



March 16, 2017

Subject: Request for Qualifications  
Consultant Pre-qualification for Highway Project Development

To Whom It May Concern:

As part of our consultant pre-qualification process, the Montana Department of Transportation is accepting statement of qualifications (SOQ) from consulting firms interested in developing highway projects throughout the state. Proposals are being accepted from firms not currently on the 2016 Pre-qualification Roster, or firms that have had significant changes since submitting their 2016 proposal.

The Department uses a 2-year consultant pre-qualification process, which starts over every even year. Since the current process started in 2016, we are entering the second year of that 2-year process right now. We are accepting SOQ proposals at this time to allow new firms to be ranked and to allow currently ranked firms with significant changes to update their qualifications.

It is important to note that only firms not currently on the 2016 Pre-qualification Roster, or firms that experienced significant changes since submitting their 2016 SOQ are allowed to submit. Firms currently on the 2016 Pre-qualification Roster are shown on the following website: [http://www.mdt.mt.gov/other/webdata/external/cdb/prequal\\_roster.pdf](http://www.mdt.mt.gov/other/webdata/external/cdb/prequal_roster.pdf).

Significant changes are defined as changes in the way the firm will develop transportation projects for the Department as a result of the following:

- Firm mergers, office closures, or other major changes in facilities.
- Personnel changes in principals, division managers, client managers, or multiple project managers.

**Please do not re-submit SOQ proposals if your firm has not experienced significant changes over the last year.** Those proposals that are resubmitted from last year that do not meet the criteria listed above will be discarded. Firms submitting SOQ proposals that are not on the 2016 Pre-qualification Roster will automatically be rated without the need to meet this criterion.

The Department will rate and rank the SOQ proposals according to various highway related design categories (described herein) and incorporate them into the current rosters. The Department may then use the resulting lists of pre-qualified consulting firms to short-list consultants for future project-specific or term contract-specific Requests for Proposals (RFPs) in accordance with federal regulations (23 CFR 172). There are instances where MDT solicits services for a specific project or term contract via open solicitation, without consideration of the pre-qualification roster. Participation in MDT's pre-qualification roster is not a prerequisite to respond to these open solicitations.

Professional Engineering (P.E.) licensure is required for the work defined in each category of service, and must be in-hand at the time your SOQ is submitted. If this requirement is not met and clearly identified in the SOQ, your SOQ will be considered non-responsive.

P.E. licensure in another state is acceptable for the purposes of this solicitation. However, Montana P.E. licensure is typically required for a project or contract for which this roster is utilized. Pursuing Montana licensure prior to submitting this proposal is encouraged. Specific licensure requirements will be identified in the project/contract-specific request for proposal.

Teams may be established as necessary; however it is expected that the prime consultant will be capable of completing the vast majority of the work required for that category. As a rule, the prime consultant must complete at least 50% of the work for a specific project or assignment unless written exception is given.

## **SCOPE OF WORK**

There are five (5) specific categories of service that make up the pre-qualification roster. Firms may submit SOQs for any or all of the categories.

Consulting services will generally involve engineering design and analysis resulting in preparation of plans, specifications, and cost estimates for the construction of various highway facilities.

### **1) Comprehensive Roadway Design**

*Professional engineering license required.*

*Work includes:*

Firms interested in this category must establish a team of experts capable of performing all of the work required to complete a road design project. This typically includes engineering, design, surveys, investigations, studies, and calculations necessary for preparation of plans, specifications, and construction estimate (PS&E package) for construction bid letting. Projects vary in size from multi-million dollar, complex, full facility reconstructions to small projects with minor complexity. The work required to accomplish this may include, but is certainly not limited to: cost benefit analysis on alternatives; topographic and cadastral surveying; engineering of roadway alignment and grade and cross-section features; analysis and design of hydraulic, geotechnical, materials, traffic, and environmental features; right-of-way design; determination of quantities; development of construction traffic control plans; estimating; public, regulatory, and local agency coordination; development of environmental documents in compliance with National Environmental Policy Act (NEPA); and overall advanced project management. Services may also include reviewing and checking of submitted shop drawings and design related to construction support.

### **2) Bridges & Structures**

*Professional engineering license required.*

*Work includes:*

Firms interested in this category must establish a team of experts capable of performing all of the work required to complete a highway bridge replacement or rehabilitation project. This typically includes engineering, design, surveys, investigations, studies, and calculations necessary for preparation of plans, specifications, and construction estimate (PS&E package) for construction bid letting. Projects vary in size from multi-million dollar, complex new structures to small bridge rehabilitation projects with minor complexity. The work required to accomplish this generally includes, but is certainly not limited to: engineering, analysis, and design of steel and concrete superstructures, pile bents, drilled shafts, solid piers, and abutments; cost benefit analysis on alternatives; topographic and cadastral surveying; engineering of roadway alignment and grade and cross-section features; analysis and design of hydraulic, geotechnical, materials, traffic, and

environmental features; right-of-way design; determination of quantities; development of construction traffic control plans; estimating; public, regulatory, and local agency coordination; development of environmental documents in compliance with National Environmental Policy Act (NEPA); and overall advanced project management. Structures are to be designed in accordance with the current AASHTO Specifications for Highways and Bridges and the procedures outlined in the Department's Design Manual(s). Services to include all detailing (except shop drawings), the determination of all quantities and plans & specifications, and may include reviewing and checking of submitted shop drawings and design related to construction support.

### 3) **Traffic & Safety**

*Professional engineering license required.*

*Work includes:*

This category of service consists of comprehensive design of stand-alone Traffic Engineering projects. This typically includes engineering, design, surveys, investigations, studies, and calculations necessary for preparation of plans, specifications, and construction estimate (PS&E package) for construction bid letting. Projects vary in size and typically include signals, roundabouts, intelligent transportation systems, roadway lighting, and roadway signing. Depending on the size of the project, the work required to accomplish this may include: cost benefit analysis on alternatives; topographic and cadastral surveying; engineering of roadway alignment and grade and cross-section features; analysis and design of hydraulic, geotechnical, materials, traffic, and environmental features; right-of-way design; determination of quantities; development of construction traffic control plans; estimating; public, regulatory, and local agency coordination; development of environmental documents in compliance with National Environmental Policy Act (NEPA); and overall advanced project management. The design must conform to the Manual on Uniform Traffic Control Devices, AASHTO guidelines, and be performed in accordance with the procedures outlined in the Department's Traffic Engineering Manual, Road Design Manual and other manuals.

This category of service also consists of the comprehensive review of traffic crashes, identification of crash trends, development of countermeasures to reduce the number and/or the severity of crashes, benefit/cost evaluations and the design of safety improvements.

Additionally, work may also include general traffic engineering studies and project-specific, minor traffic signal operations. The general traffic engineering studies may include highway capacity analysis for signalized intersections, unsignalized intersections, two-lane highways, and freeway operations, as well as traffic signal warrant studies, auxiliary turn lane analysis, speed zone investigations, pedestrian studies, etc.

#### **4) Facilities Layout and Development**

***Professional engineering license required.***

*Work includes:*

This work category is typically used for MDT rest areas, waysides, and facilities projects. This typically includes conceptual site layout of new rest areas or rehabilitation of existing rest areas, as well as the design of public water supply and wastewater treatment systems in order for the Department to obtain necessary permits. The work required to accomplish this may include, but is certainly not limited to: cost benefit analysis on alternatives; topographic and cadastral surveying; preliminary engineering of roadways, approaches, and parking areas; analysis and preliminary design of hydraulic, geotechnical, materials, traffic, and environmental features; right-of-way design; analysis of traffic movements within the site; estimating; public, regulatory, and local agency coordination; development of environmental documents in compliance with National Environmental Policy Act (NEPA); and overall advanced project management. The design may include well installation (depth, screened interval, pump size), water distribution, and wastewater treatment. The wastewater at rest areas is considered a high-strength source and may require additional evaluation and treatment. The consultant must be familiar with DEQ's design requirements and review/approval process.

The consultant may also be required to provide engineering support for Operation and Maintenance (O&M) of existing public water supply and wastewater treatment systems; troubleshoot water supply contamination issues; design collection and distribution systems at groundwater springs; and prepare source water delineation and assessment reports for public water supplies.

#### **5) Transportation Alternatives (TA)**

***Professional engineering license required.***

*Work includes:*

Firms interested in this category must establish a team of experts capable of performing all of the work required to complete a Transportation Alternatives project. This typically includes engineering, design, surveys, investigations, studies, and calculations necessary for preparation of plans, specifications, and construction estimate (PS&E package) for construction bid letting. Projects vary in scope, but typically are small projects with minor complexity. The scope, for example, may include multi-use paths, sidewalks, curb ramps, pre-fabricated pedestrian bridges, rehabilitation of historic transportation facilities, bike lane design, etc. TA projects are typically administered by MDT. The work required to accomplish this may generally include, but is certainly not limited to: topographic surveying; engineering of path alignment and grade and cross-section features; layout of sidewalk curb ramps; analysis and design of hydraulic, geotechnical, materials, traffic, and environmental features; right-of-way research; determination of quantities; estimating; public, regulatory, and local agency coordination; development of environmental documents in compliance with National Environmental Policy Act (NEPA); and overall advanced project management.

## **LOCATION**

Projects or Term Contracts for which this prequalification roster will be used may be located anywhere in the State of Montana.

## **PROJECT SCHEDULE AND DELIVERABLES**

Projects will be developed on specific schedules. Each individual schedule will be negotiated prior to developing the contract agreement for services. In general, projects, and the associated deliverables, will generally follow MDT's Consultant Activity Descriptions (as applicable): [http://www.mdt.mt.gov/other/webdata/external/cdb/ACTIVITY\\_DESCRIPTIONS/CONSULTANT\\_DESIGN\\_2500\\_MU.PDF](http://www.mdt.mt.gov/other/webdata/external/cdb/ACTIVITY_DESCRIPTIONS/CONSULTANT_DESIGN_2500_MU.PDF)

## **STANDARDS, SPECIFICATIONS, AND POLICIES**

Work is expected to follow MDT's various Manuals, Guides, and Policies. These items may be found on MDT's Design Consulting web page at: <http://www.mdt.mt.gov/business/consulting/>.

## **PROPOSAL SUBMITTAL**

Comprehensive Roadway Design Category of Service: Submit seven (7) copies of the SOQ.  
All other Categories of Service: Submit four (4) copies of the SOQ for each Category of Service.

The correct number of SOQs must be submitted in order for your firm to be considered. Clearly label each SOQ with the Category of Service. All SOQs must be submitted in hard copy format; electronic submittals will not be considered.

**The Department must receive the SOQs for this solicitation no later than 3:00 PM MST, May 11, 2017.** Send the SOQs to:

Ryan Dahlke, P.E.  
Consultant Design Engineer  
Montana Department of Transportation  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-1001

***Regardless of cause, late SOQs will not be accepted and will automatically be disqualified from further consideration.*** It shall be solely the vendor's responsibility to assure delivery at the specified office by the specified time. Offeror may request the State return late SOQs at vendor's expense or the State will dispose of late SOQs if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.). If no request is made, late SOQs become the property of the Department. All SOQs submitted on time become the property of the Department.

The costs for developing and delivering responses to this solicitation are entirely the responsibility of the offeror. The State is not liable for any expense incurred by the offeror in the preparation and presentation of this submittal.

## **TENTATIVE SOLICITATION/SELECTION SCHEDULE**

The anticipated schedule for consultant solicitation and selection for this contract is as follows (subject to change):

March 16, 2017: RFQ released  
May 11, 2017: SOQs due to be submitted to MDT Consultant Design  
June 22, 2017: SOQs reviewed, rated, and ranked by the evaluation committees  
July 5, 2017: Consultant Selection Board meeting to approve roster

The members on the evaluation committees for each Category of Service are as follows:

### Comprehensive Roadway Design

1. MDT Consultant Design Bureau Checker
2. MDT Highways Bureau Checker
3. MDT Missoula District Preconstruction Engineering Manager
4. MDT Butte District Preconstruction Engineering Manager
5. MDT Great Falls District Preconstruction Engineering Manager
6. MDT Glendive District Preconstruction Engineering Manager
7. MDT Billings District Preconstruction Engineering Manager

### Bridges & Structures

1. MDT Bridge Bureau Engineering Manager
2. MDT Bridge Bureau Engineering Manager
3. MDT Bridge Bureau Engineering Manager

### Traffic & Safety

1. MDT Traffic Bureau Manager
2. MDT Traffic Bureau Engineering Manager
3. MDT Traffic Bureau Operations Engineer

### Facilities Layout and Development

1. MDT Construction Engineering Services Bureau Engineer
2. MDT Multimodal Planning Bureau Manager
3. MDT Consultant Design Bureau Project Manager

### Transportation Alternatives

1. MDT Consultant Design Bureau Checker
2. MDT Consultant Design Bureau Project Manager
3. MDT Consultant Design Bureau Project Manager

## **PROPOSAL CONTENTS**

Each SOQ must contain the information listed in this section. Each SOQ is **limited to fourteen (14) pages**, not including the Cover Page, Appendix A, or the Unbound References attachment. Each page is defined as one side of a letter size sheet (no larger than 8 ½” x 11”), minimum font size of 10. Evaluation of information will begin with the first page immediately following the Cover Page, and every page will be counted, in order, from that point forward, including any table of contents or divider pages the firm wishes to include. Once the page limit is reached, any information included thereafter will not be considered or scored. Please organize your SOQ in the same order and numbering format as shown below, which will assist MDT in reviewing your SOQ:

### **Cover page (1 page)**

Identify the name of the solicitation identified in the subject line of this RFQ, as well as the name of the category of service the SOQ pertains to. Also include a single point of contact for questions and follow-up regarding the SOQ, including:

1. Name of individual
2. Title
3. Telephone number
4. Mailing address
5. Email address

Information presented in the cover page will not be considered in SOQ scoring.

### **Questions**

**1) Qualifications of Firm:** Provide a discussion of how your firm is best qualified to respond to the requirements of the services requested, as outlined in the Scope of Work section. Discussion should focus on:

- Your firm's expertise and experience, as it relates to the work category described in the "Scope of Work" section. Provide examples of previous related project experience as it relates to these services.
- Ability and Strategy to meet project schedules, including fast-tracked or emergency projects and changing priorities.
- Compatibility of systems, software, and equipment (i.e. CADD software, word processing, etc.), and experience with these systems, software, and equipment. The Department's standard design software is Microstation and Geopak. Describe any additional support equipment or software you intend to use.
- Subcontractors and support services that you anticipate utilizing and describe their expertise and experience.
- Quality assurance/quality control procedures.

**2) Qualifications of Personnel:** Provide a discussion of the qualifications of the key personnel to be assigned to the work. Discussion should focus on:

- Expertise, experience, and training of key personnel to be assigned to the work, as it relates to the work category described in the Scope of Work section. Provide examples of previous related project experience as it relates to these services.
- Clearly state any professional licensing requirements applicable to this work.
- Include an organization chart that indicates the project staff, their area of expertise, registration, and office location(s).

Resumes may be considered as supplemental information for scoring this question.

### **Appendix A**

#### **Resumes**

Include brief resumes for the key personnel to be assigned to the contract.

**Resumes are limited to one (1) page per person.**

### **Unbound attachment**

#### **References**

Submit three (3) references applicable to the Work Category the SOQ applies to. Include client name, a currently employed contact person, and a corresponding valid phone number. Give range of contract value. Effort should be given to provide recent references (3 years old or newer). The references submittal shall be in the form of ONE UNBOUND COPY.



## **EVALUATION OF PROPOSALS**

All SOQs will be evaluated in accordance with the following factors:

- 1) Qualifications of Firm (50 points possible)**
- 2) Qualifications of Personnel (50 points possible)**

All SOQs will be evaluated using the following basic scoring methodology:

- Outstanding/Exceptional response: 90-100% of the available points
- Good response: 70-90% of the available points
- Average response: 50-70% of the available points
- Poor response: 30-50% of the available points
- Qualifications not clearly met: 0-30% of the available points

Following the review, evaluation, and rating of all SOQs, the final results will be presented to the Consultant Selection Board at the MDT Headquarters Building. At this time, the Consultant Selection Board will take action to approve the roster of the individual firms in the order of their relative scores. The Consultant Selection Board may then short-list firms from this roster for future project-specific, brief Requests for Proposals (RFPs) on an as-needed basis. The rosters will be made available for viewing upon adoption by the Consultant Selection Board.

## **INDIRECT COST RATE REQUIREMENTS**

Proof of the firm's Indirect Cost Rate (overhead rate) is ***not required*** with this SOQ submittal. However, an Indirect Cost Rate may be required prior to executing a contract according to MDT's Indirect Cost Rate Requirements:

All submitted indirect cost rates must be calculated in accordance with 23 CFR 172 for the cost principles of 48 CFR part 31 and include the required items identified in the MDT Indirect Cost Rate Policy located in Appendix A of the Consultant Services Manual on the MDT Internet website.

[http://www.mdt.mt.gov/other/webdata/external/cdb/consultant\\_manual/consultant-design-manual\\_combined.pdf](http://www.mdt.mt.gov/other/webdata/external/cdb/consultant_manual/consultant-design-manual_combined.pdf)

***Do not show any actual numerical financial information such as the overhead rate or personnel rates within your SOQ. Specific cost information of the firm or team should not be part of the SOQ.***

## **AGREEMENT REQUIREMENTS**

Contract agreements will generally be administered on a cost plus fixed fee basis. The contracts will have negotiated cost ceilings. If a consulting firm is selected for a specific project and a contract agreement is successfully negotiated, certain financial information will be required as part of the contract agreement. As described in the Indirect Cost Rate Requirements section above, all Consultants and subconsultants must provide the Department with an Indirect Cost Rate (as applicable) audited (when applicable) in accordance with 23 CFR 172 for the cost

principles of 48 CFR Part 31 and based on the firm's latest completed fiscal year's costs. Personnel rates, profit, and direct expenses must be clearly outlined and provided to the Department. The standard MDT agreement can be found at the following address:  
<http://www.mdt.mt.gov/other/webdata/external/cdb/forms/pdf/std-agreement-shell.pdf>

*Do not submit actual numerical financial information within this proposal.*

### **STATE OPTION TO AWARD**

While the State has every intention to award a contract resulting from this RFQ, issuance of the RFQ 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 RFQ (18-4-307, MCA);
- Reject any or all SOQs received in response to this RFQ (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFQ that would not have significant impact on any SOQ (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 funds are not available (18-4-313, MCA).

### **SINGLE POINT OF CONTACT**

From the date this solicitation is issued until the Roster is finalized by MDT at the Consultant Selection Board meeting, offerors are not allowed to communicate with any state staff or officials regarding this solicitation, except at the direction of the Consultant Design Engineer. If unauthorized contact is made and the Consultant Design Engineer determines the context of the contact gives the firm an unfair advantage, the firm will be disqualified from the solicitation. Contact information for the single point of contact is as follows:

**Ryan Dahlke**  
Consultant Design Engineer  
Montana Department of Transportation  
(406) 444-7292 (Direct Line)  
(800) 335-7592 (TTY)  
[rdahlke@mt.gov](mailto:rdahlke@mt.gov)

### **DBE/WBE GOALS**

There are no DBE/WBE goals identified at this time; however DBE goals may be set for individual projects and will be identified in any project-specific RFP. Consultant firms are strongly encouraged to utilize DBE firms if applicable. A Montana certified DBE list is available and can be found on the MDT web page,  
<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>.

## **NONDISCRIMINATION COMPLIANCE**

Consultants will be subject to Federal and Montana nondiscrimination laws and regulations (see attached notice).

If you have any questions, please contact me at (406) 444-7292 or (406) 444-7696 TDD, or by email at [rdahlke@mt.gov](mailto:rdahlke@mt.gov). I look forward to receiving your SOQ.

Sincerely,

Ryan Dahlke, P.E.  
Consultant Design Engineer

### Attachment

#### copies:

Jay Skoog, ACEC Executive Director-Montana Chapter  
MDT Consultant Design Bureau file

#### e-copies:

Dwane Kailey, MDT Chief Engineer  
Dustin Rouse, MDT Preconstruction Engineer  
Lesly Tribelhorn, MDT Highways Engineer  
Lynn Zanto, MDT Planning Division Administrator  
Patricia McCubbins, MDT Civil Rights Operations Chief  
Kent Barnes, MDT Bridge Bureau Chief  
Roy Peterson, MDT Traffic & Safety Bureau Chief

Ed Toavs, Missoula District Administrator-MDT  
Jeff Ebert, Butte District Administrator-MDT  
Dave Hand, Great Falls District Administrator-MDT  
Shane Mintz, Glendive District Administrator-MDT  
Stefan Streeter, Billings District Administrator-MDT  
Chris Dorrington, MDT Multimodal Planning Bureau Chief

**MDT NONDISCRIMINATION  
AND  
DISABILITY ACCOMMODATION NOTICE**

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with whom MDT does business:

**Federal protected classes**

Race, color, national origin,  
sex, sexual orientation, gender identity,  
age, disability, & Limited English Proficiency

**State protected classes**

Race, color, national origin, parental/marital status  
pregnancy, childbirth, or medical conditions  
related to pregnancy or childbirth, religion/  
creed, social origin or condition, genetic  
information, sex, sexual orientation, gender  
identification or expression, national origin,  
ancestry, age, disability mental or physical, political  
or religious affiliations or ideas, military service or  
veteran status

For the duration of this contract/agreement, the PARTY agrees as follows:

**(1) Compliance with Regulations:** 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.

**(2) Non-discrimination:**

- a. 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.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
  - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
  - ii. 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).
  - iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

- iv. Information on how to request information in alternative accessible formats.
- c. 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.

**(3) Participation by Disadvantaged Business Enterprises (DBEs):**

- a. 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](http://mdt.mt.gov/business/contracting/civil/dbe.shtml)
- b. 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.*

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

**(4) 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.

**(5) 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.

**(6) 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.

**(7) 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 statues and authorities; including but not limited to:

*Federal*

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- 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);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- 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;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- 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);
- 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);
- 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;
- 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);
- 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;

- 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);
- 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.*).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

*State*

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

**(8) 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/or 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.