparagraphs a through e of this Paragraph in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Metro or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metro to enter into such litigation to protect the interests of Metro, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Cargo Preference

Contractor agrees:

- A. To utilize 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, materials or commodities pursuant to this section,

to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- B. To furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment 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 subparagraph A of this Paragraph to Metro (through Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20550, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

5. Conservation

Contractor shall recognize 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 (42 USC Section 6321, et seq.).

6. Buy America

This procurement is subject to the Federal Transit Buy America Requirements in 49 CFR Part 661.

Section 165a of the Surface Transportation Assistance Act of 1982, as amended, permits FTA participation in this contract only if steel and manufactured products used in the contract are produced in the United States. By signing this contract, Contractor certifies that it will comply with requirements of section 165a of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

7. Interest of Members of, or Delegates to Congress

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

8. Prohibited Interest

Metro's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements.

9. Debarred Bidders

Neither Contractor, nor any officer or controlling interest holders of Contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States Government or by the State of Oregon.

10. Maintenance and Inspection of Records

- A. Contractor shall maintain comprehensive records and documentation relating to this contract, and shall permit the authorized representatives of Metro, the U.S. Comptroller General, or the U.S. Department of Transportation to inspect and audit all records and documentation for a period of three (3) years after Metro has made final payment to Contractor.
- B. Contractor shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that Metro, the U.S. Comptroller General or the U.S. Department of Transportation shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000.00, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The period of access and examination for records that relate to (1) litigation of the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until such litigation, claims or expectations have been disposed of.

11. Lobbying Prohibition/Certifications/Disclosures

This contract is subject to Section 319, Public Law 101-121 (31 U.S.C. 1352) and regulations promulgated thereto by the Office of Management and Budget, pursuant to which Metro may not expend funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. By signing this contract, Contractor agrees to comply with these laws and regulations.

A. Definitions. As used in this clause,

"Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established or otherwise recognized by a State for the performance of a government duty including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organizations or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for less than 130 working days within one year immediately

preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional or interstate entity having governmental duties and powers.

B. Prohibition.

- (1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with any of the following covered Federal actions: 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) The prohibition does not apply as follows:
 - (i) Agency and legislative liaison by Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (b) For purposes of paragraph B(2)(i)(a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (c) For purpose of paragraph B(2)(i)(a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale and service capabilities; and;
 - (2.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (d) For purposes of paragraph B(2)(i)(a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

- (1.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
 - (3.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by paragraph B(2)(i) of this section are allowable under paragraph B(2)(i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B(2)(ii)(a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspect of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected

to be required by law or regulation, and any other requirements in the actual award document.

(d) Only those services expressly authorized by paragraph B(2)(ii) of this section are allowable under paragraph B(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B(2)(iv)(a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not all allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (e) Only those services expressly authorized by paragraph B(2)(iv) of this section are allowable under paragraph B(2)(iv).

C. Disclosure.

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal Contract shall file with that agency disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities", if such a person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph c(2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or,
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s) or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C)(1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C(1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement.

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subjected to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability.

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

regs
08/30/93