



VISION ZERO
zero deaths
zero serious injuries

Montana Department of Transportation

2701 Prospect
PO Box 201001
Helena MT 59620-1001

Michael T. Tooley, Director

Steve Bullock, Governor

Date: June 8, 2018

Subject: **Request for Proposals**
Bridge Underwater Inspection Term Contracts 2018-2021

To Whom It May Concern:

The Montana Department of Transportation is accepting proposals from consulting firms interested in a term contract for performing diving inspections of underwater bridge components at various locations throughout Montana. At this time, 154 bridges have been identified for underwater inspection.

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 \$600,000 each, for an approximate three-year period from August 2018 through December 2021. 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 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

1. General

A. Provide the necessary personnel, equipment, and expertise to complete Type 2 Underwater Inspections (see definition below) from the mud line to the water surface for various substructure types. Evaluate and document the existing and potential for scour at the bridge site as well as cross sections and contour maps of the stream or river bed by sounding or other approved methods.

MDT's 2015 Bridge Inspection and Rating Manual defines two types of underwater inspections:

- **Type I Underwater Inspections** is simply all underwater inspections that do not require bridge inspection personnel to dive underwater to inspect the substructure to the mud line.
- **Type 2 Underwater Inspection** is simply any underwater inspection that requires the inspection personnel to dive underwater to inspect the substructure to the mud line.

B. The inspections will involve:

- 1) A thorough visual inspection, if possible (tactile if not), of each substructure element.
- 2) A determination of the amount of scour in the area of the bridge, indicating to what extent, if any, that the footings are exposed or undermined.
- 3) Noting the existence of any other condition which may adversely affect the structure or require remedial attention. Examples of this would be noting the presence and type of drift present in the stream, estimating the chances of the drift hanging up on substructure units, and noting the existence and location of any underwater foreign or unexpected objects in the vicinity of the bridge.
- 4) A complete and detailed written report documenting the results of the inspection.
- 5) Data entry and uploading of documentation into Montana's Structure Management System (SMS): Including but not limited to element level defects, photos, notes, and attribute values.

2. Personnel

A. Bridge Inspection Team leader. Designate one member of the dive team as the Bridge Inspection Team Leader. The Bridge Inspection Team Leader must meet one of the following qualifications. He/she will either:

- 1) Have five years bridge inspection experience and have successfully completed an FHWA approved comprehensive bridge inspection course; or
- 2) Be certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineers' (NSPE) program for National Certification in Engineering Technologies (NICET), and have successfully completed an FHWA approved comprehensive bridge inspection training course; or
- 3) Have a bachelor's degree in engineering, have successfully passed the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering examination, have two years of bridge inspection experience, and have successfully completed an FHWA approved comprehensive bridge inspection training course; or

- 4) Have an Associate degree in engineering or engineering technology, have four years of bridge inspection experience, and have successfully completed an FHWA approved comprehensive bridge inspection training course; or
 - 5) Be a registered professional engineer licensed in Montana and have successfully completed an FHWA approved comprehensive bridge inspection training course.
 - B. The Bridge Inspection Team Leader will be on site at all times during the inspections. The Bridge Inspection Team Leader is responsible for the final evaluation and documentation of each structure.
 - C. All members of the dive team will have successfully completed either an FHWA approved comprehensive bridge inspection training course based on FHWA's Bridge Inspector's Reference Manual (BIRM) or an FHWA approved underwater diver bridge inspection training course and be trained in accordance with 29 CFR Part 1910, Subpart T, Commercial Diving Operations; Occupational Safety and Health Administration Standards (OSHA). The consultant will submit copies of the OSHA mandated annual physical examinations for each dive team member.
 - D. All inspector certification documentation for an inspection team will be submitted to MDT and approved before a Notice to Proceed is issued.
3. Coordination and Scheduling
 - A. Before the inspections begin, a tentative schedule of diving operations will be provided to the Bridge Management Section so that the District Offices may be informed ahead of time when the divers will be in their district. Periodically, during the course of the project, updates to the schedule will be provided as adjustments are made. The lines of communication between the diving contractor and the department will remain open at all times.
 - B. Contact the Fisheries Division with Montana Fish, Wildlife & Parks (FWP) at (406) 444-5383 prior to transportation of a boat or marine equipment including but not limited to barges, dredges, docks, piers, backhoes, etc. into Montana. Montana FWP will inspect all vessels and equipment before they are allowed in or near the water. Provide adequate notice prior to equipment coming on-site so FWP can arrange for this inspection. Contact FWP to request how much prior notice is needed. It is illegal to transport aquatic invasive species into Montana. Wash all equipment thoroughly with high-pressure hot water, and ensure the equipment is drained and dried prior to entrance into Montana to avoid delays.
4. Underwater Inspection
 - A. Conduct all diving operations in accordance with the applicable OSHA safety standards. Submit a copy of your firm's OSHA mandated Safe Diving Practices Manual.
 - B. Provide all the equipment necessary to complete the inspection.
 - C. Inspect all underwater elements visually where possible. Perform a tactile inspection when low visibility prevents a visual inspection.
 - D. Provide a description of the streambed in general terms (mud, sand, gravel, rock or a combination thereof).
 - E. Inspect all substructure elements and document observations in accordance with the Bridge Inspection Reference Manual

- F. Clean off all concrete surfaces and sound all concrete with a hammer for incipient spalls. Document location and dimension of all observed spalls. Note unusual cracking; the location, number and size of exposed reinforcement; and the conditions of exposed footing piles.
 - G. Locate and dimension all section loss in steel piles or shells. A representative sampling of approximately 10 percent of the steel pipe piles will be measured for wall thickness of the steel pipe. An ultrasonic thickness-measuring device will be required for this operation. The diver will clean the steel of all marine growth and any loose protective coating before placing the transducer against the pile.
 - H. Similarly, a representative sampling of timber piles will be bored or drilled to determine the extent of rot present. The holes left by this operation shall be plugged with creosote-dipped hardwood dowels.
5. Scour
- A. Sounding will be taken in the areas under and adjacent to the structure, using either lead lines or ultrasonic depth sounding equipment. The soundings will be made along the circumference of all substructure components and along lines directly under the upstream and downstream edge of the bridge deck and parallel lines 50 and 100 feet upstream and downstream of the bridge. The soundings will be taken continuously if a recording depth sounder is used or at 10 to 20 foot intervals if spot sounding is used. Additional soundings will be made as necessary to identify change in slope locations. A contour map and a set of cross sections shall be developed from the recorded data.
 - B. Soundings shall be referenced to the water surface, which shall be referenced to a point of known elevation on the bridge.
 - C. If a footing is found to be exposed or undermined, the volume of the void must be dimensioned within an accuracy of ½ foot in each direction.
6. Photography
- A. For identification purposes, photographs of the portal and profile views of each bridge inspected will be taken.
 - B. Underwater photography will be used to document the findings of the inspection. Photographs will be required to illustrate the typical condition of substructure components as well as areas of substructure component distress. Where severe deterioration exists, a sufficient number of photographs will be taken to fully document the condition.
 - C. Existing scour problems or conditions that show a potential for scour shall also be included in the photography. This would include photographs of undermined footings, adjacent scour holes and debris that may be on or near the bridge.
 - D. A clear water box will be available in the event that turbidity makes normal photography impossible.
 - E. In lieu of photography a DVD of the dive may be submitted. If a DVD is provided the quality of the video and audio (if included) must be clear and sharp and free of any distortions throughout. If video is provided it will augment but not replace the written report.
7. Report
- A. For each bridge inspected, a report will be prepared which will include the following:
 - 1) An evaluation of the overall condition of the underwater components including photographs, sketches, and diagrams used to substantiate the findings.

- 2) Recommendations for any short-term or long-term repairs or maintenance.
 - 3) Review most recent routine inspection notes and defects for substructure elements and comment on NBI Item (60) condition rating for bridge.
 - 4) Conclusions as to the condition of the streambed (amount of scour, need for riprap, etc.). Included will be the contour map and cross sections mentioned above.
- B. The final report will be uploaded to SMS under Inspection Documents within 60 days of completion of the fieldwork. All inspection data including but not limited to element level defects, notes, photos, and attribute data changes will be recorded in SMS, and the inspection report will be submitted to the MDT contract manager in QC review status within 60 days of inspection. All inspection reports and data will be final within 90 days of completion of fieldwork.

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 the Scope of Work section above. Additionally, MDT's Consultant Activity Descriptions are available here:

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

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

Ryan Dahlke: rdahlke@mt.gov

The Department must receive the proposals for this RFP no later than 3:00 PM MST, June 27, 2018.

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 by the specified time. Offeror may request the State to dispose of late proposals. (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):

June 8, 2018:	RFP released
June 27, 2018:	Proposals due to be submitted to MDT Consultant Design
July 9, 2018:	Proposals reviewed, rated, and ranked by the evaluation committee
July 11, 2018:	Consultant Selection Board meeting to select consultant(s)

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

1. MDT Bridge Management Manager
2. MDT Bridge Conditions and Operations Engineer
3. MDT Bridge Structural Engineer

PROPOSAL CONTENTS

The proposal must contain the information listed in this section. The proposal is **limited to ten (10) pages**, not including the required Cover Page, Appendix A (resumes), or Appendix B (references). 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:

Cover Page (1 page)

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

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

Questions

- 1) **Qualifications of Firm:** Provide a discussion of how your firm is best qualified to respond to the requirements of this contract. Discussion should focus on the requirements for this specific contract, particularly:
 - Your firm’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.
 - Ability, Strategy, and Approach to meet project/contract requirements, as described in the “Scope of Work” section above.
 - Ability and Strategy to meet project schedules, including fast-tracked or emergency projects, and changing priorities. Response should include a brief discussion on current and projected workload.
 - 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 additional support equipment or software you intend to use.
 - Subcontractors and support services that you anticipate utilizing and describe their expertise.
 - Quality assurance/quality control procedures.

- 2) **Qualifications of Personnel:** Provide a discussion of the qualifications of the key personnel to be assigned to this contract. Discussion should focus on the requirements for this specific contract, particularly:
 - Expertise, experience, and training of key personnel to be assigned to the contract, as it relates to the “Scope of Work” for this project. Provide examples of previous related 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).

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.

Appendix B

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) 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 the highest-scoring 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.

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 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

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 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 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)
(800) 335-7592 (TTY)
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.
I look forward to receiving your proposal.

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 Schwinden, MDT Civil Rights Bureau Chief
Stephanie Brandenberger, MDT Bridge Engineer
Amanda Jackson, MDT Bridge Management Engineer

**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
- 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.