



**Montana Department of Transportation**

2701 Prospect  
PO Box 201001  
Helena MT 59620-1001

*Michael T. Tooley, Director*

*Steve Bullock, Governor*

October 28, 2019

Subject: **Request for Proposals**  
2020-2022 Subsurface Utility Engineering Term Contracts

To Whom It May Concern:

The Montana Department of Transportation is accepting proposals from consulting firms interested in a term contract for performing Subsurface Utility Engineering (SUE) for utility locating and surveying at various locations throughout Montana.

MDT intends to establish term contract(s) to utilize consultants on an "as-needed" basis for the work described herein. At this time, the intention is to award two (2) agreements that will be approximately \$400,000 each, for a three-year period from January 2020 through December 2022. MDT reserves the right to revise the number of term contracts, the contract values, or contract timeframes, depending on the responses received. Extension(s) of contracts, by mutual agreement of both parties, may be made at one (1) year intervals, or any interval that is advantageous to MDT. Contracts, including any renewals, may not exceed a total of five (5) years.

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. As a rule, the prime consultant must complete at least 50% of the work for a specific task assignment unless written exception is given.

Montana professional engineering licensure is required for this work, and must be in-hand at the time your proposal is submitted. If this requirement is not met and clearly identified in the proposal, your proposal will be considered non-responsive.

If your firm is interested, please submit a proposal as described herein.

## **SCOPE OF WORK**

In general, the work included in this term contract is to provide on-call locating and surveying of above ground and underground facilities. For each task assignment, the consultant will secure the Department's approval of the scope and corresponding cost prior to starting any work. Consultant will locate utilities, produce documentation of utility depth along with horizontal and vertical locations and perform right-of-way and design surveys. Survey information will be provided to the Department in Microstation format. Refer to Attachment 1 for more information regarding the Scope of Work.

## **LOCATION**

Various – Statewide

## **PROJECT/TASK SCHEDULE AND DELIVERABLES**

The project schedule will be developed and negotiated separately for each individual term/task assignment. At this time, it is anticipated that deliverables will generally follow those described in MDT's Consultant Activity Descriptions (as applicable):

[https://www.mdt.mt.gov/other/webdata/external/cdb/ACTIVITY\\_DESCRIPTIONS/CONSULTANT\\_DESIGN\\_2500\\_MU.PDF](https://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**

**Submit one (1) electronic version (Adobe® PDF format) of the proposal. Hard copy proposals will not be accepted.**

Submit the electronic version by uploading to the State of Montana File Transfer Service (ePass) site, which can be accessed at this link: <https://transfer.mt.gov>. To upload to ePass, an account must be created unless the person who is uploading already has an account. Uploading instructions can be accessed at <https://transfer.mt.gov/Home/Instructions>. When your proposal has been uploaded, the ePass system will prompt you for an email. Please send this email of your uploaded proposal to the following individuals:

Sheryl Tangen: [stangen@mt.gov](mailto:stangen@mt.gov)

Ryan Dahlke: [rdahlke@mt.gov](mailto:rdahlke@mt.gov)

Jason Senn: [jasenn@mt.gov](mailto:jasenn@mt.gov)

**The Department must receive the proposals for this RFP no later than 3:00 PM MST, November 18, 2019**

***Regardless of cause, late proposals 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 proposals at vendor's expense or the State will dispose of late proposals if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.). If no request is made, late proposals become the property of the Department. All proposals 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 RFP/SELECTION SCHEDULE**

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

October 28, 2019: RFP released  
November 18, 2019: Proposals due to be submitted to MDT Consultant Design  
November 25, 2019: Proposals reviewed, rated, and ranked by the evaluation committee  
December 4, 2019: Consultant Selection Board meeting to select consultant(s)

There are three (3) members on the evaluation committee for this RFP:

1. MDT R/W Bureau – Utilities Section
2. MDT R/W Bureau – Utilities Section
3. MDT R/W Bureau – Utilities Section

### **PROPOSAL CONTENTS**

The proposal must contain the information listed in this section. The proposal is **limited to ten (10) pages**, not including the required Appendices. A single cover jacket/title page is allowed if desired and will not count in the page limit. 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 jacket/title 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 be removed and not considered or scored. Please organize your proposal in the same order and numbering format as shown below, which will assist MDT in reviewing your proposal:

#### **Questions**

##### **1) Team Qualifications**

Provide a discussion on how the team you propose to use for this contract (including subconsultants, if used) is best qualified to respond to the requirements of this contract. Discussion should focus on the requirements for this specific contract, particularly your team's expertise and experience, as it relates to the work described in the "Scope of Work" section above. Provide examples of previous related experience as it relates to these services. Identify professional licensure of staff that satisfy the requirements for this contract. Include an organization chart that indicates the staff identified for this contract, their area of expertise, registration, and office location(s). Also briefly discuss your compatibility of systems, software, and equipment (i.e. CADD software, word processing software, etc.), and experience with these

systems, software, and equipment. The Department's standard design software is Microstation GEOPAK SS4 with OpenRoads Technology. Please note that MDT is not currently prepared to allow use of Bentley OpenRoads Designer CONNECT edition. Describe any special equipment or software you intend to use. Resumes may be considered as supplemental information for scoring this question.

## **2) Approach to Task Assignments**

Transportation work has many challenging aspects, and the development and delivery of a successful work product that addresses and mitigates specific challenges is of utmost interest to MDT. Discuss the challenges you foresee as they relate to this type of work, your strategy for addressing these challenges, and your specific experience in implementing the strategies identified. Describe your quality assurance/quality control process. Include a discussion on the current and projected workload of key personnel and the effects that workload would have on your ability to successfully complete work under this contract. Provide a discussion on your overall strategy for delivering work in a timely manner, including fast-tracked or emergency tasks and changing priorities.

### **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.**

### **Appendix B: Cover Page Form**

Include a completed version of MDT's standard cover page form, available at the following location:

[http://www.mdt.mt.gov/other/webdata/external/cdb/MDT\\_CDB\\_002\\_Proposal\\_SOQ\\_Cover\\_Sheet.pdf](http://www.mdt.mt.gov/other/webdata/external/cdb/MDT_CDB_002_Proposal_SOQ_Cover_Sheet.pdf)

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

### **Appendix C: References**

Submit references that includes a minimum of five (5) separate contracts from the past three (3) years. If applicable, you may submit multiple contracts for a single client. Each contract must pertain to work similar to the proposed scope of services. Include client name, a currently employed primary contact person, an alternative contact person, corresponding valid phone numbers and emails for both contacts, a range of contract value, and a brief description of the work performed. If MDT needs to use these references for the Past Performance Score (as described in the "Evaluation of Proposals" section below) and is unable to contact the required number of references after a reasonable effort, the firm will receive a zero for the missing reference(s).

## **EVALUATION OF PROPOSALS**

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

**1) Team Qualifications (100 points possible)**

**2) Approach to Task Assignments (50 points possible)**

**3) Record of past performance (30 points possible)**

- a) If two (2) or more MDT evaluations specific to the discipline for this contract are available for the consultant, the average score of these evaluations will be used.
- b) If fewer than two (2) MDT evaluations specific to the discipline for this contract are available for the consultant, but there are two (2) or more MDT evaluations are available for other work disciplines, the consultant's current overall past performance score from MDT evaluations will be used.
- c) If there is only one (1) MDT evaluation available for the consultant, the record of past performance score will be an average of the MDT evaluation and one (1) reference check from the references provided in the unbound attachment.
- d) If no MDT evaluations are available, the average score of two (2) reference checks from the references provided in the unbound attachment will be used for this score.

Regardless of partnership/teaming relationships, the past performance of the prime consultant will be the past performance scored that will be used for this score.

All Proposals 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 proposals, the final results will be presented to the Consultant Selection Board at the MDT Headquarters Building. At this time, the Consultant Selection Board will select the most qualified firm(s) for TERM CONTRACT(S). The Board may consider any proposal scoring within 2% of another proposal as equally qualified and take into account its knowledge of the firms' workload, past performance, and familiarity with the specific work to be performed in selecting the most-qualified consultant(s).

**SELECTION OF CONSULTANTS FOR TASK ASSIGNMENTS**

If multiple consultants are selected and multiple term contracts are awarded, task or work orders (term assignments) will be awarded through an additional qualifications-based selection procedure. This selection procedure will be comprised of selecting a firm in accordance with the following weighted factors:

**1) Qualifications for specific Task Assignment (60 points possible)**

- a) Using the proposals submitted in response to this RFP and work performed with MDT since the submittal of this proposal: an evaluation of the consultant's qualifications as related to the specific knowledge, skills, and abilities required for the individual task assignment, including familiarity with the region in which the task assignment is located. Firm office location is not the determining factor for this score. (50 points possible)
- b) As relating to this type of work, the firm's current workload and amount of recent work with MDT. (10 points possible)

## **INDIRECT COST RATE REQUIREMENTS**

Proof of the firm's Indirect Cost Rate (overhead rate) is ***not required*** with this proposal 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 172.7(b) for the cost principles of 48 CFR part 31 and include the required items identified in the MDT Indirect Cost Rate Policy located on the MDT Internet website.

<http://www.mdt.mt.gov/other/cdb/external/policies/INDIRECT-COST-RATE-POLICY.PDF>

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

## **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 §172.7(b) 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/cdb/external/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 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 funds are not available (18-4-313, MCA).

## **SINGLE POINT OF CONTACT**

From the date this solicitation is issued until the consultant selection 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. Any unauthorized contact may disqualify the offeror from further consideration. 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)  
[rdahlke@mt.gov](mailto:rdahlke@mt.gov)

## **DBE/WBE GOALS**

There are no DBE/WBE goals for this work, but 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 proposal.

Sincerely,



Ryan Dahlke, P.E.  
Consultant Design Engineer

Attachment

copy: MDT Consultant Design Bureau file

e-copies:

Jay Skoog, ACEC Executive Director-Montana Chapter  
Dwane Kailey, MDT Chief Engineer  
Dustin Rouse, MDT Preconstruction Engineer  
James Combs, MDT Highways Engineer

Lynn Zanto, MDT Planning Division Administrator  
Patricia Schwinden, MDT Civil Rights Bureau Chief  
Rob Stapley, R/W Bureau Chief

## **ATTACHMENT 1**

### **SCOPE OF WORK FOR SUBSURFACE UTILITY ENGINEERING**

The CONSULTANT agrees to perform the required professional subsurface utility engineering services, including the obtaining of field subsurface utility data necessary to prepare right-of-way, utility and construction plans for this project. The Consultant agrees to perform these services utilizing the level of care as specified below by the Department.

#### **SECTION 1 – GENERAL**

The CONSULTANT, employing qualified, competent, and experienced personnel, will perform subsurface utility engineering services in two phases.

The first phase designate (Phase I) consists of the CONSULTANT's designating services. For the purposes of this Agreement, "designate" means to establish by engineering, surveying and drafting practices the presence and horizontal location of subsurface utilities using geophysical prospecting techniques, including, without limitation, electromagnetic and sonic techniques within an 18" tolerance. The term "designate" for the purpose of this Agreement will also mean to establish by engineering, surveying and drafting practices the horizontal and vertical location of above-ground utilities.

The second phase locate (Phase II) consists of the CONSULTANT's locating (test hole) services. For the purposes of this Agreement, "locate" means to establish by engineering, surveying, drafting and vacuum excavation practices the accurate horizontal and vertical position of subsurface utilities. The CONSULTANT will provide the DEPARTMENT with a written log of each test hole. The DEPARTMENT will approve the number, if any, of excavations that will be performed by the CONSULTANT.

#### **SECTION 2 – SUBSURFACE UTILITY DESIGNATING SERVICES**

CONSULTANT responsibilities (Phase I) are as follows:

1. Provide all equipment, personnel, survey, traffic control and supplies required to perform designating services. The CONSULTANT will determine which equipment, personnel, and supplies are required to perform designating services.
2. Conduct appropriate records research to identify the utility purveyor and the size of the facility, investigate site conditions, and identify applicable project limits.
3. Obtain all necessary permits from city, county, or other municipal jurisdictions to allow the CONSULTANT to work in existing streets, roads and/or on adjacent rights-of-way, including landowner permission.

Notify in writing the DEPARTMENT District Administrator and utility companies 48 hours prior to beginning work to advise of and coordinate work.

4. Designate the location of existing underground utilities including their major laterals and any overhead utilities that are within the project limits. Unless expressly requested, the CONSULTANT will not be required to designate or record storm sewers, empty or abandoned utilities, and vault or manhole limits or dimensions.

5. All utilities will be tied to project centerline or base line with distance and station. Each underground utility must be electronically designated, surveyed and mapped to within an 18-inch

tolerance at 50-foot intervals when parallel to project centerline or base line, at all direction changes and all closures, cabinets and huts. Underground utility crossings must be designated, surveyed and mapped at project centerline and at the outer project limits (proposed right-of-way line when known). Each existing pole or structure and its anchor assembly located within the project limits will be surveyed and mapped to the proposed project centerline. A clearance on all overhead crossings to centerline will be measured and mapped with a centerline station.

6. Draft survey information in a plan format acceptable to the DEPARTMENT using Computer Aided Drafting and Design (CADD – Microstation) systems of the CONSULTANT. All survey work, including the retracing of a survey centerline or base lines, will be determined and performed by the CONSULTANT.

7. Compare survey information drafted on base plans using CADD with information provided from field data and evaluate all drafted information for accuracy and reliability.

8. Review and correct all plan sheets against all records, field sketches, CADD drafting, and field notes.

9. Unless otherwise directed by the DEPARTMENT, translate survey data and drafting codes to an electronic file to allow direct incorporation of the CONSULTANT's digital survey information into the DEPARTMENT's design file.

10. Review and seal all appropriate work products by a staff Professional Engineer and/or Land Surveyor (licensed in the State of Montana) who is in responsible charge.

11. Return base plans to the DEPARTMENT and review the information obtained with the DEPARTMENT.

12. Provide the DEPARTMENT a summary sheet showing the individual lineal feet of each utility company's facility designated for a project.

13. Submit printed and electronic utility information in a format acceptable to the DEPARTMENT.

DEPARTMENT responsibilities (Phase I) are as follows:

1. As available, provide plans showing the project limits, alignment, control traverse and benchmark data.

### SECTION 3 – SUBSURFACE UTILITY LOCATING (TEST HOLE) SERVICES

CONSULTANT responsibilities (Phase II) are as follows:

1. Provide all equipment, personnel, traffic control, survey and supplies required to perform locating services.

The CONSULTANT shall determine which equipment, personnel, and supplies are required to perform such services.

2. Conduct appropriate records research and investigate site conditions.

3. Notify in writing the DEPARTMENT District Administrator and the utility companies 48 hours in advance. Contact "one-call" (811 Call Before You Dig) to advise and coordinate CONSULTANT activities.

4. Obtain all necessary permits from city, county, or other municipal jurisdictions to allow the CONSULTANT to work in existing streets, roads, and rights-of-way. Obtain permission of private property owners.
5. Electronically sweep underground utility facilities.
6. The DEPARTMENT will not reimburse for “dry” holes. A “dry” hole is defined as an excavation made by a CONSULTANT that does not locate an underground facility when utilizing CONSULTANT’s own personnel and equipment.
7. Excavate test holes to expose the utility and measure to both top and bottom in such a manner that ensures the safety of the excavation and the integrity of the utility. In performing such excavations, the CONSULTANT shall comply with all applicable utility damage prevention laws and notify the DEPARTMENT District Administrator. The CONSULTANT shall be responsible for any damage to a utility company facility during the locating phase (Phase II).
8. Survey and record (a) horizontal and vertical location of top and bottom of utility referenced to project datum, (b) elevation of existing grade over utility at a test hole referenced to project datum, (c) outside diameter of utility and configuration of non-encased, multi-conduit systems, (d) utility structure material compositions, when reasonably ascertainable, (e) benchmarks and/or project control used to determine elevations, (f) paving thickness and type, where applicable, (g) general soil type and site conditions (h) record any soil contamination and (i) such other pertinent information reasonably ascertainable from the test hole site. References to project datum shall maintain vertical tolerances to 0.05 ft. based on benchmarks shown on the CONSULTANT work product and horizontal tolerances to applicable surveying standards. If additional control points or benchmarks are required, the CONSULTANT shall perform such services according to established practices at DEPARTMENT cost.
9. Provide permanent restoration of the pavement within limits of the original cut, including backfill of compaction methods acceptable to DEPARTMENT. When test holes are excavated in areas other than a roadway pavement, these disturbed areas shall be restored as nearly as reasonably possible to the condition that existed prior to excavation.
10. Evaluate and compare obtained information with utility information described in utility records and resolve conflicts.
11. Draft the horizontal location and the profile view of the utility on project plans in a format acceptable to the DEPARTMENT.
12. Compile information described in Item #8 above using the CONSULTANT’s automated systems and quality assurance procedures. The CONSULTANT will provide the DEPARTMENT a test hole data sheet for each excavation.
13. Upon request, review data obtained with the DEPARTMENT.

DEPARTMENT responsibilities (Phase II) are as follows:

1. As available, provide plans showing the alignment, control traverse and benchmark data, and locations of required test holes for selected projects.

#### SECTION 4 – WORK ZONE TRAFFIC CONTROL

When performing field work on or adjacent to public streets or highways, it shall be the responsibility of the CONSULTANT to provide traffic control devices (signs, cones, etc.) or other necessary devices, in accordance with the *Manual on Uniform Traffic Control Devices* (MUTCD) for designating (Phase I) or locating (Phase II) work.. If special traffic control is required other than the normal signs and cones, a traffic control plan shall be requested by the District and submitted by the CONSULTANT to the appropriate District Administrator for review and approval, and the price for traffic control may be negotiated by the DEPARTMENT and the CONSULTANT prior to beginning work.

#### SECTION 5 – WORK STANDARDS

Field data shall be obtained in conformity with current practices of the DEPARTMENT as outlined in various Unit Manuals and Unit Guidelines in regard to presentation, media, sheet sizes, scales, billing of pay items, special drawings, and summaries thereof.

All original calculations, field notes, quantity calculations, boring logs, subsurface utility data, any necessary project special provisions, and other material in addition to the drawings prepared under this Agreement shall be the property of the DEPARTMENT and shall be turned over to the DEPARTMENT upon completion of the work.

#### SECTION 6 – REPRODUCTION

The CONSULTANT shall be responsible for reproduction of all plans as necessary to complete the work of the CONSULTANTS.

#### SECTION 7 – SUBCONTRACTS

The CONSULTANT shall not sublet any portion of the work under this Agreement without prior approval by the DEPARTMENT.

The CONSULTANT shall be responsible for the schedule of any work sublet to others so as to ensure that the overall schedule of the project is maintained.

The CONSULTANT shall be responsible for the completeness, accuracy, presentation, inclusion of data into the design and plans, and reviews of any work sublet to others.

#### SECTION 8 – PERFORMANCE

The CONSULTANT shall perform the subsurface utility engineering services set forth herein by providing services equal to or better than the practice prevalent within the subject area of the work and commensurate with the magnitude and intricacy of the work under consideration. Such services shall be so complete that it will not be necessary for the DEPARTMENT to supplement any of the operation by its own personnel.

**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 statutes 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.