



**Montana Department of Transportation**

2701 Prospect  
PO Box 201001  
Helena MT 59620-1001

*Greg Gianforte, Governor*  
*Malcolm "Mack" Long, Director*

Date: January 22, 2021

Subject: **Request for Proposals**  
2021 State Aviation System Plan Update

To Whom It May Concern:

The Montana Department of Transportation (MDT) is accepting proposals from consulting firms interested in conducting Pavement Condition Indexes (PCI's) for airports in Montana. One firm will be selected to perform the work specified herein.

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, and the proposal must clearly identify the prime for this contract. 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.

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 project will require Pavement Condition Indexes (PCI's) at approximately 58 general aviation airports located throughout the state of Montana. For more specific objectives and requirements, see the attached *Program Narrative*.

The Cut Bank airport is not included for field work (data collection) due to the lack of a required Project Specific Agreement (PSA) prior to this solicitation. However, MDT is planning on internal staff completing the field work at this airport. It is expected that the Consultant will be tasked with compiling/analyzing this data provided by MDT.

The airports at Harlem, Poplar, and Wolf Point are included for field work/data collection. However, a PSA is required before the Consultant can perform any field work at these specific airports. If a PSA is not executed in time to meet the needs of this project, MDT will attempt to have internal staff collect the data instead of the Consultant. If that happens, it is expected that the Consultant will be tasked with compiling/analyzing this data provided by MDT. Please note that any field work performed by the Consultant inside the exterior boundaries of a Reservation require any and all necessary permits/licenses required by that specific Tribal entity.

## **LOCATION**

The work will be statewide, with the special considerations listed above regarding the Cut Bank, Harlem, Poplar, and Wolf Point airports.

## **PROJECT SCHEDULE AND DELIVERABLES**

The project schedule will be developed and negotiated prior to executing the contract agreement. At this time, it is anticipated that the work is to be completed by December 31, 2021. Deliverable content and format is further described in the attached *Program Narrative*.

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

Work is expected to follow MDT's and FAA's various Manuals, Guides, and Policies. Many of 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, February 16, 2021.**

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):

January 22, 2021: RFP released  
February 16, 2021: Proposals due to be submitted to MDT Consultant Design  
February 25, 2021: Proposals reviewed, rated, and ranked by the evaluation committee  
March 3, 2021: Consultant Selection Board meeting to select consultant

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

1. MDT Aeronautics Bureau Chief
2. MDT Aeronautics Aviation Support Officer
3. MDT Pavement Analysis Specialist

### **PROPOSAL CONTENTS**

The proposal must contain the information listed in this section. The proposal is **limited to fourteen (14) 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) **Qualifications of Firm:** Provide a discussion of how your firm (including subconsultants, if used) is best qualified to respond to the requirements of this project. Discussion should focus on the requirements for this specific project, particularly your firm's expertise and experience, as it relates to the work described in the "Scope of Work" section above (further described in the attached *Program Narrative*). Provide examples of previous related project experience as it

relates to these services. Include a discussion on the compatibility of systems, software, and equipment (i.e. CADD software, word processing software, etc.), and experience with these systems, software, and equipment. Describe any additional support equipment or software you intend to use. Discuss your firm's quality assurance/quality control procedures and strategy for this project.

- 2) **Qualifications of Personnel:** Provide a discussion of the qualifications of the key personnel to be assigned to this project, and how they are best qualified to respond to the requirements as described. Discussion should focus on the requirements for this specific project, particularly as it relates to the work described in the "Scope of Work" section above (further described in the attached *Program Narrative*). Include a discussion on expertise, experience, and training of key personnel to be assigned to the project, as it relates to the "Scope of Work" for this project. Provide examples of previous related project experience as it relates to these services. Clearly state any professional licensing requirements applicable to this contract. Include an organization chart that indicates the project staff, their area of expertise, registration, and office location(s). Include a discussion on the current and projected workload of key personnel, and the effects that workload would have on your ability to successfully deliver this project. Resumes *may* be considered as supplemental information for scoring this question.
- 3) **Project/Contract Approach:** Discuss your Ability, Strategy, and Approach to meet project/contract requirements, as described in the "Scope of Work" section above (further described in the attached *Program Narrative*). The development and delivery of a successful project that addresses and mitigates specific project challenges is of utmost interest to MDT. Discuss the challenges you foresee as they relate to this project and its requirements, your strategy for addressing these challenges, and your specific experience in implementing the strategies identified.

#### **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:

<https://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) **Qualifications of Firm (50 points possible)**
- 2) **Qualifications of Personnel (50 points possible)**
- 3) **Project/Contract Approach (50 points possible)**
- 4) **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 (Board) at the MDT Headquarters Building. At this time, the Board will select the most qualified firm(s) to perform the work. The Board may consider any proposal scoring within 2% of the highest-scoring proposal as equally qualified and take into account its knowledge of the firms' workload, past performance, and familiarity with the project area and local entities in selecting the most-qualified consultant. In the event that a firm cannot be identified as the most qualified through an evaluation of these proposals, MDT reserves the right to narrow down the list of responding firms to an appropriate short list. Short-listed firms will either be asked to provide a supplemental proposal or asked to be interviewed or provide a presentation. Scores from the proposals, supplement project proposals (if used), and interviews (if used) will be carried forward to determine final consultant score. Consultant selection is finalized by MDT at the Consultant Selection Board meeting.

## **AGREEMENT REQUIREMENTS**

This contract agreement will be administered on a lump sum basis. The contract will be negotiated after consultant selection. Certain financial information will be required as part of the contract agreement. All Consultants and subconsultants must comply with Federal and State cost and accounting regulations and requirements. ***Do not show any actual numerical financial information such as overhead rates or personnel rates within your proposal. Specific cost information of the firm or team should not be part of the 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. 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)  
[rdahlke@mt.gov](mailto:rdahlke@mt.gov)

## **DBE GOALS**

There are no DBE 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 titled “MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE”).

If you have any questions, please contact me at (406) 444-7292, 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

e-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  
Damian Krings, MDT Highways Engineer (Acting)  
Carol Strizich, Acting MDT Planning Division  
Administrator

Patricia Schwinden, MDT Civil Rights Bureau Chief  
Bryan Miller, MDT Consultant Plans Engineer  
Dave Holien, MDT TA Engineer  
Tim Conway, Aeronautics Administrator, MDT

**PROGRAM NARRATIVE  
APPLICATION FOR FEDERAL ASSISTANCE  
MONTANA STATE AVIATION SYSTEM PLAN**

INTENT FOR CONSULTANT

The following scope of work has been structured to provide the consultant ease in completing assigned tasks without the aid of sub-consultants and/or major technical assistance from any government agency forthwith mentioned.

I. OBJECTIVE:

1. Conduct Pavement Condition Indexes (PCIs) for selected NPIAS airports.

II. APPROACH AND BENEFITS TO ACCRUE:

1. PCIs – Pavement Condition Indexes (PCIs) will be accomplished on all paved surfaces (unless specifically omitted) at approximately 53 airports located throughout the state of Montana. The final inspection sites and runways will be determined at a later date. The result anticipated from the project will be precisely measured data that will be used in an electronic format called MicroPaver. This data will be used as an objective tool for Federal, State and local agencies in determining and justifying maintenance and rehabilitation needs for various airport projects. Emphasis will be placed on the creation of a priority list of maintenance needs at inspected airports. This prioritized list of maintenance items will be used directly by the Aeronautics Division and the FAA in budgeting maintenance money for FAA funded pavement maintenance programs. In addition, the PCIs will provide a dependable scale for comparing existing pavement conditions and probable future pavement performance condition of various airports.

III. SCOPE OF WORK:

1. Project Approach, Introduction and Grant Application

A detailed chapter of the report will be compiled listing the consultants approach to the project and how it was achieved. Examples and figures will be included for clarity and the language should be written in easy to understand terms. A section including definitions, if needed, should also be included. For reasons of conformity, the final bound report and the format of the displayed information within will be loosely similar to the final bound PCI reports as collected in the last ten years. Examples of these reports will be available from the Division.

The selected consulting firm will handle all aspects of grant application, oversight, payments and closure.



## 2. Data Collection

For airports that have no previous PCI MicroPaver data available, basic airport layout data will be collected for the airport to be analyzed. This information will be collected using the airport layout plans, construction plans, pavement design, maintenance history, airport traffic, and any records on frost action or similar problems. Electronic schematic base maps will be prepared showing pavement locations, dimensions, features, pavement sections, and MicroPaver sample unit layouts with explanations.

For airports which PCI MicroPaver data is available, the existing MicroPaver database will be updated to reflect any new pavement construction, rehabilitation or maintenance work at each of the airports. Modification of all existing base maps and identification of new pavement sections will be required. Previous electronic base map information may not be available to the consultant.

In choosing the software to be used, the latest version of the Windows based MicroPaver will be obtained and utilized. Once the consultant has reviewed the latest version MicroPaver, MDT Aeronautics Division will be notified, and permission obtained before actual purchase of the software. Software purchase, licensing and any or all related costs for electronic purposes relating to this scope of work and contract will be provided by the consultant. At least one licensed copy of the approved MicroPaver software will be purchased by the consultant for the use and ownership by the Division. The consultant will be responsible for working with Montana Department of Transportation, Information Services Division (MDT ISD) representatives in order to load the licensed copy onto two separate Division computers along with all updated and final PCI data collected by the consultant. If two licensed copies are required for the two separate computers for legal reasons, then the consultant will purchase two licensed copies. The consultant will also be responsible for working as needed with MDT ISD in conjunction with all purchases to ensure MDT ISD compliance and approval for all software for all purchases, downloads and/or other electronic needs in regard to use of MicroPaver, associated software and placing collected PCI information onto the MDT website.

Other types of pavement management software (not MicroPaver) may be considered for use by the Division if requested by the consultant. These other pavement management systems will be presented by the consultant to the Division for consideration. The Division has final authority regarding which pavement management system will be utilized.

## 3. Definition of Sample Units to be Evaluated

For airports that have no previous PCI data, each different airport pavement feature, such as runways, taxiways, and apron areas, will be identified using the current airport layout plans and used to create sections for the MicroPaver database as is appropriate. Each of the pavement features present at each facility will be defined and identified on the base map by using the pavement design records and construction plans. A "pavement feature" is a pavement area having consistent thickness, built for a specific purpose utilizing normal construction materials. Sample units will be approximately 5,000 square feet in

size for asphalt pavements and by individual slab for concrete surfaces or as is reflected in any updates to MicroPaver compatible engineering techniques. The location and number of sample units analyzed must produce a 92% confidence level and will be identified and marked on the base map.

For airports which previous PCI data exists, all branches and sections will be identical to the original inspection, except where new sections occur due to new construction rehabilitation or maintenance. The location and number of sample units analyzed must produce a 92% confidence level and will be identified and marked on the base maps.

#### 4. Perform Pavement Condition Survey

Each airport to be surveyed will receive a detailed field examination and pavement analysis utilizing sound engineering techniques compatible with the MicroPaver system. Units of sections to be evaluated will be marked on the pavement using base maps as a reference. Each sample unit will then be analyzed and rated according to the procedures outlined in appendices A and B of latest version of FAA Advisory Circular 15/5380-6 "Guidelines and Procedures for Maintenance of Airport Pavement". Individual pavement distress types will be identified, such as alligator cracking, rutting, raveling, block cracking, etc. For additional information on finding, identifying and rating distress types, please refer to "Pavement Management for Airports, Roads, and Parking Lots" by M.Y. Shihin. Each sample unit will be rated using the established deficiency rating procedure. Ratings will then be compiled to produce a ranking for each pavement feature.

#### 5. Produce Summary Reports

A PCI listing and its respective pavement ratings will be developed for all airports receiving a PCI. The written report will be user friendly and contain both the base maps and field evaluation forms for each airport. The field evaluation forms complete with the rating computations will be provided in the written report for future reference. The summary report will be developed with the intent of minimizing the preliminary work effort involved in future PCI evaluations and to provide an accurate historical record.

An electronic summary report will be created for each airport with the intent of broadcasting the information on the MDT website. The electronic information will be in a format recognizable and compatible with the MDT website, such as PDF or similar. The Division will approve the final electronic format to be used for the report. The consultant will then work directly with MDT ISD representatives if needed to assure the website report is 100% compatible with the MDT website. The consultant will work closely with Division representatives during this process as well.

#### 6. Results and Recommendations

A detailed chapter of the written PCI report will be compiled listing the PCI results, recommendations and overall summaries. Reports included in this chapter should include, but not be limited to, family analysis curves, PCI predictions, tables of PCI

summary ratings, system-wide pavement conditions, the pavement life cycle figure, and a budget condition forecast.

Maintenance & Rehabilitation (M & R) policy suggestions will also be compiled with the consultant determining the correct control costs for the policies. The reports used in creating the M & R policies, including the M & R report, the network maintenance report and the preventative maintenance report may or may not be included in the final report. The Division will be consulted when determining the variables in the reports and whether the reports are to be included in the final report. The Division may have the consultant create a simple cost report for inclusion in the final report. The cost report will be specific to each airport and be aimed at airport managers, so they may realistically budget for maintenance and rehabilitation costs over a period of years.

## 7. Deliverables

All data collected within the scope of this project will be collected and organized for printing and report presentation in a three-ring binder format with pleasing cover graphics and titled "Montana Aviation System Plan - 2021 Update - Pavement Condition Indexes".

A copy of all electronic data used and created for this project, including base maps, PCI information and any other electronic files used in the creation of the PCI reports will be delivered to the Division. The Division will retain the right to use all electronic files delivered within this scope for future updates and revisions.

Ten hardcopies of the final three ring binder report will be delivered to the MDT Aeronautics Division after final approval of a final draft copy by the Aeronautics Division.

## 8. Airports to be Evaluated

All paved surfaces including all aprons, taxiways and runways (unless specifically omitted) at the approximately 53 airports, are to be evaluated under this pavement condition index program. The list of Airports and runways will be finalized at a later date.

**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.