



STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number: HWY-311683-SH	RFP Title: TRANPLAN 21 UPDATE		
RFP Response Due Date and Time: June 30, 2015 3:00 p.m., Mountain Time		Number of Pages: 49	Issue Date: May 21, 2015

ISSUING AGENCY INFORMATION	
Procurement Officer: Scott Hicks	Purchasing Service Section Administration Division Department of Transportation Phone: (406) 444-6033 Fax: (406) 444-5411 TTY Users, Dial 711
Website: http://vendor.mt.gov/	

INSTRUCTIONS TO OFFERORS		
Return Sealed Proposal to:		
PHYSICAL ADDRESS: Purchasing Services Section Administration Division Department of Transportation 2701 Prospect Avenue Helena, MT 59602	MAILING ADDRESS: Purchasing Services Section Administration Division Department of Transportation P.O. Box 201001 Helena, MT 59620-1001	Mark Face of Envelope/Package with: RFP Number: HWY-311683-SH RFP Response Due Date: June 30, 2015
Special Instructions:		

OFFERORS MUST COMPLETE THE FOLLOWING	
Offeror Name/Address:	<hr/> <div style="text-align: center;">(Name/Title)</div> <hr/> <div style="text-align: center;">(Signature)</div> <p style="font-size: small;">Print name and title and sign in ink. By submitting a response to this RFP, Offeror acknowledges it understands and will comply with the RFP specifications and requirements.</p>
Type of Entity (e.g., corporation, LLC, etc.)	Offeror Phone Number:
Offeror E-mail Address:	Offeror FAX Number:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your response. Provide responses in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

Use any forms provided, e.g., cover page, budget form, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

**The following items MUST be included in the response.
Failure to include ANY of these items may result in a nonresponsive determination.**

- Signed Cover Sheet**
- Signed Addenda (if appropriate) in accordance with Section 1.4.3**
- Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.1.**
- In addition to a detailed response to all requirements within Sections 3, 4, and 5, offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.**

- _____ Section 1, Introduction and Instructions
- _____ Section 2, RFP Standard Information
- _____ Section 3.1, Overview
- _____ Section 3.2, Background
- _____ Section 3.3, Scope of Work
- _____ Section 3.4, Meetings and Deliverables
- _____ Section 3.5, Method of Providing Services
- _____ Section 4.1, State's Right to Investigate and Reject
- _____ Section 4.2, Offeror Qualifications
- _____ Section 6, Evaluation Process
- _____ Appendix A, Standard Terms and Conditions
- _____ Appendix B, Contract
- _____ Appendix C, Reference Questionnaire
- _____ Appendix D, Proof of Authority

SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
RFP Issue Date	May 21, 2015
Deadline for Receipt of Written Questions	June 04, 2015
Deadline for Posting Written Responses to the State's Website	June 11, 2015
RFP Response Due Date	June 30, 2015
Notification of Offeror Interviews/Product Demonstrations (Optional)	July 22, 2015*
Offeror Interviews/Product Demonstrations (Optional)	Week of August 3, 2015*
Intended Date for Contract Award (Optional)	August 28, 2015*

*The dates above identified by an asterisk are included for planning purposes. These dates are subject to change.

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.1 INTRODUCTION

The STATE OF MONTANA, Department of Transportation ("State") is seeking a consultant to update TranPlan 21 Montana's statewide, long-range multimodal transportation plan. A more complete description of the services to be provided is found in Section 3.

1.2 CONTRACT PERIOD

1.2.1 Contract Term. The contract period is beginning upon contract signature date and ending upon final acceptance of all deliverables by the State, not to exceed 12 months.

1.2.2 Contract Extension. This contract may be extended to develop subsequent tasks that emerge through the TranPlan21 update or changes in statewide planning requirements that may come through ongoing federal rulemaking, and/or federal reauthorization, for example a freight specific element or plan. In the event the Contractor requests a contract extension, approval, at the State's option, may be contingent upon submittal of the work product completed to date.

1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and announced by the procurement officer, **offerors shall not communicate with any state staff regarding this procurement, except at the direction of**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: **Scott Hicks**
Telephone Number: **(406) 444-6033**
Fax Number: **(406) 444-5411**
E-mail Address: shicks@mt.gov

1.4 REQUIRED REVIEW

1.4.1 Review RFP. Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth in Section 1.4.2. The State will determine any changes to the RFP.

1.4.2 Form of Questions. Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before **(June 4, 2015)**. Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-6033. Clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

1.4.3 State's Response. The State will provide a written response by **(June 11, 2015)** to all questions received by **(June 4, 2015)**. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of

business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

1.5 GENERAL REQUIREMENTS

1.5.1 Acceptance of Standard Terms and Conditions/Contract. *By submitting a response to this RFP, offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively. Much of the language included in the standard terms and conditions and contract reflects the requirements of Montana law.*

Offerors requesting additions or exceptions to the standard terms and conditions, or to the contract terms, shall submit them to the procurement officer listed above by the date specified in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

1.5.2 Resulting Contract. This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

1.5.3 Understanding of Specifications and Requirements. By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.

1.5.4 Offeror's Signature. Offeror's proposal must be signed in ink by an individual authorized to legally bind the offeror. The offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority (**in Appendix D**) of the person signing the RFP upon State's request.

1.5.5 Offer in Effect for 120 Calendar Days. Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date or receipt of best and final offer, if required.

1.6 SUBMITTING A PROPOSAL

1.6.1 Organization of Proposal. Offerors must organize their proposal into sections that follow the format of this RFP. Proposals should be bound, and must include tabbed dividers separating each section. Proposal pages must be consecutively numbered.

All subsections not listed in the "Instructions to Offerors" on page 3 require a response. Restate the section/subsection number and the text immediately prior to your written response.

Unless specifically requested in the RFP, an offeror making the statement "Refer to our literature..." or "Please see www.....com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. **The Evaluator/Evaluation Committee is not required to search through the proposal or literature to find a response.**

The State encourages offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

1.6.2 Failure to Comply with Instructions. Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

1.6.3 Multiple Proposals. Offerors may, at their option, submit multiple proposals. Each proposal shall be evaluated separately.

1.6.4 Copies Required and Deadline for Receipt of Proposals. Offerors must submit **one original proposal and six (6) copies** to the Purchasing Services Section. In addition, Offerors must submit **one (1) electronic copy** on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word or portable document format (PDF). If any confidential materials are included in accordance with the requirements of Section 2.3.2, they must be submitted on a separate CD or USB flash drive.

EACH PROPOSAL MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE clearly indicating it is in response to RFP (HWY-311683-SH) *Proposals must be received at the Department of Transportation, Purchasing Services Section prior to 3:00 p.m., Mountain Time, (June 30, 2015) Offeror is solely responsible for assuring delivery by the designated time.*

1.6.5 Late Proposals. *Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.* Offeror may request the State return the proposal at offeror's expense or the State will dispose of the proposal if requested by the Offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

1.7 COSTS/OWNERSHIP OF MATERIALS

1.7.1 State Not Responsible for Preparation Costs. Offeror is solely responsible for all costs it incurs prior to contract execution.

1.7.2 Ownership of Timely Submitted Materials. The State shall own all materials submitted in response to this RFP.

SECTION 2: RFP STANDARD INFORMATION

2.1 AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

2.2 OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.3.1 Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

2.3.2 Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

2.4.2 Determination of Responsibility. The procurement officer will determine whether an Offeror has met the standards of responsibility consistent with ARM 2.5.407. An Offeror may be determined nonresponsible at any time during the procurement process if information surfaces that supports a nonresponsible determination. If an Offeror is found nonresponsible, the procurement officer will notify the Offeror by mail. The determination will be included within the procurement file.

2.4.3 Evaluation of Proposals. An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

2.4.4 Completeness of Proposals. Selection and award will be based on the Offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by Offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the Offeror being disqualified from further consideration.

2.4.6 Opportunity for Discussion/Negotiation and/or Oral Presentation/Interview. After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more Offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation/interview to clarify their RFP response or to further define their offer. In either case, Offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of their proposal. Oral presentations/interviews, if requested, shall be at the Offeror's expense.

2.4.5 Best and Final Offer. Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.

2.4.6 Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

2.4.7 Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State's selection.

2.4.8 Contract Execution. Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring offeror's proposal, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

2.5 STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

SECTION 3: SCOPE OF SERVICES

To enable the State to determine the capabilities of an Offeror to perform the services specified in the RFP, the Offeror shall respond to the following regarding its ability to meet the State's requirements.

All subsections of Section 3 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

3.1 OVERVIEW

The Montana Department of Transportation (MDT or State) is seeking a consultant to update TranPlan 21, Montana's statewide, long-range multimodal transportation plan. The current version is available at http://www.mdt.mt.gov/pubinvolve/TranPlan_21.shtml. TranPlan 21 is a policy-based plan and part of an ongoing process that regularly identifies transportation issues, evaluates public and stakeholder needs and priorities, and establishes and implements policy goals and actions. This process guides MDT in the development and management of a multimodal transportation system.

In 2015, the State will update TranPlan 21 to align with and meet the Moving Ahead for Progress Act for the 21st Century (MAP21) requirements for a performance-based planning process. The update will also address emerging issues and priorities as determined through public outreach and the participation of federal, state, tribal, and local governments along with stakeholder groups.

TranPlan 21 is a policy-based plan, rather than project-specific. Policy papers will be reviewed and updated as necessary. Policy goals and action items will be reviewed and revised as appropriate. The plan update will maintain and strengthen the link between the plan and the State's project selection process. The overall format of TranPlan 21 may be revised for easier use and readability.

Goals of the 2015 update include:

- Comply with MAP21;
- Engage the public and stakeholders in a creative and cost effective manner, with the intent to reach a broader public and ensure that public and stakeholder needs are represented as practicable in policy goals and actions;
- Confirm key policy areas and streamline plan goals, actions, and policy papers to ensure relevancy to transportation issues, needs, and resources;
- Demonstrate the value of Montana's transportation system and need for continued investment to Montana's traveling public, while maintaining and strengthening the link between TranPlan 21 and the State's project selection process;
- Produce a streamlined plan format that is easily understood and user friendly.

3.2 BACKGROUND

MDT developed TranPlan 21 in 1994 and 1995, with updates in 2002 and 2008. TranPlan 21 was developed in accordance with 23 USC Section 135 - Statewide and nonmetropolitan transportation planning and 23 CFR Part 450. The plan was developed with extensive public involvement of Montana residents, business owners, federal and state agencies, local and tribal officials, and transportation system users. The planning effort

focused on major transportation policy areas identified by federal requirements, input received during the issue identification phase of the public involvement process, and technical analysis including a resource analysis for proposed goals and actions.

The State monitors the changes in Montana's public and stakeholder group transportation related issues and priorities through various efforts, including biennial surveys. . These surveys are elements of an ongoing implementation and evaluation process designed to ensure TranPlan 21 policy goals and actions are aligned with customer needs and expectations, and to provide guidance in determining when TranPlan 21 scope amendments and revisions are needed.

MDT updated TranPlan 21 in 2002 to ensure the goals and actions continued to address customer priorities and assure transportation funds were effectively spent on the programs and projects that reflect those priorities. The update also incorporated new goals and actions so that MDT could support economic development through transportation policy and programs.

The primary purpose for the 2008 limited amendment was to ensure the plan met requirements of federal transportation legislation - the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The limited amendment addressed several issues including:

- Consideration of transportation system security;
- Incorporation of visualization techniques into public involvement activities;
- Integration of the Montana comprehensive highway safety plan;
- Consistency with growth and economic development plans;
- New consultation requirements;
- Statewide plans/environmental mitigation activities;
- Capital, operations, and system management strategies, investments, procedures, and other measures

3.3 SCOPE OF WORK

TranPlan 21 must be updated in accordance with 23 USC Section 135 - Statewide and nonmetropolitan transportation planning and 23 CFR Part 450. This includes consideration, as appropriate, of the planning factors listed in 23 CFR 450.206, content of the plan described in 23 CFR 450.216, along with a performance based approach, and public and stakeholder involvement. The update must comply with Title VI of the Civil Rights Act, Executive Order 12898 on Environmental Justice, and the Montana Department of Transportation Public Involvement Plan <http://www.mdt.mt.gov/publications/docs/manuals/pubinvhb.pdf> .

A steering committee will direct the plan update, similar to the one involved in the development of TranPlan 21, which included the MDT Director, and MDT Division Administrators. In addition to approving the final product, this committee will approve interim draft products prior to public distribution and will be briefed by the consultant on the progress of the project at key points during the update.

This scope of work may be modified in the event of new requirements finalized through the federal rule making process or a new federal surface transportation bill.

3.3.1 MAP 21 Compliance:

Align TranPlan 21 with the MAP 21 requirements including but not limited to new provisions for performance measures and targets. This update will transition TranPlan 21 to a performance-based planning approach for transportation decision-making with consideration of MDT's existing performance goals and measures; resulting in modifications as appropriate to comply with national goals described in 23 USC 150, general purposes described in 49 USC 5301, and rulemaking as available.

In addition, the update process will ensure integration into the statewide transportation planning process, the goals, objectives, performance measures and targets established through MDT's risk-based asset management plan, comprehensive highway safety plan, and transit program.

3.3.2 Public Involvement & Stakeholder Approach: Align TranPlan 21 with the MAP 21 requirements for public involvement and government agency consultation. The consultant will lead the public involvement process consistent with MDT's established processes, and must provide the general public, stakeholders, metropolitan planning organizations, elected non-metropolitan local officials, and local and tribal governments with opportunities to participate at key points in the process. The process will incorporate cost effective and innovative techniques and processes, such as online engagement, intended to reach a broad audience and take into account Montana's rural characteristics and large size.

3.3.3 Data Collection & Trend Analysis: Compile and evaluate data necessary to make informed decisions about goals, actions, and performance criteria. The analysis shall include a summary of transportation and socioeconomic conditions; system extent, condition and performance; revenue outlook, needs, and implications for achieving performance objectives; and identify major transportation trends, corridors (commercial, tourism, etc.), and activity centers that are essential to Montana's economy.

3.3.4 Issue Identification and Update/Confirmation of Policy Goals & Actions: Review and confirm TranPlan 21 policy goals, actions, and ongoing business processes to ensure all are relevant based on public involvement and trend analysis. Update policy goals and actions as necessary to reflect a comprehensive, long-term view of highway system performance and cost effective strategies to protect the existing investment. Review and update policy papers to be current and relevant, considering changes in federal and state laws, regulations, policies, and MDT organizational structure and processes. Develop new policy area papers as appropriate.

3.3.5 Transportation Asset Management Plan: Ensure the TranPlan 21 update is consistent with MDT's Transportation Asset Management Plan (TAMP) and supporting asset management strategy (P3 Process, MDT's method to develop an optimal investment plan and measure progress toward strategic transportation system goals). Ensure the update accommodates latitude in arriving at performance-driven decisions on resource allocation.

The review and update of TranPlan 21 goals and actions should directly reflect MDT's adopted performance goals and objectives. Given timing of federal rulemaking and MDT management system updates, existing MDT performance goals and measures could change while the plan is being updated requiring adjustments to ensure consistency within TranPlan 21. Any changes or updates to these performance goals resulting from the plan update should be described using adopted performance measures in these areas along with any new policy areas.

3.3.6 Draft & Final Document: Based on input received through public involvement and guidance from the steering committee, develop a draft document that describes the recommended policy goals and actions and incorporates results of the data collection and technical analysis. The document must also include the results of the project's processes and activities. A final opportunity to review and comment on the recommended goals will be afforded to the public for a minimum of 45 days to meet federal requirements.

The final document must reflect changes made as a result of the public involvement process as approved by the steering committee, and must be published in a reader-friendly format that allows for broad dissemination through electronic and print mediums. New policy goals and actions adopted will be prioritized and sequenced for implementation consistent with best estimates of available resources.

3.3.7 Implementation Strategy: Review current implementation strategy and revise as appropriate. This includes review and improvement of existing biennial public telephone survey and stakeholder survey instruments. Any changes in these surveys must consider the effects on trend analysis used to assess customer satisfaction and transportation priorities since implementation of the surveys.

3.4 MEETINGS AND DELIVERABLES

The final TranPlan 21 update must be published and distributed within 12 months of the notice to proceed.

Once the contract is executed, the consultant's Principal Investigator and any other team members shall meet in Helena with the project manager and steering committee to review and finalize the project work plan. Two weeks prior to this meeting, with input from the Project Manager, the consultant will prepare and submit the agenda and meeting materials. Within two weeks after the meeting, the consultant will submit a final work plan.

Based on the complexity of the project, interim meetings may be proposed. Offerer will add interim meetings to the proposal as appropriate. Two weeks prior to any interim meetings, with input from the Project Manager, the consultant will prepare and submit the agenda and meeting materials. Within two weeks after the meeting, the consultant will submit minutes of the meeting for approval by the State

Bi-weekly updates via telephone will be scheduled with the Project Manager to report progress and address issues. The consultant will submit an agenda at least one day prior to the meeting and minutes of the meeting within three work days after the call.

Monthly progress reports will be prepared and submitted electronically to the Project Manager on or before the 15th of the month following the month which the progress report covers. These reports will, at a minimum, include: status of each of the major tasks outlined in the work plan; planned and actual time schedule for each of the tasks, including the percent completion; issues (financial, staff, equipment, technical) as they affect the tasks or project as a whole, as well as resolution or attempts at resolution; discussion of major accomplishments or discoveries; and fiscal expenditures.

All reports and meeting minutes are considered draft until the State's internal review process has been completed.

Deliverables are expected to be of exceptional quality. All draft Deliverables must be edited for content, accuracy, and grammatical correctness prior to submittal. All proposals must address Deliverable quality and how quality will be guaranteed (i.e., use of editing staff and/or peer reviewer).

3.5 Method of Providing Services

Offeror shall provide a detailed work plan that will convincingly demonstrate to the State what the Offeror intends to do, the timeframes necessary to accomplish the work, and how the work will be accomplished to meet the contract requirements as more specifically detailed above in Sections 3.3 and 3.4. Offeror must specifically address each of the following requirements as defined in this RFP.

3.5.1 PROCESS FOR DEVELOPING THE DELIVERABLES AND WORK PLAN

Describe the method and approach that you/your firm would use for the development of the responsibilities and deliverables detailed in Sections 3.3 and 3.4. Include information about the proposed process to assure compliance with MAP21, data collection and analysis, and production of the deliverables. From this outline the evaluation committee will gain insight into the Offeror's thought process and working style. The outline is not

expected to be a final workplan. Include a timeline of actions and activities and key personnel assigned for each task. Offeror shall provide an example of a final report in MSWord, PDF format, or hardcopy that the Offeror has produced.

3.5.2 UNDERSTANDING OF THE MONTANA DEPARTMENT OF TRANSPORTATION'S TRANPLAN 21 UPDATE.

Describe your/your firm's understanding of the TranPlan 21 Update and the process, procedures, and resources you would utilize to increase this understanding in order to develop and produce deliverables (reports, presentations, charts, educational information, etc.) that are useful and relevant to the program.

3.5.3 PUBLIC INVOLVEMENT AND STAKEHOLDER INVOLVEMENT

Describe the methods your/your firm would use to solicit creative and cost-effective statewide input from the public and stakeholders to update TranPlan 21. Address how this input will be incorporated into the update and how this input will be used to identify issues and confirm goals and action areas.

3.5.4 IMPLEMENTATION AND LINKAGE TO MDT PROCESSES

Describe the approach you/your firm would use to ensure the updated TranPlan21 would be implemented by MDT. Specifically address how the update may be linked to risk-based asset management and Performance Programming Process.

SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.2 OFFEROR QUALIFICATIONS

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

4.2.1 Client Reference Form. Offeror shall provide complete and separate **Appendix C**, Client Reference Form, for three **(3)** references that are currently using or have previously used the services of the type proposed in this RFP. The references may include state governments or universities for whom the offeror, preferably within the last five (5) years, has successfully completed services of the type referenced in this RFP. Since reference questions are based on a contractual relationship, the optimal reference is one that has participated in a contractual relationship with the Offeror. All references must have comprehensive knowledge about the services provided. A responsible party of the organization for which the supplies and/or services were provided to the client (the Offeror's customer) must provide the reference information and must sign and date the form. It is the Offeror's responsibility to ensure that the completed forms are submitted with the proposal by the submission date, for inclusion in the evaluation process. Any Client Reference Forms that are not received or are not completed may adversely affect the Offeror's score in the evaluation process. Client Reference Forms exceeding the specified number will not be considered. The State may contact the client references for validation of the information provided in the Client Reference Forms. If the State finds erroneous information, evaluation points may be deducted or the proposal may be rejected.

The State reserves the right to verify the validity of references and any reference information it receives. These references may be contacted to verify Offeror's ability to perform the contract. The State reserves the right to use any information or additional references deemed necessary to establish the ability of the Offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification. If multiple employees of any entity such as a state or federal department of transportation are used as references, they will be considered as one reference.

Appendix C contains further instructions and the reference questionnaire.

4.2.2 Company Profile and Experience

Offeror shall specify how long and under what name(s) the Offeror has been in the business of providing services similar to those sought in this RFP.

For all key personnel who will be involved with any aspect of the project, Offerer should provide a complete description of the following:

- a detailed description of any relevant past projects, including qualifications, work experience, education, skills, and abilities, dates the services were provided.

4.2.3 Resumes. A resume or summary of qualifications, work experience, education, and skills must be provided for all key personnel, including any subcontractors, who will be performing any aspects of the contract. Include years of experience providing services similar to those required; education; and certifications where applicable. Identify what role each person would fulfill in performing work identified in this RFP.

4.2.4 Oral Presentation/Product Demonstration/Interview. Offerors must be prepared to have the key personnel assigned to this project complete a(n) oral presentation/interview in Helena, Montana. The State reserves the right to: (1) have presentations/interviews from up to three highest scoring offerors after Tier One evaluation; (2) have presentations/interviews from all offerors within 500 points of the highest scoring offeror after Tier One evaluation; or (3) to proceed directly to contract award if the highest scoring Offeror has outscored all other Offerors by more than 500 points after Tier One evaluation.

SECTION 5: COST PROPOSAL

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

5.1 BASIS OF EVALUATION

Each Offeror must complete and submit a Budget Worksheet with their proposal. The Budget Worksheet should include a breakdown of all costs for each Deliverable described in Section 3.4. The Budget Worksheet **MUST** include a **TOTAL PROJECT COST**. The total project cost amount will be evaluated based on the formula set forth in Section 6.2.

SECTION 6: EVALUATION PROCESS

6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a **maximum possible value of 1,200 points for Tier One and an additional 500 points for Tier Two.**

All **Evaluation Criteria**, with the exception of the Cost Proposal, will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below.

SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

Superior Response (95-100%): A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-94%): A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or less): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

6.2 EVALUATION CRITERIA

EVALUATION CRITERIA - TIER ONE

References	7.5% of points for a possible points 90
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Category	Section of RFP	Point Value
Reference #1	4.2.1	30
Reference #2	4.2.1	30
Reference #3	4.2.1	30

Resumes/Company Profile and Experience	9.6% of points for a possible 115 points
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Category	Section of RFP	Point Value
Years of Experience	4.2.2\4.2.3	15
Applicability of Experience	4.2.2\4.2.3	30
Staff and Company Qualifications	4.2.2\4.2.3	50
Experience developing freight plans	4.2.2\4.2.3	20

Work Plan and Project Understanding	12.5% of points for 150 points
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Category	Section of RFP	Point Value
Process for Developing Services and work Plan	3.5.1	60
Understanding MDT's TranPlan 21 Update	3.5.2	40
Hours and Staff Assigned to Each Task	3.5.1	25
Schedule	3.5.1	25

Public Involvement & Stakeholder Involvement Approach	25% of points for 300 points
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Category	Section of RFP	Point Value
Comprehensive	3.5.3	50
Cost effective	3.5.3	75
Innovative	3.5.3	75
Incorporation of input into plan	3.5.3	50
In compliance with federal requirements	3.5.3	50

Scope of Work	25% of points for a possible 300 points
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Category	Section of RFP	Point Value
Map21 compliance	3.3.1	50
Public involvement & stakeholder approach	3.3.2	50
Data collection and trend analysis	3.3.3	50
Issue identification and update/confirm goals & actions	3.3.4	50
Transportation asset management plan	3.3.5	50
Implementation strategy review	3.3.7	50

Cost Proposal	20.4% of points for a possible 245 points
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OFFEROR ORAL PRESENTATIONS/INTERVIEWS – TIER TWO

Offerors must be prepared to have the key personnel assigned to this project complete an oral presentation/interview in Helena, Montana. The State reserves the right to: (1) have presentations/ interviews from only the three (3) highest scoring Offerors after evaluation of Tier One Scoring Criteria; (2) have presentations/interviews from all Offerors within 500 points of the highest scoring Offeror after evaluation of Tier One Scoring Criteria.

The State reserves the right to proceed directly to contract award if the highest scoring Offeror has outscored all other Offerors by more than 500 points after Tier One Scoring Criteria.

Offerors shall have a time limit of two hours for both their presentations and evaluation committee questions. Presentations shall be at the Offeror's expense.

Offerors who qualify for an interview will present a general overview of their experience and their approach to updating TranPlan21.

Interviews	500 points possible
Understanding of diversity of Montana communities and geographic regions.	50
Understanding of Montana's Transportation system	75
Demonstrated knowledge of long range planning, with emphasis on policy-based approach	50
Demonstrated knowledge and proposed approach of soliciting public and stakeholder input	75
Approach to data compilation and evaluation	75
Schedule sufficient and realistic based on complexity of tasks	50
Consideration of existing plan, processes, and resources for incorporation into update	75
Experience & demonstrated knowledge with federal requirements	50

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

DEBARMENT: Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If Contractor cannot certify this statement, attach a written explanation for review by the State.

FACSIMILE RESPONSES: Facsimile responses to requests for proposals will not be accepted.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp.x>.

REGISTRATION WITH THE SECRETARY OF STATE: Within 10 business days of receiving the Request for Documents Notice, the successful bidder/offeror must register with the Secretary of State and obtain a certificate of authority to demonstrate that the successful bidder/offeror is in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665 or visit their website at <http://sos.mt.gov/>

In the sole discretion of Montana Department of Transportation, this contract may be voided for violation of these requirements. The Certificate of Authority must be sent to the Purchasing Services Section, PO Box

201001, Helena, MT 59620-1001. This section does not apply to a natural person, conducting business in his/her full, true and correct name, (Mont. Code Ann. § 30-13-201(1)).

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

APPENDIX B: CONTRACT

Tranplan 21 Update Contract #311683

THIS CONTRACT is entered into by and between the State of Montana Department of Transportation, (State), whose address and phone number are (insert address), (insert phone number) and (insert name of contractor), (Contractor), whose address and phone number are (insert address) and (insert phone number).

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is beginning at contract signature date, and ending one (1) calendar year from that date unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

2. COST ADJUSTMENTS

2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs. *After the contract's initial term and if the State agrees to a renewal*, the parties may negotiate cost adjustments at the time of contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. The State is not obligated to agree upon a renewal or a cost increase.

3. SERVICES AND/OR SUPPLIES

Contractor shall provide the State TranPlan 21 Update as described in #HWY-311683-SH, and Contractor's response to #HWY-311683-SH.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the services to be provided, the State shall pay Contractor according to the following schedule: (insert pay schedule).

5.2 Withholding of Payment. In addition to its other remedies under this contract, at law, or in equity, the State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 10% of the total value of the subject statement of work or applicable contract.

5.3 Payment Terms. Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the State's electronic funds transfer payments.

5.4 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

9. ACCESS AND RETENTION OF RECORDS

9.1 Access to Records. Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The State may terminate this

contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

9.2 Retention Period. Contractor shall create and retain all records supporting the services rendered for a period of eight years after either the completion date of this contract or termination of the contract.

10. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.) Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

11. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

13. REQUIRED INSURANCE

13.1 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

13.2 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$100,000 per occurrence and \$500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

13.3 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

13.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or

volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

13.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the Purchasing Services Section, P.O. Box 201001, Helena, MT 59620-1001. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

14. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Purchasing Services Section, P.O. Box 201001, Helena, MT 59620-1001.

15. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

17. FEDERAL AID REQUIREMENTS

Federal Aid Funds may fund this Agreement. Therefore, the following provisions will apply.

A. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality performance in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law.

To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice applies to all activities under this contract. It shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS 18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the

submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented,

Shall be fined under this title or imprisoned not more than five years, or both."

B. INSTRUCTIONS CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – PRIMARY COVERED TRANSACTIONS (Applicable to all Federal-aid contracts – 49 CFR 29)

By submitting the Proposal and executing this Agreement, the Contractor provides the certification set out below.

- a. The certification is a material representation of fact upon which reliance was placed when MDT determined to enter into this Agreement.
- b. If it is later determined that the Contractor knowingly rendered an erroneous certification, such contractor shall be in default of this Agreement. In addition to other remedies available to the Federal Government or MDT, MDT may, in its sole discretion, terminate this contract for cause.
- c. If any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, the Contractor shall provide immediate written notice to the MDT Contracting Liaison.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary 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. For assistance in obtaining a copy of these regulations, you may contact the MDT Contracting Liaison.
- e. Unless specifically authorized in writing by the MDT Contracting Liaison, the Contractor 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 any affected program.
- f. In all lower tier covered transactions and in all solicitations for lower tier covered transactions Contractor shall include without modification the section titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction".
- g. Unless it knows that the certification is erroneous, a participant in a covered transaction may rely upon the Contractor's certification that a prospective participant in a lower tier covered transaction is not debarred, suspended, ineligible, or voluntarily excluded from any affected program. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant shall check the non-procurement portion of the "Lists of Parties

Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized, in writing, by the MDT Contracting Liaison, a participant in a covered transaction who knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation any affected program is in default of this contract. In addition to other remedies, MDT may terminate this transaction for cause.

C. INSTRUCTIONS FOR CERTIFICATION – LOWER TIER COVERED TRANSACTIONS (Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more – 49 CFR 29)

By signing and submitting any subcontract, purchase order or other lower tier transaction of \$25,000 or more, the prospective lower tier participant is providing the certification set out below.

- a. The certification is a material representation of fact upon which reliance was placed when the transaction was entered into.
- b. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available, the Federal Government or MDT may pursue suspension and/or debarment.
- c. If at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, the lower tier participant shall provide immediate written notice to the MDT Contracting Liaison.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "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. For assistance in obtaining a copy of these regulations, you may contact the MDT Contracting Liaison.
- e. The prospective lower tier participant agrees that except for transactions authorized, in writing, by the MDT Contracting Liaison, it/he/she 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 a covered transaction,
- f. The prospective lower tier participant further agrees by submitting a proposal that it will include this 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.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that 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 Non-procurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of

records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- i. Except for transactions authorized under 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 other remedies available, the Federal Government or MDT may pursue suspension and/or debarment.

D. CERTIFICATION

Each Contractor and lower tier participant certifies to the best of its/his/her knowledge and belief, for it/his/herself and for each of its/her/his principals that:

- a. None are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or by any federal department or agency;
- b. Within a 3-year period preceding the submission of the Proposal, none has been convicted of or has had a civil judgment rendered against it/him/her for commission of fraud or for a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; or for violation of Federal or State antitrust statutes or for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. None is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and
- d. Within a 3-year period preceding submission of the Proposal, none has been in default of one or more public (federal, state or local) transactions.
- e. Within a 3-year period preceding submission of the Proposal, none has had one or more public (federal, state or local) transactions terminated for cause.

E. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING (Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 – 49 CFR 20)

Each Contractor and lower tier participant certifies and agrees:

- a. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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 Contractor or lower tier participant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. 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. 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.

- d. The language of this certification shall be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

18. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

19. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA.) Contact the Purchasing Services Section at (406) 444-6365 for more information concerning nonvisual access standards.

20. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>

21. INTELLECTUAL PROPERTY/OWNERSHIP

21.1 Mutual Use. Contractor shall make available to the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this contract, if such availability is necessary for the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for the State under this contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

21.2 Title and Ownership Rights. The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like

provided by the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this contract and any applicable statement of work.

21.3 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

21.4 Copy of Work Product. Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

21.5 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by Contractor in connection with the services provided to the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 21.3** or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

22. PATENT AND COPYRIGHT PROTECTION

22.1 Third-Party Claim. If a third party makes a claim against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

22.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the contract has been breached.

24. CONTRACT TERMINATION

24.1 Termination for Cause with Notice to Cure Requirement. The State may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30 days**. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

24.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30 days**. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

24.3 Reduction of Funding. The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

25. EVENT OF BREACH – REMEDIES

25.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this contract;
- Failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval or breaching Section 29.1 obligations; or
- Voluntary or involuntary bankruptcy or receivership.

25.2 Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

25.3 Actions in Event of Breach.

Upon Contractor's material breach, the State may:

- Terminate this contract under Section 23.1 and pursue any of its remedies under this contract, at law, or in equity; or
- Treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, Contractor may:

- Terminate this contract under Section 23.2 and pursue any of its remedies under this contract, at law, or in equity; or
- Treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

26. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials

shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

27. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

28. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the Purchasing Services Section prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

29. LIAISONS AND SERVICE OF NOTICES

29.1 Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

_____ is the State's liaison.

(Address):

(City, State, Zip):

Telephone:

Fax:

E-mail:

_____ is Contractor's liaison.

(Address):

(City, State, Zip):

Telephone:

Cell Phone:

Fax:

E-mail:

29.2 Notifications. The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

29.3 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the

right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

30. MEETINGS

30.1 Technical or Contractual Problems. Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

30.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

30.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

31. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

32. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

33. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

34. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

35. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

36. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

36.1 Contract. This contract consists of **(insert number)** numbered pages, any Attachments as required, Solicitation # HWY-311683-SH as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

36.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

37. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

38. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF TRANSPORTATION
ADDRESS
CITY, STATE, ZIP**

**(INSERT CONTRACTOR'S NAME)
ADDRESS
CITY, STATE, ZIP
FEDERAL ID #**

BY: _____
(Name/Title)

BY: _____
(Name/Title)

BY: _____
(Signature)

BY: _____
(Signature)

DATE: _____

DATE: _____

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

Approved as to Legal Content:

Approved as to Form:

Legal Counsel

Procurement Officer

Approved as to Civil Rights Language

Civil Rights Bureau

The Montana Department of Transportation attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For more information or to arrange special accommodations for disabilities, please call Scott Hicks at (406) 444-6033 Voice or 1-800-335-7592 TTY or (406) 444-7696 TTY.

ATTACHMENT A

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, sex, age, physical or mental disability, parental/marital status, pregnancy, religion/creed/culture, political belief, genetic material, veteran status, or social origin/ancestry (hereafter “protected classes”). by its employees or anyone with whom MDT chooses to do business. For the duration of this contract/agreement, the PARTY agrees as follows:

The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

A. NON-DISCRIMINATION

The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.

PARTY will provide notice to its employees and the members of the public that it serves that will include the following:

- a. Statement that PARTY does not discriminate on the grounds of any protected classes.
- b. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).
- c. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
- d. Information on how to request information in alternative accessible formats.

In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

B. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)

If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml

By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. 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.

PARTY must include the above assurance in each contract/agreement the PARTY enters.

Solicitation for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

C. PERTINENT NON-DISCRIMINATION AUTHORITIES

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 200d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- f. Airport and Airways Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- i. The Federal Aviation Administration’s Non-Discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

State:

- a. Mont. Code Ann. § 49-3-205 Governmental services;
- b. Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- c. Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX C: CLIENT REFERENCE FORM

INSTRUCTIONS FOR OFFEROR

The Offeror is solely responsible for obtaining **up to 3** fully completed reference questionnaires from clients for whom the offeror has provided services substantially similar to the types proposed in this RFP, and for including them with their response. To obtain and submit the completed reference questionnaires as required, follow the process detailed below.

- (1) Customize the standard reference questionnaire by adding the Offeror's name, and make exact duplicates for completion by references.
- (2) Send the customized reference questionnaires to each person chosen to provide a reference along with a new standard #10 envelope.
- (3) Instruct the person that will provide a reference for the Offeror to:
 - (a) Complete the reference questionnaire;
 - (b) Sign and date the completed, reference questionnaire;
 - (c) Seal the completed, signed, and dated reference questionnaire within the envelope provided;
 - (d) **Sign his or her name in ink across the sealed portion of the envelope;** and
 - (e) Return the sealed envelope containing the completed reference questionnaire directly to the Offeror.
- (4) Do NOT open the sealed references upon receipt.
- (5) Enclose all sealed reference envelopes within a larger envelope labeled References for RFP # HWY-311683-SH to be submitted with your response.

NOTES:

- The State will not accept late references or references submitted by any means other than that which is described above. Each reference questionnaire submitted must be completed as required.
- The State will not review more than the **3** references requested.
- These references may be contacted to verify Offeror's ability to perform the contract.
- The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- The State is under no obligation to clarify any reference information.

Client References must be included with the Offeror's response. Responses must be received in the Administration Division of the MDT prior to 3:00 p.m., Mountain Time, June 30, 2015. References received after this time will not be accepted for consideration. The Offeror may wish to give each reference a deadline to ensure that the required references are received in time to be included with the response.

CLIENT REFERENCE QUESTIONNAIRE
for RFP # HWY-311683-SH TranPlan 21 Update

This standard reference questionnaire must be completed by all individuals providing a reference for the Offeror.

The Offeror is solely responsible for obtaining completed reference questionnaires as required and for enclosing the sealed reference envelopes with their response.

REFERENCE SUBJECT:

OFFEROR'S NAME: (completed by Offeror before reference is requested)

The Offeror specified above intends to submit a proposal to the State of Montana in response to RFP # HWY-311683-SH TranPlan 21 Update. As a part of this proposal, the Offeror must include a number of completed and sealed reference questionnaires (using this form). Each individual responding to this reference questionnaire is asked to follow these instructions:

- Complete this questionnaire (either using the form provided or an exact duplicate of this document);
- Sign and date the completed questionnaire;
- Seal the completed, signed, and dated questionnaire in the new standard #10 envelope provided by the Offeror;
- Sign in ink across the sealed portion of the envelope; and
- Return the sealed envelope containing the completed questionnaire directly to the Offeror.

Please note: Reference Questionnaires must be included with the Offeror's response and received at the Administration Division of the MDT prior to 3:00 p.m., Mountain Time, June30, 2015. References received after this time will not be accepted for consideration.

Your response will be used as part of the Offeror's score, a maximum of 30 points are available based on your ratings.

Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named Offeror.

<i>Client Information</i>	
Organization Name (Client):	Organization Address:
Person Providing the Reference:	Title:
Phone Number:	Email Address:
Reference Signature and Date:	
_____	_____
Signature	Date
(must be the same as the signature across the envelope seal)	

1. Briefly describe the services provided by the Offeror identified above.

2. What were the dates of service for your project with the Offeror named above?

3. How long have you been using the services from the Offeror named above?

4. Did the Offeror provide skilled and qualified staff to perform the job?

5. Were there any changes in key personnel and if so, please explain reasons for the change.

6. Please briefly describe your role with the services.

7. Are you familiar with any of the key project personnel identified in this request for a reference?

8. Rate each of the following concerning this Offeror's performance using the ratings from 0-4 below:
 - 4 – Excellent
 - 3 – Above Average
 - 2 – Average
 - 1 – Below Average
 - 0 – Poor
 - NA – Not Applicable

Rating

- _____ Their work was timely.
- _____ Their work was accurate.
- _____ They kept you informed of progress and made efforts to maintain contact regarding progress.
- _____ They addressed your questions and concerns.
- _____ The quality of responses to your questions and concerns.
- _____ The timeliness of response to your needs.
- _____ Their knowledge level.
- _____ The products and services they provided met your objectives.
- _____ Their writing ability was sufficient to provide quality products.
- _____ They delivered the project within contract budget.
- _____ They were easy to work with.
- _____ Overall, what is your assessment of their performance?
- _____ Overall, what is your assessment of the final product?

9. Please provide additional comments if desired.

APPENDIX D: PROOF OF AUTHORITY

**Upon award
CORPORATE RESOLUTION**

[INSERT NAME OF CORPORATION]

THIS RESOLUTION is made this ___ day of _____, 20___, by the undersigned, being all of the members of the Board of Directors of [Insert name of corporation] (the "corporation"). The undersigned waive any requirement that a special meeting be held for the transaction of the business resolved hereby.

WHEREAS, Article [Insert], Section [Insert] of the By-Laws of the corporation provides:

[Quote from By-Laws]; and

WHEREAS, the [Insert name of corporation] has provided to the Montana Department of Transportation (MDT) a proposal in response to RFP #HWY-311008-RP; and

WHEREAS, it is in the best interest of the corporation to enter into said contract;

NOW THEREFORE BE IT RESOLVED:

That the President and Secretary of the corporation are authorized to execute the contract documents on behalf of the corporation.

DATED beneath the signatures of the Directors.

[Insert signature lines for all directors; get from last corporation annual report].

, Director
Dated:

, Director
Dated:

, Director
Dated:

