



# Invitation For Bid Construction

**UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**

**CONTRACT BID NO. GD 23-15R**

December 7th, 2023

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**Greater Dayton Regional Transit Authority**

4 S. Main Street, Dayton, OH 45402 • P: 937-425-8400 • F: 937-425-8416 • [www.iriderta.org](http://www.iriderta.org)

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December 7<sup>th</sup>, 2023

DEAR PROSPECTIVE BIDDERS:

Re: Invitation for Bids (IFB)  
UNDERGROUND STORAGE TANK REPLACEMENT PROJECT  
IFB No. 23-15R

The Greater Dayton Regional Transit Authority (RTA) is soliciting bids for GD 23-15R **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**. Your firm has been invited to submit a bid.

**Please send your completed bid clearly marked "UNDERGROUND STORAGE TANK REPLACEMENT PROJECT" to the undersigned by 10:00 AM, Dayton (Eastern) Time, January 25<sup>th</sup>, 2024.** Bids may be hand delivered, mailed, or sent by delivery services addressed to: Director of Procurement, Greater Dayton Regional Transit Authority, 4 S. Main Street, Dayton, OH 45402. Please allow additional working days for U.S. Postal Service delivery. If you attend the bid opening, plan to arrive at least 20 minutes early.

**A pre-bid conference for this procurement will be held on December 21<sup>st</sup>, 2023, at 10:00 AM in the Maintenance conference room at 600 Longworth St., Dayton OH.** All bidders are encouraged to attend. Any questions or inquiries may be submitted in writing to ensure accuracy. Parking is available near the flagpole on the side of the 600 Longworth building or across the street.

**DBE Participation:** It is the policy of the Department of Transportation (DOT) that DBEs, as defined in 49 CFR, parts 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The DBE goal for this procurement is 5%

**BASIS OF AWARD:** The award of this order is based on the lowest responsive and responsible bidder(s) as determined by the Greater Dayton Regional Transit Authority (RTA). The RTA has the right to make award(s) based on each individual item or any combination of items, or in the aggregate of all items.

Any interpretation, correction or change of the bid documents will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding, and bidders shall not rely upon such interpretations, corrections, and changes. Addenda will be mailed to every bidder of record.

**Please Note:** This bid package and any addenda are available on the Procurement Department page of our website, <http://proc.greaterdaytonrta.org>. Please continue checking the website for any updates or addenda. If you have received this bid package via email or regular mail, all addenda will also be sent to you by the same method. However, if you accessed this bid package from our website, we may not have you in our database. To ensure that you receive all updates and addenda, please send an email to [ngreer@greaterdaytonrta.org](mailto:ngreer@greaterdaytonrta.org) to be added to our database.

**Please contact me with any questions or comments concerning the IFB at (937) 425-8311 or email at [ngreer@greaterdayton.org](mailto:ngreer@greaterdayton.org).**

Sincerely,

Noah Greer  
Senior Purchasing Agent

**GREATER DAYTON REGIONAL TRANSIT AUTHORITY  
UNDERGROUND STORAGE TANK REPLACEMENT PROJECT  
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**SECTION I**  
**INVITATION FOR BID**

## LEGAL NOTICE 23-15R

### INVITATION FOR BID

Notice is hereby given that the Greater Dayton Regional Transit Authority (RTA) is receiving bids for the following procurement until **10:00 AM EST, on January 25<sup>th</sup>, 2024**, for the following:

#### **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**

In accordance with the drawings and specifications prepared by Champlin Architecture and on file at the Greater Dayton Regional Transit Authority (RTA).

Pursuant to Section 153.54 et seq. of the Ohio Revised Code, the bidder shall submit a BID GUARANTY in the form of either:

- a. A bond for the full amount of the bid conditioned that if the bid is accepted, the bidder after the awarding or the recommendation for awarding the contract, will enter a proper contract based upon the bid; or
- b. A certified check, cashier's check, or letter of credit pursuant to Chapter 1305, Ohio Revised Code, in the amount of 10 percent of the base bid amount. If a 10 percent GUARANTY is submitted, provided that the bid is accepted, the bidder will, after the awarding or recommendation for awarding the contract, enter a proper contract and indemnify the RTA against all damages suffered by failure to perform the contract by supplying a performance bond in accordance with Section 153.54(2) et. seq. of the Ohio Revised Code for the FULL AMOUNT OF THE CONTRACT.

All bids and related documents shall be subject to a financial assistance contract between the RTA and the United States Department of Transportation under the Urban Mass Transportation Administration Act of 1964, as amended, terms and conditions established under the Act will apply. All bidders will be required to certify they are not on the U.S. Comptroller General's Consolidated list of ineligible contractors. Manufacturers appearing on said list will be considered ineligible.

**A pre-bid meeting will be held on December 21<sup>st</sup>, 2023, at 10:00 AM, local time, in the Maintenance conference room at 600 Longworth. Parking is available near the side of the 600 Longworth Street building or across the street.**

The RTA hereby notifies all bidders that regarding any contract entered pursuant to this Invitation for Bid, advertisement or solicitation, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids and/or proposals in response and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.

Any interpretation, correction or change of the bid documents will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding. Addenda will be mailed to every bidder of record.

No bid may be withdrawn for a period of one hundred twenty (120) days after bid opening. The RTA reserves the right, as the interests of the RTA may require, to postpone, accept or reject any and all bids and to waive any information in bids received and to award the contract to the lowest responsive and responsible bidder as determined by its Board of Trustees.

Noah Greer  
Senior Purchasing Agent



## **RTA Background**

### ***History***

RTA is an independent political subdivision of the State of Ohio organized pursuant to Ohio Revised Code Section 306.30 through 306.71, inclusive, as amended.

The RTA was created on July 6, 1971, pursuant to the Revised Code, by ordinances of the Councils of the City of Dayton and the City of Oakwood. After completing the purchase of the assets of City Transit, the major privately owned public transportation system in the area, the RTA became operational on November 5, 1972. In July 1980, after the approval in the preceding April by the voters of the County of a one-half percent sales and use tax of unlimited duration for all purposes of the RTA, the boundaries of the RTA were extended to be coextensive with the boundaries of Montgomery County and parts of Greene County.

### ***Governing Body***

All power and authority of the RTA are vested in and exercised by its nine (9) member Board of Trustees.

The Greater Dayton Regional Transit Authority

BID FORM

<p>BIDS WILL BE RECEIVED UNTIL <b>10:00 AM EST</b> on <b>January 25<sup>th</sup>, 2024</b>, AND THEN PUBLICLY OPENED AT:</p> <p>4 S. Main Street Dayton, OH 45402</p> <p><i>BID BOND REQUIREMENT:</i> A BID BOND, CASHIER'S CHECK OR CERTIFIED CHECK MUST ACCOMPANY THIS BID FOR NOT LESS THAN <b><u>10%</u></b> OF THE BASE BID PRICE.</p>	<p>BID NUMBER: 23-15R</p> <p>CURRENT DATE: <b>December 7<sup>th</sup>, 2023</b></p> <p>PERFORMANCE BOND REQUIREMENT: IN THE EVENT BID IS ACCEPTED, A PERFORMANCE BOND WILL BE REQUIRED IN THE AMOUNT OF <b><u>100%</u></b> OF THE CONTRACT AMOUNT <u>WITHIN TEN (10)</u> <u>CALENDAR DAYS AFTER NOTIFICATION OF</u> <u>AWARD.</u></p>
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The undersigned hereby agrees to provide the goods/services/equipment as listed below and in accordance with the specifications on file at the office of the Director of Procurement, Greater Dayton Regional Transit Authority, 4 S. Main Street, Dayton, Ohio 45402, which have been carefully examined and which are incorporated herein and made a part of the bid documentation.

**Bid Form on Attachment 4 of this solicitation.**

**The Greater Dayton Regional Transit Authority**  
**BIDDER QUALIFICATIONS**

**Firm Name:** \_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Address) (City, State, Zip Code)

\_\_\_\_\_  
(Phone Number) (Fax Number) (E-mail)

Date: \_\_\_\_\_

**Construction Capabilities:** (Check all that apply)

- |  |                                     |                                      |
|--|-------------------------------------|--------------------------------------|
| <input type="checkbox"/> General Contracting | <input type="checkbox"/> Electrical | <input type="checkbox"/> Plumbing    |
| <input type="checkbox"/> HVAC                | <input type="checkbox"/> Demolition | <input type="checkbox"/> Carpeting   |
| <input type="checkbox"/> Asbestos Abatement  | <input type="checkbox"/> Painting   | <input type="checkbox"/> Other _____ |

**For Corporations Only:**

Federal ID Number: \_\_\_\_\_

Name of State(s) in which incorporated: \_\_\_\_\_

Date(s) of incorporation: \_\_\_\_\_

If not incorporated in Ohio:

1. Attach Certificate of Authority to do Business in Ohio

2. Certificate Number: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
(President's Name) (Vice-President's Name)

\_\_\_\_\_  
(Secretary's Name) (Treasurer's Name)

For Partnerships Only: Date of Organization: \_\_\_\_\_

Type of Partnership:  General  Limited  Association

Names and Addresses of all partners: (Use additional sheet if necessary)

1. \_\_\_\_\_  
(Name) (Address) (City, State, Zip Code)

2. \_\_\_\_\_  
(Name) (Address) (City, State, Zip Code)

**General Information:**

Federal ID Number: \_\_\_\_\_ or SSN: \_\_\_\_\_

Percent of work done by Contractor: \_\_\_\_\_ Number of Permanent Employees: \_\_\_\_\_

Number of years in business: \_\_\_\_\_

Geographical limits of operation: \_\_\_\_\_

(This form is continued)

If you have done business under a different name, please give name and location:

\_\_\_\_\_  
\_\_\_\_\_

Has firm failed to complete a project or defaulted on a contract? If so, state where and why:

\_\_\_\_\_  
\_\_\_\_\_

**Date:** Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Signatures:**

Individual       Partnership       Joint Venture       Corporation

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Incorporated under the laws of the State of \_\_\_\_\_

(If a corporation is organized in a state other than Ohio, attach a certificate of Authority to do business in the State of Ohio.)

\_\_\_\_\_  
(Bidder's Signature)

\_\_\_\_\_  
(Corporate Secretary's Signature and Seal)

\_\_\_\_\_  
(Typed or Printed Name of Signor)

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Partner/Joint Venture Signature)

\_\_\_\_\_  
(Typed or Printed Name of Signor)

**Greater Dayton Regional Transit Authority**  
**SUMMARY OF BID REQUIREMENTS**

**FAILURE TO SUBMIT ANY OF THE FOLLOWING DOCUMENTS MAY RENDER YOUR BID NON-RESPONSIVE**

**Bid Submission:** Complete the following checklist indicating that the documents required for this bid are enclosed and that you have read and comply with the clauses marked as applicable to this IFB.

Required	Read & Comply	Required Clauses and Submittals
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Requirements (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bid Form Attachment – 1 (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Addenda Acknowledgement (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bidder Qualifications (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Affirmation Action Assurance (AAA) Certification (Submit Copy or write Pending if in process)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Insurance (Submit as required)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bid Bond (Submit as required)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warranty Information (Submit as required)
<b>FTA &amp; ORC Third-Party Contract Clauses</b>		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>FTA Clauses Section IV</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Affidavit of Intended Disadvantaged Business Enterprise (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Affidavit of Disadvantaged Business Enterprise (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	DBE Unavailability Certification (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Personal Property Tax Affidavit (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Non-Collusion Affidavit (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Buy America Certification (> \$100,000) (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certification of Restrictions on Lobbying (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certification of Procurement Integrity (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	RTA Clean Air Policy Verification (Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Debarment and Suspension (>\$25,000) (3 separate forms – Submit Copy)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Affidavit of Contractor or Subcontractor – Prevailing Wages (Submit Copy)

Name of individual, partner, or corporation:

Street Address:

Office & Mobile  
Number:

E-Mail Address:

Printed Name & Title:

Authorized Signature:

Date:

**The Greater Dayton Regional Transit Authority**

**TO BE COMPLETED BY PRIME CONTRACTOR**

**ADDENDA ACKNOWLEDGMENT FORM**

**Bidders must indicate below the addenda received and the dates addenda were received. (If none received, write "none received".)**

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Date Received: \_\_\_\_\_

Name of individual, partner or corporation:

\_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF DAYTON AFFIRMATIVE ACTION ASSURANCE (AAA) CERTIFICATION

**(Applies to Contractors with 50 or more employees and bids over \$100,000)**

*Refer to Section IV, Paragraph 7, Nondiscrimination Clause*

**Please submit a copy of AAA Certificate supplied through CityBOTS, if applicable.**

Note: Bidders who currently **do not** have a AAA Certificate must submit with their bid a copy of the email from the City of Dayton’s Human Relations Council (HRC), stating that their application for Affirmative Action Assurance (AAA) certification has been approved. Failure to furnish a copy of the AAA approval email from the City of Dayton’s HRC may be cause for rejection of the bid.

In order to receive the AAA approval email, vendor must first log onto the City of Dayton’s vendor certification portal, CityBOTS ([www.citybots.com](http://www.citybots.com)) and complete the online AAA form. To obtain CityBOTS login credentials, vendor must go to [www.citybots.com](http://www.citybots.com), click the “Request Login” button, and follow the instructions. (If vendor’s Tax ID number does not exist in the City of Dayton’s CityBOTS database, they will need to contact the HRC’s Business & Technical Assistance team at [bta@daytonohio.gov](mailto:bta@daytonohio.gov) to set up a CityBOTS account or call 937.333.1430.

Vendor will receive an email explaining the status of their AAA certification from the City of Dayton.

**If an approval email is not received by the bid due date, vendor is to write “Application Pending” on this page and on the applicable line in SECTION I – SUMMARY OF BID REQUIREMENTS FORM. A copy of the approval email must be sent as soon as possible after received.**

The bid of any firm, who in RTA’s judgment has failed to comply with such laws and regulations, may be considered non-responsive, and may be rejected.

**THE GREATER DAYTON REGIONAL TRANSIT AUTHORITY**  
**Bid Requirement**  
**AFFIDAVIT OF INTENDED DISADVANTAGED BUSINESS ENTERPRISE**

State of \_\_\_\_\_

County of \_\_\_\_\_

Comes now \_\_\_\_\_ of lawful age, and being duly sworn  
*(Name of the individual)*

upon his/her oath states as follows:

This affidavit is made for the purpose of complying with that part of the specifications of the Greater Dayton Regional Transit Authority's DBE program, which requires that

\_\_\_\_\_ *(Name of Bidder)*

as a Contractor/vendor bidding on the project, sets forth the names of certified disadvantage Contractors, subcontractors, and suppliers with whom it will contract if awarded a contract for this project, the area(s) and scope of work and corresponding NAICS code of each listed Contractor, subcontractor, and supplier and the approximate dollar amount of each listed item and corresponding NAICS Code.

That the following list is true and accurate to the best of my knowledge:

<u>Contractor</u>	<u>Description</u>	<u>Corresponding NAICS Code</u>	<u>Dollar Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I certify that \_\_\_\_\_ is \_\_\_\_\_ Is not a disadvantaged  
*(Firm Submitting Bid)*  
 owned business as defined in DOT 49 CFR Parts 23 and 26.

That I am authorized to make this affidavit in my capacity  
 as \_\_\_\_\_  
*(Title)*  
 of this bidder.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
*(Name of Company)*

By: \_\_\_\_\_  
*(Affiant)* \_\_\_\_\_  
*(Title)*

Email: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
*(Notary Public)*

My Commission Expires: \_\_\_\_\_ (SEAL)



**The Greater Dayton Regional Transit Authority**

**AFFIDAVIT OF DISADVANTAGED BUSINESS ENTERPRISE**

**(TO BE COMPLETED BY EACH DISADVANTAGED BUSINESS ENTERPRISE THAT IS BEING UTILIZED)**

State of \_\_\_\_\_

County of \_\_\_\_\_

I hereby declare and affirm that I am the \_\_\_\_\_  
(Title)

and duly authorized  
representative of \_\_\_\_\_  
(Name of Company)

whose address is \_\_\_\_\_

I hereby declare and affirm that I am a disadvantaged business enterprise as defined by The Greater Dayton Regional Transit Authority in the Instructions to Bidders for Contract No. GD 23-15R and that I will provide the information requested by the Greater Dayton Regional Transit Authority to document this fact.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

By: \_\_\_\_\_  
(Affiant) (Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_, known to me to be the person described in the foregoing affidavit and acknowledged that he/she executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
(Notary Public)

My Commission (SEAL)

Expires: \_\_\_\_\_

**The Greater Dayton Regional Transit Authority**

**NON-COLLUSION AFFIDAVIT**

NOTE: Each bidder shall furnish this affidavit, containing all required information, with their bid.

***IF YOU FAIL TO COMPLY, YOUR BID WILL NOT BE CONSIDERED.***

STATE OF \_\_\_\_\_ }  
\_\_\_\_\_ COUNTY } SS: **NON-COLLUSION AFFADAVIT**

\_\_\_\_\_ being fires duly sworn deposes and says:

Individual only: That he is an individual doing business under the name of \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_ in the city of \_\_\_\_\_,  
State of \_\_\_\_\_.

Partnership only: That he is the duly authorized representative of a partnership doing business under the  
name of \_\_\_\_\_  
at \_\_\_\_\_  
in the city of \_\_\_\_\_, State of \_\_\_\_\_.

Corporation only: That he is the duly authorized, qualified, and acting of \_\_\_\_\_  
\_\_\_\_\_, a corporation organized and existing under the  
laws of the State of \_\_\_\_\_, and that the, said partnership or said  
corporation, is filing herewith a proposal or bid to the Greater Dayton Regional Transit  
Authority in conformity with the foregoing specifications.

Individual only: Affiant further says that the following is a complete and accurate list of the names and  
address of all persons interested in said proposed contract: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Affiant further says that he is represented by the following attorney(s): \_\_\_\_\_  
\_\_\_\_\_

And is also represented by the following resident agents in the City of Dayton: \_\_\_\_\_  
\_\_\_\_\_

*(This form is continued)*

Partnership only: Affiant further says that the following is a complete and accurate list of the names and addresses of all the members of said partnership: \_\_\_\_\_

\_\_\_\_\_

Affiant further says that said partnership is represented by the following attorney(s): \_\_\_\_\_

\_\_\_\_\_

And is also represented by the following resident agents in the City of Dayton: \_\_\_\_\_

\_\_\_\_\_

Corporation only: **Affiant further says that the following is a complete and accurate list of the officers, directors, and attorney(s) of said corporation:**

President: \_\_\_\_\_

Directors: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Local Manager of Statutory Agent: \_\_\_\_\_

Attorney(s): \_\_\_\_\_

\_\_\_\_\_

And that the following officers are authorized to execute contracts on behalf of

said

corporation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Affiant further says that the bid filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusion or sham; that said bidder has not, directly or indirectly, induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly, colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder or to fix any overhead, profit, or cost element of such bid price or that of any other bidder, or to secure any advantage against the Greater Dayton Regional Transit Authority, or anyone interested in the proposed contract; that all statements contained in such bid are true; that said bidder has not directly, or indirectly, submitted his price or any breakdown thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money or other

*(This form is continued)*

valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the contract above referred to, to any corporation, partnership, company, association, organization, or to any member or agent thereof, or to any other individual, except such persons as herein above-disclosed to have a partnership or other financial interest with said bidder will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization or to any member or agent thereof, or to any other individual, for aid or assistance in securing contract above referred to in the event the same is awarded to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Further Affiant saith not.

(Sign here): \_\_\_\_\_

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_ (SEAL)

The Greater Dayton Regional Transit Authority

PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C. 5719.042)

The person making a bid shall submit to the RTA Chief Financial Officer a statement affirmed under oath that the person with whom the contract is to be made was not charged at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the Chief Financial Officer to the county treasurer within thirty (30) days of the date it is submitted.

STATE OF \_\_\_\_\_
COUNTY OF \_\_\_\_\_

The undersigned being first duly sworn states that he/she is (check one):

- checkbox the bidder OR checkbox the duly authorized representative of the bidder

to whom a contract pursuant to Invitation for Bid No. GD 23-15R for UNDERGROUND STORAGE TANK REPLACEMENT PROJECT was awarded; and further states that, at the time the bidder's bid was submitted (check and complete as required):

checkbox bidder was not charged with any delinquent personal property taxes on the general tax list of personal property of

\_\_\_\_\_  
(County, State)

checkbox bidder was charged with delinquent personal property taxes on the general tax list of personal property of \_\_\_\_\_ as follows:
(County, State)

\$\_\_\_\_\_ in due and unpaid delinquent taxes

\$\_\_\_\_\_ in due and unpaid penalties and interest thereon

Name of Bidder: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Notary Public's Signature)

My Commission Expires: \_\_\_\_\_ (SEAL)

The Greater Dayton Regional Transit Authority

Proposal Requirement

BUY AMERICA CERTIFICATION  
STEEL, IRON, OR MANUFACTURED PRODUCTS

Instructions:

Bidder or Proposer must complete the Buy America Certification listed below. Bidder or Proposer shall certify EITHER COMPLIANCE OR NON-COMPLIANCE (not both). This Certification MUST BE submitted with the Bidder's or Proposer's bid response.

Certification requirement for procurement of steel, iron, or manufactured products.

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or proposer hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS

The bidder or proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

**The Greater Dayton Regional Transit Authority**

**The Greater Dayton Regional Transit Authority**

**RTA CLEAN AIR POLICY**

As the region's public transportation provider, the Greater Dayton Regional Transit Authority (RTA) recognizes its role in improving the environment, specifically air quality. Therefore, RTA is committed to environmentally sound solutions that adhere to its primary mission of affordable, flexible, reliable and convenient public transportation that meets the needs of an ever-changing regional community.

In order to meet this clean air commitment, RTA shall:

- Encourage use of the RTA system in an effort to offset the growing use of single-occupant vehicles, the greatest source of ozone pollution.
- Adjust and expand service, when feasible, in response to population shifts and regional needs in an effort to increase the use of the system.
- Assure that RTA vehicles, either through adaptation or purchase, meet or exceed the emission standards of the Environmental Protection Agency (EPA). RTA will continue to investigate technologies developed to aid public transportation in its mission to improve air quality.
- Contract only with vendors and suppliers who comply with EPA Clean Air standards.
- Invite area employers to participate in RTA's corporate pass purchase program to increase ridership among their employees.
- Lobby for development of municipal land use ordinances and policies that encourage accessibility to mass transit.
- Maintain open communication with riders, taxpayers, public interest groups, private organizations, and government agencies to encourage the free exchange of information regarding environmental issues and improvements.

***PLEASE EXECUTE: RTA CLEAN AIR POLICY VERIFICATION***

There is no action pending against

\_\_\_\_\_ *(Name of Bidder)*

for violating the Environmental Protection Agency Clean Air standards.

Company: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Duly Authorized Company Representative)*

**The Greater Dayton Regional Transit Authority**  
**Bid Requirement**  
**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

The undersigned hereby certifies on behalf of

\_\_\_\_\_ that:  
*(Name of Bidder)*

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that all language of this certification is included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Signature and  
Title of Official: \_\_\_\_\_

Telephone: \_\_\_\_\_ Date: \_\_\_\_\_



**The Greater Dayton Regional Transit Authority**

**Bid Requirement**

**CERTIFICATE OF PROCUREMENT INTEGRITY**

I, \_\_\_\_\_ am the officer or employee responsible  
*(Name of Certifier)*

for the preparation of this offer or bid and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of Subsection 27(a), (b),(c), or (e) of the Office of Federal Procurement Policy Act\* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (Solicitation No. 3-15). As required by Subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of

\_\_\_\_\_  
*(Name of Offer)*

who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of Subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning any violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

Violations or possible violations: (Continue on plain bond paper if necessary and label it 'Certificate of Procurement Integrity (Continuation Sheet)'. **ENTER 'NONE' IF NONE EXISTS**)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*(Signature of the Officer or Employee  
Responsible for the Offer)*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*(Typed Name of the Officer or  
Employee Responsible for the Offer)*

\*Section 27 became effective on July 16, 1989.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE SECTION 1001.

**The Greater Dayton Regional Transit Authority**

**CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION,  
AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The undersigned, an authorized official of the Bidder stated below, certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the undersigned is unable to certify to any of the statements in this certifications, such official shall attach an explanation to this bid).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 2 CFR Part 1200 and 2 CFR Part 180, 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Title of Official: \_\_\_\_\_

Telephone: \_\_\_\_\_ Date: \_\_\_\_\_

**The Greater Dayton Regional Transit Authority**

**CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTEER EXCLUSION**

**(THIS AFFIDAVIT TO BE COMPLETED BY THE SUCCESSFUL CONTRACTOR'S SUB-CONTRACTORS AFTER NOTIFICATION OF AWARD HAS BEEN RECEIVED)**

The Lower Tier Participant [Subcontractor to the Primary Contractor(s)], \_\_\_\_\_, certifies by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the above-named Lower Tier Participant (Subcontractor) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this certification.

The Lower-Tier Participant (Subcontractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31. U.S.C. Section 3801 et seq. is applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

**NOTICE TO BIDDER: THIS CERTIFICATION SHALL BE COMPLETED BY ALL SUBCONTRACTORS WHICH WILL HAVE A FINANCIAL INTEREST IN THIS PROJECT WHICH EXCEEDS \$25,000 OR SUBCONTRACTORS WHICH WILL HAVE A CRITICAL INFLUENCE ON OR A SUBSTANTIVE CONTROL OVER THE PROJECT.**

**AFFIDAVIT OF CONTRACTOR OR SUBCONTRACTORS - PREVAILING WAGES**

**(THIS AFFIDAVIT TO BE COMPLETED BY THE SUCCESSFUL CONTRACTOR  
AFTER NOTIFICATION OF AWARD HAS BEEN RECEIVED)**

I, \_\_\_\_\_,  
*(Name of person signing affidavit and title)*

of the \_\_\_\_\_,  
*(Company's Name)* do hereby certify that the

wages paid to all employees for the full number of hours worked in connection with the Legal

Notice No. GD 23-15R, titled **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**  
during the following period from

\_\_\_\_\_ to \_\_\_\_\_ is in accordance with

the prevailing wage prescribed by the contract document. I further certify that no rebates or

deductions for any wages due to any person have been directly or indirectly made other than  
those

provided by law.

\_\_\_\_\_  
*(Signature of Officer or Agent)*

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*(Notary Public)*

**My commission expires:** \_\_\_\_\_

**(SEAL)**

The above affidavit must be executed and sworn to by an officer or agent of the Contractor or Subcontractor who supervises the payment of employees before the Owner will release the surety and/or make a final payment due under the terms of the Contract.

**SECTION II**  
**SCOPE OF WORK**

# **GD 23-15R Underground Storage Tank Replacement Project**

## **Scope of Work**

### **GENERAL INFORMATION**

The Greater Dayton Regional Transit Authority (RTA) is seeking bids for the replacement of three (3) underground storage tanks at one of RTA's operating locations, 601 Longworth St. Dayton, OH. This project involves the removal of two (2) 20,000-gallon diesel tanks and one (1) 2000-gallon motor oil tank as well as the purchase and installation of one (1) new 20,000-gallon diesel tank with two (2) high volume submersible pumps installed for redundancy and one 2000-gallon motor oil tank. This project will also include an upgrade to the Veeder Root 450-Plus tank monitoring system. The Veeder Root upgrade applies to both 601 Longworth and 600 Longworth locations. All materials and work performed under this project shall be in accordance with all applicable regulatory requirements, including but not limited to Federal, State, County, City, EPA, BUSTR and such like.

### **SPECIFICATIONS AND SITE DRAWINGS**

This bid package includes very detailed specifications and site plan drawings, which were developed by Champlin Architecture and other engineering firms experienced with underground storage tanks. Champlin will also be providing construction management oversight for this project.

### **REMIEDIATION PLAN**

This underground storage tank replacement project will involve a remediation plan, developed and managed by RTA's environmental consulting firm, Trihydro Corporation of Cincinnati. One (1) of the 20,000-gallon diesel tanks failed causing a fuel release on 8-24-20, which is currently being overseen by the Bureau of Underground Storage Regulations (BUSTR) and managed Trihydro. Once this underground storage project begins, Trihydro will be on-site to oversee all remediation activities that may be required by BUSTR. This may involve moving the contaminated dirt/sand to a specific location on RTA property, depending on the level of contamination found once the dirt/sand is exposed.

### **ADDITIONAL OR UNFORESEEN WORK**

Should the successful contractor find that additional work is required, which was not evident during the site visit, and was not part of the original proposal, the following shall prevail:

1. The contractor shall provide RTA with a detailed estimate of any additional work required, a breakdown of additional parts and labor, the reason this work is now required and why it was not included in the original proposal. The contractor shall provide photos of the additional work for reference.
2. The RTA shall review the additional work estimate and if it agrees, shall issue written permission and a change order to perform the additional work as outlined in the written estimate.
3. All rates, labor, equipment, or other trades or professional services that are required for any additional work shall not exceed the rate provided as part of the original proposal.

## **WARRANTY**

All Labor shall be warranted by the contractor for a minimum period of one (1) from the date of official project completion.

All Materials shall be warranted by the contractor and or manufacturer for a minimum period of one (1) from the date of official project completion. If any material manufacturer's warranty exceeds the one (1) year warranty period, the longer warranty shall prevail.

The contractor is responsible for all warranty work.

## **INVOICING**

The Contractor should use AIA G702 when submitting pay applications for completed work or delivered materials. These pay applications will be reviewed and approved by RTA's Construction management firm, Champlin Architecture and RTA's Project Manager.

## **AWARD**

Sealed bids are due to Greater Dayton Regional Transit Authority (RTA) by January 25<sup>th</sup>, 2024, with an expected award in March 2024.

**SECTION III**  
**INSTRUCTIONS TO BIDDERS AND SPECIAL CONDITIONS**



## INSTRUCTIONS TO BIDDERS AND SPECIAL CONDITIONS

The Greater Dayton Regional Transit Authority, hereinafter called "RTA", requests bids for UNDERGROUND STORAGE TANK REPLACEMENT PROJECT under the following requirements and conditions, which shall be considered an essential part of the contract documents.

1. *Request for Bid*

Bids are requested for **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** per the special conditions, specifications, and drawings.

2. *Sealed Bids - Date*

- A. Sealed bids shall be submitted in an envelope marked "Sealed Bid No. GD 23-15R for **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**" opening at **10:00 AM, Dayton (EST), on January 25<sup>th</sup>, 2024**, and will be received at the office of the Director of Procurement, greater Dayton regional transit authority at 4 S. Main Street Dayton, Ohio 45402, at which time and place the bids will be opened in public. Any bid received after the time referred to will not be considered and will be returned unopened. Any bid received and opened may not be withdrawn by the bidder for sixty (60) days from the date on which the bids were opened.
- B. Bids may be withdrawn by personal, written, or telegraphic requests received from bidders prior to the bid opening date. No bid may be withdrawn for sixty (60) days after opening. Modifications of bids already submitted will be considered if received prior to the bid opening date. When submitting a request for withdrawal, please ensure that the envelope is boldly labeled "withdrawal of bid" and submitted to the same address as the bid.
- C. Because bids and offers can at times be ambiguous, in its solicitation documents, the RTA reserves the right to request additional information before making an award. The RTA also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the RTA finds ambiguous.
- D. The RTA reserves the right, as the interests of the RTA may require, to postpone, accept or reject any and all bids and to waive defects or irregularities in bids received and to award a contract(s) in the best interest of the RTA.
- E. In determining the successful bidder, consideration will be given to the price, the experience of the bidder, responsibility of the bidder including financial responsibility, responsiveness to these specifications, and the bidder's record as an equal opportunity employer. RTA's maintenance history with equipment previously furnished by a bidder, directly or indirectly through a manufacturer, will also be considered.
- F. All bids submitted are subject to instructions and general conditions, and any special conditions and specifications contained herein, all of which are made a part of this bid by reference and constitute the contract documents, and shall become a part of any agreement/purchase order between the RTA and the successful bidder.

- G. Only bids printed in ink (which may include legible hand-printing) or typewritten, and properly signed by a member of the firm or authorized representative, will be accepted. Pencil figures or signatures will disqualify the bidder.
- H. With respect to actions prior to awarding a contract, only the RTA's chief financial officer, Director of Procurement, purchasing agents, or chief executive officer have the authority to act on behalf of the RTA. Only the RTA's board of trustees has the authority to award a contract(s) of more than \$100,000.

### 3. *Contract Award*

All bidders will be required to comply with all Equal Employment Opportunity laws and regulations and file with RTA's DBE Officer if requested, an Affirmative Action Assurance Plan, consistent with RTA's non-discriminatory policy, subject to RTA approval.

All bidders must submit with their bid a letter from the City of Dayton's Human Relation Council, stating that they have an approved Affirmative Action Assurance Plan. Failure to furnish the letter from the City of Dayton's Human Relations Council may be cause for rejection of your bid. If a bidder is not on the approved list, please contact the City of Dayton Human Relations Council to obtain an application.

The RTA reserves the right, as the interests of the RTA may require, to postpone, accept or reject all bids and to waive defects or irregularities in the bids received, and to award a contract(s) to the lowest bidder the RTA deems responsive and responsible.

In awarding a contract(s), the RTA reserves the right to consider all elements entering the determination of the responsibility of the bidder. Any bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the bid.

Contract(s) for the purchase of goods and/or services will be awarded within sixty (60) calendar days from the date upon which bids were opened to the lowest bidder the RTA deems responsive and responsible. The successful bidder will be required to execute the attached contract within five (5) calendar days after notification of award.

In the event a single bid is received, the RTA will conduct a price and/or cost analysis of the bid. Price analysis is the process of examining and evaluating a price submitted without examining in detail the separate cost elements and the profit included in the cost bid. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison.

The comparison must be made to a purchase of similar quantities and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and the costs associated thereto.

The RTA has the right to enter into a negotiated procurement should only a single bid be received.

Where it is impossible to obtain a valid price analysis, it may be necessary for the RTA to conduct a cost analysis of the bid price.

If the RTA does not have the capabilities to perform the needed analysis, FTA will lend support in obtaining the services of the Defense Contract Audit Agency. RTA shall submit to FTA all data and analyses of the determination prior to award of the contract.

4. *Funding*

The proposed contract shall be funded in part from the Federal Transit Administration (FTA) and the Ohio Department of Transportation (ODOT). Each bidder shall examine all contract documents noting particularly all requirements, which will affect bidder's work in any way.

5. *Bid Security*

As security for the acceptance of a contract, each bid must be accompanied by a certified check, cashier's check, or bid bond in the amount of **10%** of the total bid amount drawn payable to the Greater Dayton Regional Transit Authority (RTA). Such bid deposits of all bidders will be held by RTA until all bids submitted shall have been canvassed and the bids have either been rejected or the contract has been awarded. The bid deposit of the successful bidder will be held until the contract is duly executed. Bid deposits will be returned to the unsuccessful bidder(s) as soon as possible after award of the contract. The successful bidder under this bid shall execute a contract with the RTA, or its authorized representative, within ten (10) calendar days after notification of the award. If the successful bidder with whom the contract shall have been awarded refuses to execute the contract within ten (10) calendar days after notification of award of the contract, the amount of the bid deposit shall be forfeited to and retained by RTA as liquidated damages for such neglect or refusal.

6. *Sensitive Security Information*

Each third-party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third-party contract or subcontract to ensure compliance with 49 U.S. C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

7. *Statement of Qualification*

RTA reserves the right to award a contract to the low bidder it deems responsive and responsible. The bidder may be required, upon request, to prove to the satisfaction of the RTA that the bidder has the skill and experience and the necessary facilities and financial resources to perform the contract in a responsible and satisfactory manner.

8. *Price Complete*

The price quoted shall include all items of labor, material, tools, equipment and other costs necessary to fully complete the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** pursuant to the specifications. It is the intention of the specifications to provide and require complete goods and/or services prescribed. Anything omitted from the specifications, which is clearly necessary for the use of or operation of the goods and/or services shall be included within the scope of such goods and/or services although not directly specified or called for in the specifications. No advantage shall be taken by the

manufacturer or supplier in the omission of any part or detail, which goes to make **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** complete and ready for service or use. All parts shall be new and in no case will be used (except for testing), reconditioned or obsolete parts be accepted. The RTA and the manufacturer/supplier shall mutually agree when it is necessary or desirable to make changes in, additions to or deductions from the work to be performed, or the goods and/or service to be furnished, pursuant to the provisions of the contract documents. Any such changes which affect the contract price shall require the approval of the RTA, in writing, in which the effect on the contract price is specifically set forth. All requests and responses shall be in writing.

9. *Payment Terms*

Net 30 days after the date of delivery of an order by the prime contractor. Payment for products or services delivered to and accepted by RTA shall be at the contract price. RTA shall order materials using a purchase order referencing this contract, and such purchase order shall be the only authorization the contractor shall use to deliver materials and invoice the RTA.

10. *Prompt Payment*

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from RTA. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both SBE, DBE and non-SBE, DBE subcontractors.

When applicable, the RTA may use the following mechanisms to ensure prompt payment.

- A. Language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- B. Language providing that prime contractors will not be reimbursed for work performed by subcontractors until the prime contractor ensures that the subcontractors are paid promptly for work they have performed.
- C. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.
- D. Other applicable mechanisms as necessary.

11. *Retainage*

The prime contractor agrees to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both SBE, DBE and non-SBE, DBE subcontracts.

12. *Tax-Exempt*

The RTA is exempt from payment of all taxes, and taxes must not be included in bid prices. Necessary exemption certificates shall be furnished to the successful bidder upon request.

13. *Time of Delivery*

- A. In the event the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** delivered, installed and tested by the contractor does not satisfy fully all of the specifications and all other requirements appearing in the contract documents the RTA may reject the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** or any portion in which case the equipment rejected shall be deemed not to have been delivered, and the RTA shall have the rights set forth in article v of the contract, in addition to any other rights and remedies to which it may be entitled by law.
- B. Further, if the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** is delivered, installed and tested incomplete or contains any defective or damaged parts, said parts shall be removed and new parts shall be furnished. The new parts furnished, including the transportation charges for the same plus the labor for removal and installation of said parts, shall be free of all costs to RTA. If RTA finds it necessary to perform any work, which should have been done by the contractor, the contractor agrees to reimburse RTA all costs incident thereto including material, labor, and overhead.
- C. In case the delivery, installation and testing of the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** under this contract shall be necessarily delayed because of strike, injunctions, government controls or by reason of any causes or circumstances beyond the control of the contractor which could not reasonably have been foreseen by the contractor at the time of bid opening, the time of completion of delivery shall be extended by a number of days to be determined in each instance by the RTA.
- D. Acceptance of the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** shall not release the contractor from liability for faulty workmanship or materials even after final payment has been made. The RTA shall have the right to reject all materials and workmanship, which does not conform to the specifications. The contractor shall not be relieved of any obligation to furnish materials and workmanship strictly in accordance with the specifications.
- E. Contractor shall make all deliveries in accordance with the time requirements and other terms and conditions set in all applicable specifications and special conditions.

14. *Liability of RTA*

The contractor shall agree to save, keep, bear harmless and fully indemnify the RTA and all its employees or agents for damages, costs or expenses in law and equity including reasonable attorney fees, if any, that may at any time arise, or be set up, for any infringement of the patent rights of any person or persons in consequence of the use by the RTA or by any of its employees or agents, of articles supplied under this contract. The RTA will give to the contractor notice in writing ten (10) days after the RTA has received actual notice of the institution of any suit or proceeding and permit the contractor, through his counsel, to defend same and will give all needed information, assistance and authority to enable the contractor to do so.

15. *Specified Material and "Approved Equals"*

- A. In all cases, the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** must be furnished as specified. Where brand names or specific items or processes are used in the specifications, consider the term "or approved equal" to follow. However, a request for approval for any proposed substitution as an equal must be submitted in writing based by the terms of the IFB.
- B. For all items listed and which are described or defined by dimensions or another measure of physical characteristics or performance, it is understood that such information indicates the character of the required items and so strict interpretations with respect to nonessential details shall not be made as to limit competition among manufacturers of substantially equivalent items.

Whenever this specification defines the material or article required by using a proprietary product or of a manufacturer or vendor, rather than by using descriptive detail of substance and function, the term "or equal" always is understood to follow immediately the name of the make, vendor or proprietary product. An item of material shall be considered equal to the item so named in the specifications if: (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the function imposed by the general design for the material or equipment being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in this specification.

Whenever in this specification the names of one or more manufacturers are mentioned as indicating that their product will comply with a particular specification or where specific trade names are mentioned, it is not intended to exclude products of other manufacturers whose names or symbols have not been provided, only however, that such products conform to the detailed requirements for the item as indicated in the specifications.

- C. Bidder shall be responsible to provide the RTA with information in the latest applicable revision of any part or process specifically called for in the specifications for consideration.
- D. The RTA shall have the power to reject the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**, furnished under the contract, which does not conform, to the terms and conditions as set forth in the contract documents.

16. *Performance Bond*

The successful bidder shall furnish, at its own expense, a performance bond in the percentage/amount stipulated on the Bid Form within ten (10) calendar days after notification of award, as a guarantee of good faith on behalf of the contractor that the terms of the specifications will be complied with in every particular. The performance bond shall, on its face, reference the date(s) of the contract period and the material, equipment or service covered by the contract. This bond shall be guaranteed by a surety company licensed to do business in the State of Ohio. The performance bond shall be conditioned on the complete performance of the contract, in accordance with the Ohio Revised Code Section 306.43. The RTA will not agree to release the surety on a performance bond until at least sixty (60) days after the acceptance of the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**, to be provided under the contract, and the RTA reserves the right to require the surety to remain bound thereafter to the extent that the RTA may

reasonably deem it necessary to do so to protect itself from the possibility of defective goods and/or services.

17. *Affirmative Action Assurance Plan*

All bidders will be required to comply with all Equal Employment Opportunity laws and regulations and file with RTA's DBE Officer, if requested, an Affirmative Action Assurance (AAA) Plan, consistent with RTA's non-discriminatory policy, subject to RTA approval. All bidders with 50 or more employees and bids over \$100,000 must submit with their bid, an email from the City of Dayton Human Relations Council, stating that they have an approved Affirmative Action Assurance Plan. **For instructions to obtain AAA Certification see SECTION I – CITY OF DAYTON AFFIRMATIVE ACTION ASSURANCE CERTIFICATION.**

The bid of any bidder who in RTA's judgment has failed to comply with such laws and regulations, even though their bid may be the lowest in dollar amount, may be considered non-responsive and may be rejected.

18. *Bid Submission*

The bid submitted shall contain: (1) The Bid Form; (2) Bidder Qualifications; (3) Summary of Bid Requirements; (4) Addenda Acknowledgment; (5) Letter of AAAP Approval from the City of Dayton, Human Relations Council, if applicable; (6) Affidavit of Intended Small Business Enterprise (SBE); (7) Small Business Enterprise Unavailability Certification (if applicable); (8) Affidavit of Intended Disadvantaged Business Enterprise (if applicable); (9) Affidavit of Disadvantaged Business Enterprise (if applicable); (10) Non-Collusion Affidavit; (11) Personal Property Tax Affidavit; (12) Bid Bond; (13) Buy America Certification; (14) RTA Clean Air Policy Verification; (15) Certification of Restrictions on Lobbying; (16) Certificate of Procurement Integrity (17) Certification of Contractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion; (18) Affidavit of Contractor or Subcontractor-Prevailing Wages; (19) Certification of Lower Tier Participants (Subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion and all other information required herein. A bid shall be submitted in a sealed envelope and endorsed that it is a "Sealed Bid" and for what purpose. Bids shall be on the RTA's forms, which will be made available upon request to any person interested in bidding.

19. *Warranty and Guarantee*

Contractor guarantees that all equipment delivered and installed under the Contract will be made from materials suitable and adequate for the purposes intended and described in the Contract, and in a workmanlike manner in accordance with the best engineering practice, and that such equipment will fully comply with the Contract Drawings, Specifications and Contractor's bid including all performance requirements and representations included in the Contract Drawings, Specifications or the Contractor's bid, whether set forth on data sheets, performance curves, or otherwise.

All specialties, equipment, and parts supplied by the Contractor shall be the same design and model on all equipment purchased under this Specification. The Contractor shall assume all responsibility for these specialties, parts, and equipment whether manufactured by the Contractor or purchased by him/her from another source.

The contractor shall warrant and guarantee the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT** for a period of 365 days from the date of acceptance for both labor and materials. All materials, specialties, equipment, or accessories that prove defective in normal operation within the above period shall be replaced or repaired by the Contractor free of any cost to the RTA, including all material, labor, and transportation costs. Transportation of warranty replacement parts shall be by the fastest means possible, including airfreight if the part is of a size that can be reasonably shipped via airfreight.

If it becomes necessary under the terms of this guarantee that any part or material must be redesigned, replaced or repaired by this contractor, such replaced items and any other item affected by this replacement shall be guaranteed for an additional one (1) year period from the date of replacement. Any needed redesign efforts to correct defective parts will be at additional cost to RTA.

The Prime Contractor will provide / transfer to the Owner all commercial warranties received from subcontractors and suppliers for all Equipment, Material and Labor used to complete the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT OPTION**.

#### Duration of Contract

The duration of the contract shall be until delivery, installation, testing, acceptance and warranty of the UNDERGROUND STORAGE TANK REPLACEMENT PROJECT as outlined in the successful bid's schedule or not later than one (1) year.

20. *Restoration of Property Owned by or commissioned by, RTA upon Termination*

In the event of termination either for default or for the convenience of the RTA, the contractor shall account for any property in its possession paid for from funds received from the RTA, or property supplied to the contractor by the RTA.

21. *Non-Waiver by Acceptance or Payment*

Neither the acceptance by the RTA of any goods and/or services; the payment by the RTA for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the contractor for any breach of contract, of warranty or of both contract and of warranty.

22. *Time for Performance*

Time is of the essence in the performance of this contract. The Contractor shall fully perform all of its obligations, including, without limitation, the satisfactory performance of all work to be done, by no later than the delivery or completion date set forth in the Special Conditions and Bid Document. The Contractor and the RTA recognize it will be difficult to compute the RTA's damage resulting from unexcused delays in the performance of the contract, particularly in view of the fact that the RTA is not a profit-making entity. Accordingly, it is agreed that the RTA will have the right to recover liquidated damages for delay in the completion of this contract beyond the date specified and not subject to the contract excusable delays clause to be computed as follows: **\$0**. Costs caused by delays or defective construction shall be borne by the party responsible thereafter.

Alternatively, if the delivery or performance is so delayed, the RTA may terminate the contract in whole or in part under the Termination for Cause clause in the contract document and in that event, the Contractor shall be liable for fixed, agreed, liquidated



damages accruing until the time the RTA may reasonably obtain delivery or performance of similar supplies or services.

The RTA may cancel the unfilled portion of the contract for default; purchase substitute requirements elsewhere; and recover from the Contractor any increased costs thereby incurred, together with all resulting incidental and consequential damages.

23. *Descriptions*

Bidders shall furnish with their bids, as an integral part thereof, complete descriptions and specifications of the product they propose to furnish.

When the descriptions and specifications of the product meet the description and specifications provided in the bid document, no additional submission is required.

24. *Appearance*

The highest standard of accepted practice shall govern the workmanship throughout.

25. *Proposal/Bid Protest Procedures*

RTA will hear and consider a sustainable bid protest regarding its procurement actions in accordance with the below procedures. Due to the significantly limited role of FTA in bid protests, it is anticipated that the majority of all protests will be evaluated, and the final decision rendered by RTA. RTA intends to provide a thorough review of all sustainable bid protests. The RTA's primary concern is the timely procurement of needed capital equipment, supplies, or services. Therefore, it does not intend to allow the filing of bid protests to unnecessarily delay the procurement process.

**I. PROTEST**

A protest is a written objection by a potentially interested party to a solicitation or award of a contract over the small purchase threshold to receive a remedial result. An interested party must be an actual or prospective bidder/proposer whose direct economic interest would be affected by the award or failure to award the applicable contract in accordance with FTA Circular 4220.1.

**II. PROTEST DEFINITIONS**

**A. Pre-Bid**

A written objection is made during the pre-bid or solicitation phase and is received before the bid opening or proposal due date.

**B. Pre-Award**

A written objection is made before an award and is received after the bid opening or proposal due date, but before award of the contract.

**C. Post-Award**

A written objection made by an unsuccessful offeror and received after the Board approves award of the contract.

**III. SUBMITTAL PROCESS**

**A. Before Protest**

The bidder/proposer should contact or make an appointment with the solicitation's procurement representative to resolve any issues.

## B. Filing a Protest

Protests may be filed during the following:

1. Pre-bid or solicitation phase must be submitted **no later than five (5) business days** before the closing of said bid/proposal. If the protester fails to meet this deadline, protests based on those solicitation issues may not be allowed.
2. Pre-award must be received **no later than five (5) business days** after the bid opening or proposal due date.
3. Post-award must be received **at least five (5) business days** after the Board approves contract award.

## C. Protest Submittals

The protest shall include, at a minimum:

1. The name and address of the protesting party and its relationship to the procurement are sufficient to establish that an interested party is filing the protest;
2. Identity of the contact person for the protester, including name, title, address, telephone, fax, and e-mail addresses. If the contact point is a third party representing the protester, the same information must be provided, plus a statement defining the relationship between the protester and the third party;
3. The name and number of the solicitation/contract;
4. A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
5. Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
6. A complete discussion of the basis for the protest, including all supporting facts, documents, or data;
7. A statement of the specific relief requested;
8. State if an informal conference is wanted to discuss the protest with RTA.
9. Submit the protest in writing by certified mail or another delivery method by which receipt can be verified and address it to:

Director of Procurement  
Greater Dayton Regional Transit Authority  
4 S. Main Street  
Dayton, OH 45402

The Protester's Submittal Procedures and RTA's Protest process can be accessed at <http://proc.greaterdaytonrta.org> under Resources/Protests.

#### D. Protest Determination

1. Director of Procurement or designee will review the protest submittal to determine if sustainable.
2. If not sustainable, the protester will be notified in writing **within ten (10) business days** of receipt of the protest.
3. If sustainable and an informal conference is requested, the protester will be notified in writing of the location and time **within three (3) business days** of such notice.
4. A decision will be made in writing and sent to the protester **within ten (10) business days** after receipt of the protest. Such a decision is final.

#### E. Request for Reconsideration

1. The protester shall deliver the request to the Chief Executive Officer (CEO) with a copy to the Director of Procurement **within five (5) business days** of receipt of the initial decision. The request shall state the reason(s) why the decision should be reconsidered and any information to support such a position.
2. The CEO shall review and decide on the request for reconsideration and issue a written decision to the protester **within ten (10) business days** of receipt of the request. Such a decision is final.

#### 26. *Patents - Copyrights – Trademarks*

Contractor shall assume the defense of all claims and suits against RTA, its officers, agents and employees for infringement of the patents, copyrights or trademarks of any person arising out of the use by RTA, its officers, agents and employees of any article supplied under this contract, and the Contractor shall indemnify and hold harmless RTA, its officers, agents and employees from any and all liability, loss or damage arising from such claims or suits, including attorney fees.

#### 27. *Ownership of Documents*

RTA shall be the owner of all plans, scope of work and related documents prepared pursuant to this Contract or provided to Contractor by RTA. Any reuse of the plans, scope of work or related documents by RTA for other than the purpose intended by this Contract shall impose no liability on the Contractor.

#### 28. *Maintenance of Records*

The Contractor shall, at all times, maintain records of actual overhead costs and actual general and administrative costs in conformity with generally accepted accounting principles, and subject to Title 41 of the C.F.R. The Contractor shall maintain records of direct labor costs and other applicable payroll expenses. Labor and payroll records shall be in sufficient detail to indicate, at a minimum, employees by name, employee's time spent on the project, and an itemization of applicable fringe benefit expenses.

29. *Payments*

Contractor shall be paid, upon the submission of activity reports with proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deduction, if any, as herein provided, within thirty (30) days.

30. *Covenant against Contingent Fees*

Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide, established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, RTA shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

31. *Indemnifications*

Contractor shall indemnify and save harmless RTA, its trustees, officers and employees from and against all claims, suits, damages, injuries, deaths, costs, liability, damage and expense whether direct, consequential or incidental, for personal injury and for property damage, such loss, costs, liability, damage and expense arising out of, or resulting in whole or in part, directly or indirectly, from work or operations under the contract but not limited to the acts, errors, omissions and negligence of Contractor's employees and agents, except to the extent of liability imposed due to RTA's own negligence.

32. *Entire Agreement*

This contract which includes project specifications and drawings, and any amendments or change orders contain the entire agreement between the RTA and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument, signed by both the RTA and the Contractor.

33. *Subcontracts Approval*

RTA shall have the right to approve or disapprove all subcontracts in accordance with the following provisions.

As used in this clause, the term "subcontract" includes subcontractors and major suppliers of material or services to the Contractor.

Contractor shall notify RTA reasonably in advance of entering any subcontract if Contractor's procurement system has not been approved by RTA and if the subcontract:

- A. Is to be a cost-reimbursement, time and materials, or labor-hour contract, which is estimated to involve an amount in excess of ten thousand dollars (\$10,000) including any fee.
- B. Is expected to exceed one hundred thousand dollars (\$100,000); or

- C. Is one of a number of subcontracts, under this contract, with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed one hundred thousand dollars (\$100,000);

The advance notification required by the above shall include: A description of the supplies or services to be called for by the subcontract;

Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected including the competition obtained: The proposed subcontract price, together with Contractor's cost or price analysis thereof; the subcontractor's current, complete and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificates are required by other provisions of this contract to be obtained from the subcontractor; Identification of the type of subcontract to be used;

and a memorandum of negotiation, which sets forth the principle elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for use of RTA's reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices.

Contractor shall not enter into any subcontract for which advance notification to RTA is required by this clause, without the prior written consent of RTA, provided that RTA, in its discretion, may ratify in writing any subcontract. Such ratification shall constitute the consent of RTA required by this paragraph.

Neither consent by RTA to any subcontract nor any provisions thereof nor approval of Contractor's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve Contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus a percentage-of-cost basis. Strict compliance with the provisions of this paragraph shall be a condition of any reimbursement by RTA of the costs of subcontracts or material purchased by the Contractor. The provisions of this clause in no way limit the provision of the clause entitled "Substitution of DBE Subcontractors".

34. *Parts*

Only standard parts of units that conform in material, design, and workmanship to the best procedure known in the industry shall be used. No reconditioned or obsolete parts shall be used. All parts shall be identical and interchangeable in its class.

35. *Laws of Ohio*

The rights and duties of the parties hereto shall be determined by the laws of the State of Ohio, and to that end, the contract shall be construed and considered as a contract made and to be performed in the County of Montgomery, Ohio.

36. *State Industrial Compensation*

Contractor shall comply with the state law known as the Workers' Compensation Act, Chapter 4123, Ohio Revised Code as applicable, and shall pay into the State Insurance Fund the necessary premiums required by that Act to cover all employees furnishing the services purchased under the terms of this contract and under the control of Contractor, and shall relieve RTA from any costs due to accidents or other liabilities mentioned in said Act. If Contractor is a self-insurer under the Ohio Workers' Compensation Act, and duly authorized as such by the Industrial Commission of Ohio, it shall tender to RTA proof of such status. Contractor shall, from time to time upon request, tender to RTA a certificate evidencing its compliance with the Workers' Compensation Act.

37. *Independent Contractor*

Contractor shall be and remain an independent contractor with respect to all service performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid under this contract, and further agrees to indemnify and save harmless RTA from any such contributions or taxes or liability thereof.

38. *Limited Liability*

By virtue of the provisions of Section 306.31 of the Ohio Revised Code, RTA is a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation. It is understood and agreed that only the corporate entity, RTA, shall be liable hereunder.

39. *Insurance*

### **CONTRACTOR INSURANCE REQUIREMENTS**

The Contractor shall maintain, at its own expense, throughout the period of the Contract and any extensions thereof the following minimum insurance coverages of the types and in the amounts described below that are applicable to the scope of work being performed:

- 1. Workers Compensation and Employer's Liability Insurance.** The contractor must carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of any applicable jurisdiction in which the Work is to be performed. For the attainment of Workers Compensation in monopolistic states, including Ohio, coverage must be secured through the state fund. If the Contractor is a qualified self-insurer in compliance with the laws of the state, this is also acceptable. A certificate of compliance from the appropriate workers' compensation bureau or board must be provided with the certificate of insurance.

The contractor must also carry Employer's Liability Insurance with minimum limits of \$500,000 each accident; \$500,000 for disease (per employee); and \$500,000 for disease (policy limit). This policy must include Ohio "Stop Gap" coverage.

- 2. Commercial General Liability Insurance.** The contractor must carry Commercial General Liability Insurance written on ISO form CG 00 01 10 01 (or its equivalent) with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The general aggregate limit shall apply separately to this project. RTA (including its directors, officers, employees, and volunteers) must be named as an additional insured on the CGL for liability arising out of the acts or omissions of the Contractor, including coverage for liability

arising out of products and completed operations. The coverage afforded to RTA shall be primary to any other insurance carried by the RTA, and the RTA's coverage shall not contribute to any loss made pursuant to this coverage grant. Commercial General Liability coverage (including RTA's status as additional insured) shall be maintained for at least two years after completion of Contractor's work performed under this contract.

- 3. Commercial Auto Liability Insurance.** Contractor shall carry Commercial Automobile Liability Insurance covering all owned, leased and non-owned vehicles used in connection with the work to be performed under this contract, with limits of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. RTA shall be afforded coverage under this policy for any liability arising out of the acts or omissions of Contractor.
- 4. Excess/Umbrella Insurance.** Contractor shall carry Commercial Excess or Umbrella Liability Insurance over the Commercial General Liability, Employer's Liability and Commercial Automobile Liability policies in the amount of \$2,000,000 combined single limit. The Excess/Umbrella policy is subject to all requirements of the underlying policies as set forth herein.
- 5. Builders' Risk Insurance.** Contractor shall provide and maintain, during the progress of the work and until execution of the Certificate of Contract Completion, a Builder's Risk Insurance policy to cover all work in the course of construction including falsework, temporary buildings, scaffolding, and materials used in the construction process (including materials designated for the project but stored off-site or in transit). The coverage shall equal the total completed value of the work and shall provide recovery at replacement cost.

  - a.** Such insurance shall be on a special cause of loss form, providing coverage on an open perils basis insuring against the direct physical loss of or damage to covered property, including but not limited to theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, collapse, water damage, and testing/startup.
  - b.** Coverage shall include coverage for "soft costs" (costs other than replacement of building materials) including, but not limited to, the reasonable extra costs of the architect/engineer and reasonable Contractor extension or acceleration costs. This coverage shall also include the reasonable extra costs of expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of express or other means for rapidly transporting materials and supplies necessary to the repair or replacement.
  - c.** The policy shall specifically permit and allow for partial occupancy by the owner prior to the execution of the final Certification of Contract Completion, and coverage shall remain in effect until all punch list items are completed.
  - d.** The Builder's Risk deductible may not exceed \$5,000. The Contractor or subcontractor experiencing any loss claimed under the Builder's Risk policy shall be responsible for that loss up to the amount of the deductible.
  - e.** If the Contractor is involved solely in the installation of material and equipment and not in new building construction, the Contractor shall provide an Installation Floater policy

in lieu of a Builder's Risk policy. The policy must comply with the provisions of this Paragraph 5.

- 6. Pollution Liability Insurance.** If the Work involves environmental remediation, demolition or such other risks as the RTA reasonably determines to create a pollution hazard, Contractor shall purchase and maintain pollution liability coverage of at least \$1,000,000 per occurrence. This policy shall cover property damage, bodily injury and cleanup/pollution remediation costs caused by a pollution event and otherwise excluded under Contractor's Commercial General Liability policy. RTA shall be afforded protection under this policy as an additional insured, including coverage for claims arising out of Contractor's products and completed operations.
- 7. Aircraft/Watercraft Liability Insurance.** If the Contractor is using aircraft or watercraft in performance of the Work under this contract, Contractor shall disclose this to RTA prior to contract execution. Contractor shall carry aircraft and/or watercraft liability insurance, including coverage for non-owned and hired craft, and RTA shall determine the appropriate limits which must be carried by Contractor.
- 8. Railroad Protective Liability Insurance.** If the Work is being performed within 50 feet of a railroad, Contractor shall maintain Railroad Protective Liability insurance coverage with limits of \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Contractor shall name RTA and the affected railroad as additional insured(s) on such policy for liability arising out of Work performed under this contract.
- 9. Requirements common to all policies.**

  - a.** Contractor shall be solely responsible for reimbursing any deductible amount to the insurer, even if payment is being made on behalf of RTA as an additional insured on the Contractor's policy. Any deductibles or self-insured retentions in excess of \$5,000 must be disclosed and approved in writing by RTA.
  - b.** Contractor waives all rights of recovery it may otherwise have against RTA including its directors, officers, employees, and volunteers) to the extent these damages are covered by any of Contractor's insurance policies as required in this contract.
  - c.** All insurance required hereunder shall be placed with insurers that have a minimum A.M. Best's rating of A-/X and shall be licensed, admitted insurers authorized to do business in the state of Ohio.
  - d.** A certificate(s) of insurance showing that Contractor's insurance coverages are in compliance with the insurance requirements set forth below must be completed by the Contractor's insurance agent, broker, or insurance company after the contract has been awarded. All certificates (other than Ohio workers' compensation) shall provide for thirty (30) days written notice to RTA prior to cancellation or non-renewal of any insurance referred to therein. The certificate shall reference RTA's status as an additional insured with primary/noncontributory coverage under both the General Liability and Auto policies.
  - e.** Failure of RTA to receive certificate(s) or other evidence of full compliance with these insurance requirements (or failure of RTA to identify and/or object to a deficiency in the certificate(s) that is/are provided by Contractor) shall not be construed as a waiver of Contractor's obligations to maintain such insurance. RTA shall have the right, but not the



obligation, to prohibit Contractor from beginning performance under this contract until such certificates or other evidence that insurance has been placed in complete compliance with the above insurance requirements is received and approved by RTA. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of a written request from RTA.

f. By requiring insurance herein, RTA does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to RTA.

g. Any subcontractors engaged by Contractor to perform the Work shall comply with these insurance and indemnification provisions and shall provide primary/noncontributory coverage to RTA as set forth herein.

40. *Assignability*

The terms and provisions of the Contract Documents shall be binding upon RTA and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having obtained the written approval by RTA of the subcontractor, which approval shall not be unreasonably withheld. RTA may assign its rights and obligations under the Contract to any successor to the rights and functions of RTA or to any governmental agency to the extent required by applicable laws and governmental regulations or to the extent RTA deems necessary or advisable under the circumstances.

Should RTA agree to the assignment of a contract, Contractor shall be responsible for all associated costs, including all RTA's legal fees. The total expense will be deducted from the Contractor's invoice.

41. *Partial Payments*

RTA shall make payment to the Contractor for work actually performed and accepted by RTA, fewer deductions, if any, as herein provided. RTA shall withhold eight percent (8%). Withholding is not subject to interest, nor will the RTA be liable for the same. Final payment will be made in accordance with Final Payment below. All payments will be made within 30 days after acceptance by RTA.

RTA may elect to reduce retainage in accordance with applicable provisions of the Ohio Revised Code.

An escrow agreement authorizing an escrow agent mutually agreed to by the RTA and Contractor shall be established for deposit of withheld funds in accordance with applicable sections of Chapter 153 of the Ohio Revised Code.

42. *Final Payment*

After the Contractor has completed all work and made all corrections to the satisfaction of the RTA and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, as-built plans and other documents - all as required by

the contract document, he may make application for final payment following the procedures for Partial Payments.

The application for final payment shall be accompanied by three (3) copies of the affidavits certifying that all work required to be performed under this contract has been fully completed in accordance with the contract document, and that all claims, liens, bills for labor and materials, and/or other obligations incurred in connection with the performance of the work, including work performed by subcontractors, have been fully paid and settled.

The date of approval of the application for final payment by the RTA for all completed items of work will be the date upon which all guarantees and warranties begin unless otherwise noted in the RTA's approval. In cases where some predetermined amount of money has been withheld from final payment on certain contract items due to delay in their completion, as approved by the RTA, then the date of start of the guarantees and warranties on the whole amount of these particular delayed contract items will start on the date of approval of their final payments by the RTA.

43. *Waivers of Claims*

The Contractor's obligation to perform the work and complete the project in accordance with the contract document shall be absolute. Neither approval or any partial or final payment by the RTA, nor the issuance of a list of work to be completed or corrected, or any payment by the RTA to the Contractor under the contract document, nor any use or occupancy of the project or any part thereof by the RTA, nor any act of acceptance by the RTA shall constitute an acceptance of work not in accordance with the contract document.

The making and acceptance of final payment shall constitute:

- A. A waiver of all claims by the RTA against the contractor other than those arising from unsettled liens, from faulty or defective work appearing after final payment, or from failure to comply with the requirements of the contract document, or the terms of any special guarantees therein.
- B. A waiver of all claims by the contractor against the RTA, other than those previously made in writing and still unsettled.

44. *Environmental Violations*

For all contracts and subcontracts, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, 42 USC (1857(h)), Section 508 of the Clean Water Act, 33 USC 1368. Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the U.S. EPA Assistant Administrator for Enforcement (EN0329).

45. *Release of Liens*

The lien laws of the State of Ohio shall govern all work and materials.

The Contractor shall furnish the Owner with each estimate for payment and before final payment is made, a full Release of Lien signed by all Subcontractors and Materialmen associated in any way with the work.

If any Subcontractor refuses to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to Owner to indemnify the Owner against any lien.

If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all the monies that the later may have been compelled to pay in discharging such lien, including all costs and a reasonable Attorney's fee.

46. *Certified Payrolls and Wage Determination*

The Contractor shall provide RTA with contractor and subcontractor certified copies of each weekly payroll within seven (7) days after the regular payroll date. Following a review by the Owner for compliance with state and federal labor laws, the payroll copy shall be retained for later review by FTA.

A contractor may use the Department of Labor Form WH-347, "Optional Payroll Form", which provides for all the necessary payroll information and certifications. This Department of Labor form may be purchased at a nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Prevailing Wages shall be paid in accordance with the Federal Wage Decision and the Ohio Department of Industrial Relations Wage Determination Schedule(s) effective during the period of the Contract and as provided for in Sections 4115.02 through 4115.16 of the Ohio Revised Code. The higher rate per classification will be used.

Each Contractor must submit an affidavit that Prevailing Wages have been paid prior to receipt of final payment.

47. *Contractor's Superintendence*

The Contractor shall keep the same competent superintendent and any necessary assistants on the work during its progress. All shall be satisfactory to the Project Manager.

Superintendent shall have previous experience in this type of work and shall maintain progress schedule and be authorized to make field decisions in the absence of the Contractor. He shall not be required to perform work not related to administering, expediting or coordinating the work under this Contract.

The Contractor shall attend to every part of the work personally, or through his competent foremen, who shall be constantly on the work, lay it out and give all necessary lines, levels, patterns and dimensions according to the accompanying drawings and these Specifications, and shall verify that Drawings and Specifications are observed by all subcontractors and employees.

He shall inspect all materials when delivered and see that they are properly stored and protected from damage until used and must keep himself familiar with the working drawings, scale and full size details and Specifications concerning all parts of the work at all times, and must report to the Project Manager for correction of apparent errors, either in the drawings or Specifications, as soon as discovered.

The Contractor shall provide a Project Manager during the entire duration of the delivery, installation and field testing of the **UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**

48. *Safety*

The Contractor should be aware that RTA is a constantly operating organization, with activity 24 hours a day, seven days a week.

It is the intention of the RTA to protect RTA employees, customers and property from harm due to Contractor activity, and to reduce RTA's liability exposure limits regarding safety and environmental infractions.

During the pre-construction or post-award meeting, the RTA will provide upon request RTA's System-Wide Safety Manual and any additional required information to assure that contractors comply with RTA's safety rules.

In addition, the RTA expects all contractors and sub-contractors to comply with and abide with any and all applicable regulatory standards.

Some special and unique safety and environmental concerns found at RTA and incumbent upon the contractor and sub-contractor include:

- A. RTA is a 24-hour per day operation.
- B. Multiple sized vehicles move about the interior and exterior of most buildings, 24 hours per day. Please be advised that set traffic patterns have been established and must be followed.
- C. Operators of all equipment are expected to be certified to operate appropriate equipment.
- D. Restrictive rules apply to the running of engines inside all buildings.
- E. Restrictive storm water pollution rules apply.
- F. Material safety data sheets must be provided for all materials used. Specific notification is required if a product to be used on the job has been classified as an "extremely hazardous material".
- G. Building evacuation procedures.
- H. Fire safety and prevention procedures.
- I. First aid procedures.
- J. Hazardous material safety

49. *Compliance with RTA Security Measures*

All contractors are required to display an identification badge supplied by RTA while on RTA premises. Badges must be worn where they can be seen at all times. This requirement applies to every employee of all contractors and/or subcontractors. All

contractors' employees are also required to wear clothing which identifies the company for which they work (i.e., uniform, hard hat, jacket, etc.). Badges must be obtained from the Project Manager and must be returned upon completion of the project. A fee will be charged for any badges that are lost or not returned and will be deducted from the final project invoice.

50. *Occupancy during the Work*

The building scheduled for improvements will be used during the work of this contract. However, the contractor will have the ability to cordon off and control access to his or her work areas based on safety and security requirements. The contractor shall develop its site access plan and present it to the RTA Project Manager for final approval.

51. *Site Access*

Access will be restricted to those areas designated by the Owner. Protection must be provided to ensure damage does not occur. In the event that Contractor operations result in any damage, damages shall be repaired within 24 hours at no additional cost to the RTA.

52. *Parking*

Limited parking will be made available for the contractor's employees.

53. *Project Signs*

No project signs will be allowed on the project other than a project sign provided by the Owner.

54. *Differing Site Conditions*

- A. The contractor shall promptly, and before the conditions are disturbed, give a written notice to the project manager of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- B. The project manager shall investigate the site conditions promptly after receiving notice. If the conditions do materially differ and cause an increase or decrease in the contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- C. No request by the contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the contractor has given written notice required; provided that the time prescribed in (a) above for giving written notice may be extended by the owner.
- D. No request by the contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

55. *Site Investigation and Conditions Affecting the Work*

- A. The contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its costs, including but not limited to (1) conditions bearing upon transportation, disposal handling, and storage of materials; (2) the availability of labor, water, electric power and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the grounds; and (5) the character of equipment and facilities needed preliminary to and during work performance. The contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the RTA, as well as from the drawings and specifications made a part of this contract. Any failure of the contractor to take the actions described and acknowledged in this paragraph will not relieve the contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the RTA.
- B. The RTA assumes no responsibility for any conclusions or interpretations made by the contractor based on the information made available by the RTA. Nor does the RTA assume responsibility for any understanding reached or representation made concerning conditions, which can affect the work by any of its officers or agents before the execution of the contract unless the understanding or representation is expressly stated in the contract.

56. *Other Contracts*

The RTA may undertake and award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with RTA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any directions that may be provided by the Project Manager. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by RTA employees.

57. *Protection of Existing Vegetation, Structures, Equipment and Utilities, and Improvements*

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the worksite, which was not to be removed and which do not unreasonably interfere with the work required under the contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the contractor shall trim those limbs or branches with a clean-cut and paint the cut with a tree-pruning compound as directed by the project manager.
- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the worksite, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the contract or failure to exercise reasonable care in performing the work. If the

contractor fails or refuses to repair the damages promptly, the owner may have the necessary work performed and charge the cost to the contractor.

58. *Operations and Storage Areas*

- A. The Contractor shall confine all operations (including storage of materials) on RTA premises to areas authorized or approved by the Owner. The Contractor shall hold and save the RTA, its officers, and agents, free and harmless from liability of any nature occasioned by the contractor's performance.
- B. Temporary buildings (e.g., storage sheds, shop, offices) and utilities may be erected by the contractor only with the approval of the Project Manager and shall be built with labor and materials furnished by the contractor without expense to the RTA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Project Manager, the buildings and utilities may be abandoned and need not be removed.
- C. The contractor shall, under regulations prescribed by the project manager, use only established roadways, or use temporary roadways constructed by the contractor when and as authorized by the Project Manager. When materials are transported in performing the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbs or sidewalks, the contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks or roads.

59. *Accident Prevention*

- A. The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and RTA personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; (2) avoid interruptions of RTA operations and delays in project completion dates; and (3) control costs in the performance of this contract.
- B. For these purposes of contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall:
  - (1) Provide appropriate safety barricades, signs, and signal lights;
  - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  - (3) Ensure that any additional measures the Project Manager determines to be reasonably necessary for the purposes are taken.
- C. If this contract is for construction or dismantling, demolition or removal of improvements with any Department Of Transportation agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

- D. Whenever the Owner or its representatives become aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or RTA personnel, the project manager shall notify the contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the worksite, shall be deemed sufficient notice of noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop-work order issued under this clause.
- E. The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of parties, in subcontracts.

**Alternate I**

If the contract will involve (a) work of a long duration with hazardous nature, or (b) performance on a government facility that on the advice of the technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or RTA personnel or property, add the following paragraph (f) to the basic clause:

- F. Before commencing the work, the contractor shall:
  - (1) Submit a written proposal plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
  - (2) Meet with representatives of the RTA to discuss and develop a mutual understanding relative to the administration of the overall safety program.

**60. *Availability and Use of Utility Services***

- A. The RTA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. The Contractor shall carefully conserve any utilities furnished.
- B. The Contractor, at its expense and in a workmanship manner satisfactory to the Project Manager, shall install and maintain all necessary temporary connections and distribution lines. Before final acceptance of the work by the RTA, the contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

**61. *Schedules for Construction Contracts***

- A. The Contractor shall, within five (5) days after the work commences on the contract or another period of time determined by the Project Manager, prepare and submit to the Project Manager for approval three copies of a practicable schedule and show the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing several



salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled within the time prescribed. The Owner may withhold approval of progress payments until the contractor submits the required schedule.

- B. The Contractor shall enter the actual progress on the chart as directed by the Project Manager, and upon doing so shall immediately deliver three copies of the annotated schedule to the Project Manager. If in the opinion of the Project Manager, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Project Manager, without additional cost to the RTA. In this circumstance, the Owner may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Project Manager deems necessary to demonstrate how the approved rate of progress will be regained.
- C. Failure of the Contractor to comply with requirements of the Owner under this clause shall be grounds for a determination by the Owner that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Owner may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

62. *Layout of Work*

The Contractor shall lay out its work from RTA established baselines and benchmarks indicated on the drawings, and shall be responsible for all measurements in connections with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor through its negligence before their removal is authorized, the Project Manager may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

63. *Organization and Direction of the Work*

- A. When the contract is executed, the Contractor shall submit to the Project Manager a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.
- B. Work performance under the contract shall be under the full-time direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if the Contractor is a corporation, association, or similar legal entity. However, if the Project Manager approves, the Contractor may be represented in the direction of the work

by a specific person or persons holding positions other than those identified in this paragraph.

64. *Specifications and Drawings for Construction*

- A. The Contractor shall keep on the worksite a copy of the drawings and specifications and shall at all times give the owner and its representative's access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the project manager, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Project Manager shall furnish from time to time such detailed drawings and other information as considered necessary unless otherwise provided.
- B. Wherever in the specifications or upon the drawings the words "directed, required, ordered, designated, prescribed", or words of like import are used, it shall be understood that the direction, requirement, order, designation, or prescription, of the owner, is intended; and similarly the words "approved, acceptable, satisfactory", or words of like import shall mean approved by, or acceptable to, or satisfactory to the owner, unless otherwise expressly stated.
- C. When "as shown, as indicated, as detailed", or words of like import are used, it shall be understood that the reference is made to the drawings accompanying the contract unless stated otherwise. The word "provide", as used herein, shall be understood to mean provide completed in place that is, furnished and installed.
- D. Shop drawings means drawings, submitted to the Project Manager by the Contractor, subcontractor, or any lower-tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The RTA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the contract.
- E. If the contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Project Manager without evidence of the Contractor's approval may be returned for resubmission. The Project Manager will indicate approval or disapproval of the shop drawings, and if not approved as submitted, shall indicate reasons therefor. Any work done before such approval shall be at the contractor's risk. Approval by the Project Manager shall not relieve the contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the contract, except with respect to variations described and approved in accordance with (f) below.

- F. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the project manager approves any such variations, the RTA shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- G. The Contractor shall submit a minimum of four (4) "owner's copies" for each shop drawing and submittal. The owner will retain one (1) copy during construction for Owner's purposes. Upon completion of the job, the Contractor shall provide the Owner with three (3) original copies. Any additional copies required by the Contractor shall also be provided. The owner will review each submittal, mark as appropriate to indicate the action taken, and return copies less one (1) retained. As an example, if the Contractor needs three (3) copies of a submittal (one for the vendor, one for a subcontractor and one for the Contractor), the Contractor shall provide a minimum of seven (7) copies (three for the Contractor's purposes, three for the Contractor to submit with three copies of operation and maintenance manuals upon completion of the job, and one copy for the owner to utilize during construction).
- H. Upon completing the work under the contract, the Contractor shall furnish three (3) complete sets of all shop drawings as finally approved, to be included in the operation and maintenance manuals. These drawings shall show all changes and revisions made up to the time the project is completed and accepted by the RTA.

65. *Pre-construction Conference*

If the Owner decides to conduct a pre-construction conference, the successful Contractors will be notified and will be required to attend. The Project Manager's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

66. *Material and Workmanship (based on APR 1984)*

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the contracting officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery, mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles that the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the

material or articles. When directed to do so, the Contractor shall submit samples for approval at the contractor's expense, with all shipping charges prepaid. machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable (R 7-602.9 1964 Jun).

67. *Superintendence by the Contractor (based on APR 1984)*

At all times during the performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor. Each prime contractor shall provide superintendence for work covered by the respective prime contract and to coordinate his work with the other Prime Contractors and the Construction Manager. The Construction Manager shall also provide superintendence over all other contracts.

68. *Permits and Responsibilities (based on NOV 1991)*

The Contractor shall, without additional expense to the Greater Dayton Regional Transit Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

69. *Use and Possession Prior to Completion*

- A. The Greater Dayton Regional Transit Authority shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the administrative team shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Greater Dayton Regional Transit Authority intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Greater Dayton Regional Transit Authority's possession or use shall not be deemed an acceptance of any work under the contract.

- B. While the Greater Dayton Regional Transit Authority has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Greater Dayton Regional Transit Authority's possession or use, notwithstanding the terms of the clause in this contract entitled "permits and responsibilities". If prior possession or use by the Greater Dayton Regional Transit Authority delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

70. *Cleaning Up (based on APR 1984)*

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Greater Dayton Regional Transit Authority. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer. Clean up is the specific responsibility of each separate contractor. The Construction Manager will ensure all contractors have adequately performed cleanup tasks. Cleanup shall take place on a daily basis.

71. *Disputes Concerning Labor Standards*

Disputes arising out of the labor standard provisions of this Contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

72. *Certification of Eligibility*

By entering into this agreement or a third party contract financed under this agreement, the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

The penalty for making false statements as prescribed in the U.S. Criminal Code, 18 USC Section 1001.

73. *Environmental, Resource Conservation, and Energy Requirements*

Environmental Protection: The Contractor agrees to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC Section 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 USC app. Section 1610; Council on Environmental Quality Regulations, 40 CFR Part 1500 et seq.; and joint FHWA/FTA Regulations, "Environmental Impact and Related Procedures" at 23 CFR Part 771 and 49 CFR Part 622.

Air Quality: The Contractor agrees to comply with applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plan, Programs, and Project Developed, Funded or Approved Under Title 23 USC or The Federal Transit Act," 40 CFR Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP.

EPA also imposes requirements pertaining to the Clean Air Act, as amended that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Contractor should be aware that the following EPA regulations, among others, may apply to this Project; "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines", 40 CFR Part 85; "Control of Air Pollution and New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures", 40 CFR Part 86; and "Fuel Economy of Motor Vehicles", 40 CFR Part 600.

Use of Public Lands: No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local officials having jurisdiction thereof, or any and from an historic site of national, state, or local significance may be used for the Project unless specific findings required by 49 CFR Section 303 are made by U.S. DOT.

Mitigations of Adverse Environmental Effects: Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 USC app. Section 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 USC Section 303) and with any conditions imposed by the government as part of a finding of no significant impact or a record of this Agreement by reference. As soon as the government and the Contractor reach agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the government.

74. *Labor and Materialmen Bond*

The successful Bidder shall supply a separate Labor and Materialmen Bond with a surety in the amount equal to **100 percent** of the total contract award amount.

75. *Builders Risk Insurance*

Contractor shall provide builders risk insurance coverage covering both the interests of the Owner, Contractor and all applicable subcontractors in accordance with the following:

- A. Said policy of insurance to be written utilizing either a) the 1995 ISO Builders Risk Coverage form CPOO 20 with special causes of loss, form CP 20 30 11 attached and endorsed to include the perils of flood, surface water, backup of sewers and drains, and earthquakes or b) an inland marine builders risk coverage form which is certified by the insurance underwriter to be no more restrictive than the iso form CP 00 20, 1995 edition.
- B. The policy will carry a maximum deductible of \$1,000-\$5,000, depending on the size of the project. The Contractor will be financially responsible for absorbing all losses within the deductible.
- C. The policy will be written on a completed value basis. The limit will be equal to 100% of the total contract award amount.
- D. Valuation for all property, including but not limited to the property of others in the insured's care, custody, and control, will be the replacement cost.

- E. The policy will be endorsed to cover property in transit.
- F. The policy will be endorsed to cover off-site storage of building materials, contents, and supplies.
- G. The policy will be endorsed to include form CP 11 21 builders risk-theft of building materials.
- H. The policy shall be endorsed to provide the owner with the right to approve/disapprove all settlements.
- I. Contractor shall provide Owner with a certificate of insurance evidencing each of the above items prior to initiating any construction activity. Said certificate of insurance will include a provision providing the Owner with 30 days written notice of cancellation, material change or non-renewal. The standard "endeavor to" wording will be deleted from any certifications provided by the Contractor to the Owner.
- J. It is agreed that all coverage placed by the Contractor on behalf of the Owner shall be underwritten by an insurance company licensed and admitted by the State of Ohio. Said insurance company will carry a current minimum A.M. Best rating of A-

76. *Excusable Delays*

Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the RTA in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performances.

If the failure to perform is caused by the failure of the subcontractor at any tier to perform or make progress, and if the cause of failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless-

- A. The subcontracted supplies or services were obtainable from other sources.
- B. The RTA ordered the contractor in writing to purchase these supplies or services from the other source; and
- C. The Contractor failed to comply reasonably with this contract.

Upon request of the Contractor, the RTA shall ascertain the facts and extent of the failure. If the RTA determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the RTA under the termination clause of the contract.

77. *Trade Secret Notification*

Under Ohio law, a bid document may be a public record unless it meets an exception under the Public Records Law. One such exception is for trade secrets. Trade secrets must be treated with confidentiality. However, the bidder must notify the RTA in all of their bid documents as to which portions of their bid documents constitute trade secrets and are to be treated as confidential. As a bidder, it is your responsibility to mark those parts of the bid, which you wish to have treated as confidential. While this does not assure that these portions of the document will constitute a trade secret and be exempt from public records requests under Ohio Law, in the absence of notice from you to us that those documents are to be treated as trade secrets and to be held confidential, they will be made available to the public upon a public records request unless another exception applies to exempt them from disclosure.

78. *Changes in the Work/Change Orders*

Oral changes are not permitted. No change in the contract shall be made unless the RTA gives prior written approval therefor. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any change in the work not authorized by the RTA in writing.

The Contractor shall submit to the RTA a detailed pricing and schedule proposal for the work to be performed under the change order. The proposal may be accepted by the RTA or may be modified by negotiations between the Contractor and RTA. A change order amendment shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract "Disputes" clause. Regardless of any disputes, the Contractor shall proceed with the work ordered, provided the Contractor has obtained the prior concurrence of RTA.

79. *Late Submissions, Modifications, and Withdrawals of Bids*

Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered.

The exact time (also referred to as official time) is the date and time the bid is actually received in the RTA's Procurement Department.

The only acceptable evidence to establish the time of receipt at the RTA office is the time/date stamp of the RTA on the bid wrapper or other documentary evidence of receipt maintained by the RTA.

Bids may be withdrawn by the written or telegraphic request received from bidders prior to the time set for the receipt of bids. Bids may be withdrawn in person by a bidder or an authorized representative if the representative's identity is made known and the representative signs a receipt for the bids before award.

80. *Duty to Inform*

If at any time during the performance of this contract, the Contractor becomes aware of actual or potential problems, fault defect in the project or any nonconformance with any contract document, federal, state or local law, rule or regulation, the Contractor shall give immediate notice thereof to the RTA's RTA Title.



**SECTION IV**

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES

## FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES

### 1. *No Obligation by Federal Government*

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party of this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 2. *Program Fraud and False or Fraudulent Statements or Related Acts*

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S. C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### 3. *Audit and Inspection of Records*

Contractor shall permit the authorized representatives of RTA, its member entities, the Ohio Auditor of State, the U.S. Department of Transportation, and the Comptroller General of the United States access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions until the expiration of three (3) years after final payment under this contract. Contractor further agrees to include all its subcontracts hereunder, a provision to the effect that the subcontractor agrees that RTA, its member entities, the Ohio Auditor of State, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives

shall, until the expiration of three (3) years after final payment under the subcontract, have access to books, documents, papers and records of such subcontractor involving transactions, related to the subcontractor for the purpose of making audit, examination, excerpts and transcriptions. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontractor or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expense of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed.

4. *Federal Requirement Changes*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (7) dated October 2000) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. *Contract Termination*

A. Termination for default

In the event contractor defaults in the performance of any of its obligations under this contract, RTA shall have (in addition to and not in lieu of, all other rights, remedies and damages to which it may be entitled by reason of such default) the right and option to terminate this contract. In the event RTA exercises such right and option to terminate for default, RTA shall be obligated to pay only for work performed and accepted by RTA prior to the date upon which RTA gives contractor written notice of termination for default, less 1) the amount of all damages suffered by RTA by reason of such default and 2) any amount by which the commercially reasonable cost of correcting the default and/or completing the work exceeds the unpaid portion of amount which would have paid hereunder; if the sum of 1) and 2) plus all amounts previously paid to exceed the value of the work performed and accepted by RTA prior to the giving of written notice of default, contractor shall be liable to RTA for such excess.

B. Termination for convenience

RTA may terminate this contract at any time at its convenience by giving notice in writing to the contractor, which notice shall state that it is a notice of termination for the convenience of RTA and shall specify the effective date of termination. Contractor shall promptly submit its termination claim, to RTA, and the parties shall negotiate the termination settlement to be paid contractor. Contractor shall be paid pursuant to the contract for costs and expenses accrued to the date of termination. In such event, amounts previously paid to the contractor shall be credited against any amounts determined to be due to the contractor pursuant to this paragraph. Upon receipt of the notice of termination contractor shall immediately cancel its

outstanding orders for procurement of materials, supplies and other miscellaneous goods.

- C. In the event of termination either for default or for the convenience of RTA, the contractor shall account for any property in its possession paid for from funds received from RTA, or property supplied to contractor by RTA.

6. *Title VI, Civil Rights Act of 1964, Compliance*

The Greater Dayton Regional Transit Authority (RTA), in accordance with Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. 2000d et seq. and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- A. Compliance with regulations: The contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department Of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, creed, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the regulations, including employment practices when the contract covers a program set forth in appendix b of the regulations.
- C. Solicitations for subcontracts, including procurements of materials and equipment: in all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, age or national origin.
- D. Information and reports: The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the RTA or the Federal Transit Administration (hereinafter, "FTA") to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the

contractor shall so certify to the RTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for noncompliance: In the event of the contractor's noncompliance with nondiscrimination provisions of this contract, the RTA shall impose contract sanctions as it or the RTA may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - (2) Cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor procurement as the RTA or may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the RTA to enter into such litigation to protect the interests of the RTA, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. *Nondiscrimination*

During the performance of this contract, the Contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during the employment without regard to their race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post inaccessible places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin.

Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of Contractor's commitments under this section, and shall post copies of the notice inaccessible places available to employees and applicants for employment. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations and orders of the Secretary

of Labor, or pursuant thereto, and will permit access to its books, records and accounts by FTA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and Contractor may be declared ineligible for further RTA contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the foregoing provisions of this paragraph in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor.

Contractor will take such action with respect to any subcontract or purchase order as RTA may direct as a means of enforcing such provisions, including sanctions for noncompliance, providing, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by RTA, Contractor may request the United States to enter into such litigation to protect the interest of the United States.

8. *Disadvantaged Business Enterprise Participation*

**A. POLICY**

It is the policy of the Department of Transportation (DOT) that DBE's, as defined in 49 CFR, Parts 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Disadvantaged Business requirements of these sections apply to this agreement.

**B. DBE OBLIGATION**

The recipient or its Contractor agrees to ensure that DBE's, as defined in 49 CFR Parts 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Parts 23 and 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, religion, color, creed, sex, disability, age or national origin in the award and performance of DOT-assisted contracts.

Further, the Department of Transportation's Regulation 49 CFR Parts 23 and 26 requires recipients to set goals consistent with our own circumstances.

In keeping with that requirement, the RTA has established a DBE goal of 5% for this project. Any bidder that fails to comply with the goal or make good faith efforts shall not be eligible to be awarded this contract.

The forms included must be completed and notarized within five (5) days after bid opening. Failure to submit these forms may render your firm non-responsible.

**C. PROCEDURE**

DBE'S are required to be certified, prior to submission of a bid, under the Federal Unified Certification Program (UPC), by the Ohio Department of Transportation (ODOT) or the City of Dayton's Human Relations Council. Please note that the City of Dayton's other socio-economic programs are not acceptable. The certification application is available upon request from ODOT at <http://www.dot.state.oh.us/divisions/odi/sdbe/pages/default.aspx> or by calling 614/466-7699. The City of Dayton may be reached at 937/333-1403. The application is to be completed by all DBE firms and submitted to ODOT or the City of Dayton, who will review and approve or disapprove the firm as a DBE.

**D. GOOD FAITH**

To demonstrate that sufficient reasonable efforts were taken to meet the DBE contract goal, the bidder shall document the steps it has taken to obtain DBE participation including but not limited to the following:

- (1) Whether the contractor/supplier solicited through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract;
- (2) Whether the contractor/supplier solicited this interest within sufficient time to allow the DBEs to respond to the solicitation;
- (3) Whether the contractor/supplier took appropriate steps to follow up initial solicitations.
- (4) Whether the contractor/supplier selected portions of work to be performed by DBE's to increase the likelihood that DBE goals will be achieved (including, when appropriate, dividing contracts into economically feasible units to facilitate participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces);
- (5) Whether the contractor/supplier provided adequate information about plans, specifications, and/or bidder requirements of the contract in a timely manner to assist them in responding to a solicitation;
- (6) Whether the contractor/supplier negotiated in good faith with interested DBEs.
  - (a) It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

- (b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (7) Whether the contractor/supplier rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- (8) Whether the contractor/supplier made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (9) Whether the contractor/supplier made efforts to assist interested DBEs in obtaining the necessary equipment, supplies, materials, or related assistance or services.
- (10) Whether the contractor/supplier effectively used the services of available contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (11) In determining whether a bidder has made good faith efforts, the RTA may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, RTA may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, the RTA may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

**E. DBE PROGRAM DEFINITIONS, AS USED IN THE CONTRACT:**

- (1) *Disadvantaged Business Enterprise means a small business concern:*
  - (a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of



a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

- (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).

- (a) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is —

- (b) Any individual who a recipient finds to be socially and economically disadvantaged on a case-by-case basis.

- i. Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantaged:

- ii. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- iii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- iv. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

- v. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

- vi. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- vii. Women;

- viii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

#### **F. ASSURANCES**

- (1) Federal Financial Assistance Agreement Assurance:

RTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose a sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- (2) Contract Assurance:

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.

#### **B. DISADVANTAGED BUSINESS ENTERPRISE SUBSTITUTIONS:**

It is strictly prohibited that a Contractor changes the DBE(s) identified in a contract. If bidders/proposers submit the names and addresses of DBE firms that will participate in a contract; a description of the work that each DBE will perform; the dollar amount of the participation of each DBE firm, etc., changes cannot be made without prior approval of the DBE Officer. Furthermore, the Contractor may not terminate a subcontract agreement, reduce the scope of work nor decrease the proposed price to the DBE without prior approval of the DBE Officer. Should a Contractor determine that it is necessary to request the substitution of a DBE for reasons such as default on the part of the DBE, poor work performance, etc., the Contractor must request in writing authorization to make a change, prior to subcontracting with other certified DBE's.

Should it be determined that a need exists to request a substitution of a DBE or modify a DBE's contract, the following steps are to be taken:

- (1) The Contractor must notify the DBE Officer in writing of the necessity to reduce, modify or terminate a DBE's contract and when necessary, propose a substitute firm to fulfill the commitment. This notification should include the rationale for the proposed substitution. Examples of acceptable reasons would be as follows:
  - (a) A committed DBE was found unable to comply with the contract within the required timeframe.
  - (b) A DBE was discovered not to be bona fide.
  - (c) The DBE desires to make significant changes in the contract.
- (2) The request should include the name, address and principal official of any proposed substitute, as well as the dollar value and specification/scope of work of the proposed contract or change order.
- (3) RTA will review and evaluate the submitted documentation and respond to the request as soon as practicable. The RTA retains the right to request additional information or requests an interview.
- (4) A change must not be made until approved by RTA. The Contractor will then provide RTA with an executed copy of the DBE contract or change order with signatures of both parties to the agreement, within five (5) days.
- (5) The RTA will not approve additional monies for escalated costs incurred by a Contractor when a substitution is necessary.

9. *Contract Assurance (Nondiscrimination Assurance)*

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.

10. *Incorporation of Federal Transit Administration (FTA) Terms*

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Greater Dayton RTA requests which would cause RTA to be in violation of the FTA terms and conditions.

11. *Debarment and Suspension*

The Contractor agrees to comply with U.S. Department of Transportation regulations, "Government Debarment and Suspension (Non-procurement)", 2 CFR Part 1200 and 2

CFR Part 180, and otherwise comply with the requirements of those regulations. This includes the requirement of the bidder to submit the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion for all projects when the total aggregate value of the Contract exceeds \$25,000 and to submit a Certification of Lower Tier Participation Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions for each subcontractor which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project.

During the term of the Contract the Contractor agrees to immediately notify RTA of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of the subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

The Contractor shall submit with each request for payment a list of all subcontractors to this contract which has a financial interest in this Project which exceeds \$25,000 or has had a critical influence on or substantive control over the Project and submits evidence that the appropriate certificates have been submitted and that they remain valid.

RTA will not make payment to the Contractor or subcontractor which 1) does not comply with this contract provision, or 2) is not in compliance with the above-cited federal requirements.

12. *Buy America Act*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provides that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The bidder or proposer must submit to RTA the appropriate Buy America certification with its bid or proposal. Bids or Proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

13. *Disputes*

Any dispute arising under this contract, which is not disposed of by agreement, shall be decided by RTA, which shall reduce its decision to writing and furnish a copy of same to Contractor. RTA's obligation to provide a written decision shall be limited to its providing a written statement setting forth its conclusion; it shall not be required to state its reasoning, although it may choose to do so.

Pending any administrative decision or litigation concerning any dispute arising under this contract, the Contractor shall proceed diligently with the performance with this contract.

14. *Lobbying*

During the term of this Contract the Contractor agrees to comply with the provisions of 31 USC Section 1352, which prohibits the use of federal funds for lobbying by any official or employee of any federal agency, or member or employee of Congress; and requires the

Contractor to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20 and include these requirements in any subcontract, which exceeds \$25,000.

The Contractor and all subcontractors in receipt of contracts exceeding \$25,000 shall submit Standard Form LLL quarterly to RTA. The Contractor shall also submit with each request for payment 1) a list of each contractor and subcontractor that is subject to the Lobbying Certifications, 2) certifications or evidence of certification for all sub-contractors, 3) information regarding material changes in the previous certifications or disclosures, and 4) Standard Form LLL or evidence that the form was previously submitted to RTA.

RTA will not make any payment to the Contractor or subcontractor which 1) does not comply with the contract provisions, or, 2) is not in compliance with the above-cited federal requirements.

15. *Clean Water Act/Clean Air Act*

The contractor must comply with the requirements of Section 508 of the Clean Water Act, as amended, 33 U.S.C. Section 1368, and other appl. req. of the CWA, as amended, 33 U.S.C. Section 1251-1377 and Section 306, as amended, 42 U.S.C. Section 7414, and other application of the Clean Air Act, as amended, 42 U.S.C. Section 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. Sections 7401-7671q, which prohibits the use of facilities included in the Environmental Protection Agency (EPA) "List of Violating Facilities." This provision also requires the reporting of any violations to RTA and the EPA.

16. *Cargo Preference - Use of United States Flag Vessels*

The Contractor agrees:

- A. To utilize privately-owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described in the paragraph above, to the RTA (through the prime Contractor) and the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification for the project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

17. *Fly America*

The Recipient understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S.-flag air carriers to the

extent service by these carriers is available, in accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. General Services Administration (U.S. GSA) regulations pertaining to the use of United States flag air carriers, at 41 C.F.R. § 301-10.131 thru 301-10.143.

18. *Seismic Safety*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in 42 U.S.C. Sections 7701 et seq. and Department of Transportation Seismic Safety Regulations 49 CFR Part 41 Sections 41.117 and 41.120 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

19. *Energy Conservation*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 et seq.

20. *Recycled Products*

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designed in Subpart B of 40 CFR Part 247.

21. *Intelligent Transportation Systems*

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

22. *Americans with Disabilities Act (ADA)*

The Contractor agrees to comply with, and assure that any subcontractor under this Project complies with all applicable requirements for the American with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. Section 12101 et seq. and 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. Section 1612, and the following regulations and any amendments thereto:

- A. U.S. DOT Regulations, "Transportation Services for Individuals with Disabilities (Ada)," 49 C.F.R. Part 37;
- B. U.S. DOT Regulations, "Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

- C. U.S. DOT Regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38; And 36 C.F.R. Part 1192.
- D. Department of Justice (DOJ) Regulations, Nondiscrimination on the basis of Disability In State And Local Government Services," 28 C.F.R. Part 35;
- E. Department of Justice (DOJ) Regulations, "Nondiscrimination on the basis of disability by public accommodations and in commercial facilities," 28 C.F.R. Part 36;
- F. General Services Administration, "Construction and Alteration of Public Building." Accommodations of the Physically Handicapped," 41 C.F.R. Part 101-19;
- G. Equal Employment Opportunity Commission (Eeoc) "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- H. Federal Communications Regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- I. FTA Regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

23. *Contract Work Hours and Safety Act*

Mechanics and laborers are required to be paid on the basis of a standard 8-hour workday and a 40-hour workweek. Any work in excess of eight (8) hours a day or 40 hours a week must be compensated at a rate no less than 1-1/2 times the worker's base rate. Further, no laborer or mechanic will be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous, as determined under the standards established by the Secretary of Labor.

24. *Drug and Alcohol Rules*

The Greater Dayton Regional Transit Authority (RTA) is required to comply with the Federal Transit Administration's drug and alcohol rule, 49 CFR Part 655. This rule requires RTA to ensure that any entity performing a safety-sensitive function on our behalf implement a drug and alcohol program which complies with the following clause:

"The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State of Ohio, or Greater Dayton Regional Transit Authority to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 655."

25. *Safe Operation of Motor Vehicle*

- A. **Seat Belt Use.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or GLPTC.
- B. **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

26. *Veterans Employment*

Recipients and sub-recipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans, as defined in section 5 U.S.C. Section 2108, who have the requisite skills and abilities to perform the construction work required under the contract.

This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

27. *Organizational Conflicts of Interest*

The recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) **When It Occurs.** An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third-Party Participant performing the Project work, and (b) That impairs that Third Party Participant’s objectivity in performing the Project work, or (2) **Other.** An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) **Disclosure Requirements.** Consistent with FTA policies, the Recipient must disclose to RTA, and each of its Sub recipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal laws, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) **Failure to Disclose.** Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.



**SECTION V**  
**SPECIAL CONDITIONS**

## **SPECIAL CONDITIONS**

**BUILDING CODE:** The Contractor shall comply in every respect with the latest edition of the Ohio Building Code and the Code's subsequent approved amendments. The Contractor shall be solely responsible for any damage, injury or delay caused to the Owner, or others, through any failure or negligence to observe said laws or regulations.

**SHOP DRAWINGS, BROCHURES, AND SAMPLES:** Submit for approval, prior to preparation of shop drawings, a list of proposed submittals and a tentative schedule of all proposed shop drawings, brochures, and samples called for under the Contract.

Prepare shop drawings that establish the actual details of the work; indicate proper relation to adjoining work; amplify design details of all general, structural, architectural, mechanical and electrical equipment in proper relation to verified physical spaces; and incorporate minor changes of design or construction to suit actual conditions. Fully describe all materials and equipment to be incorporated into the project, including manufacturer's specifications and special detailed information.

The Project Manager will review shop drawings, brochures, and samples submitted in accordance with an approved shop drawing submittal schedule and return to the Contractor in a timely manner.

The Project Manager's review of shop drawings, brochures or samples is for general design information only and is not a complete check of the method of assembly, erection, or construction. The review shall in no way be construed as:

Permitting any departure whatsoever from the contract documents, except where the Contractor, in accordance with the provisions of the General Conditions, has previously notified the RTA of such departure.

Relieving the contractual responsibility for any error in quality of materials, details, and omissions or otherwise, that may exist.

Relieving the contractual responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength.

Relieving the full contractual responsibility for the satisfactory performance of all work and coordination of work.

Permitting departure from additional details or instructions previously furnished by RTA.

**PROTECTION OF WORK AND PROPERTY:** Maintain adequate protection for all work under construction. Protect the RTA's property from injury or loss arising in connection with the Contract.

Protect all work materials and equipment to be incorporated in this Contract whether in transit or in the storage on or off the site and under the care, custody or control of the Contractor.

Protect all partially installed and completed work associated with this Contract.

Furnish all temporary work required to complete this Contract. This will include all temporary work required to keep in operation all requisite guards, sidewalks, fences and other safeguards for the protection of the work and safety of the premises and the public.

Provide all temporary heat required for the prevention of damage to work and materials by freezing, as found necessary to carry on construction operations.

Protect other property at the site or adjacent thereto not designated for removal or replacement in the course of construction.

Protect all public and private property and all persons who may be affected directly or indirectly by work performed under this Contract.

Promptly remedy all damage or loss (other than damage or loss covered by the "Insurance Requirements") to original condition at no additional cost to the RTA.

**SAFETY:** The Contractor shall take all necessary and appropriate precautions to ensure the safety of the public and of workmen on the job to prevent accidents or injury to any persons on, about, or adjacent to the premises where the work is being performed. The Contractor shall comply with all laws, ordinances, codes, rules, and regulations relative to health, safety and the prevention of accidents.

**CONTRACT CHANGES:** Any proposed change in this Contract shall be submitted to the RTA for its prior approval, and shall not become effective unless it is contained in writing, signed by the Chief Executive Officer of the RTA. No undertaking of the RTA in connection with this Contract at the time that the contract is awarded, or thereafter, shall bond the RTA until and unless such undertaking is executed in writing and signed by the Chief Executive Officer of the RTA.

**PREVAILING SCALE OF WAGES:** The successful bidder must comply with the Prevailing Rates of Wages on Public Improvements, as ascertained by the Department of Industrial Relations, State of Ohio, and as provided for in Sections 4115.03 through 4115.04 of the Ohio Revised Code and the United States Department of Labor.

**PERMITS AND INSPECTION FEES:** The Contractor shall, without additional expense to the RTA, be responsible for obtaining any necessary licenses, permits, and inspections, and for complying with federal, state and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or properties that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work, which, may have been accepted under the contract.

**EXECUTION OF CONTRACT:** The successful bidder must, within ten (10) days after the date of notification of the award and before the signing of the contract, furnish a Performance Bond; Labor and Materialmen Bond; certificates of insurance and compliance from the Industrial Commission and Bureau of Workers' Compensation; the requirements of which are stated in the following sections.

**LIABILITY AND PROPERTY INSURANCE:** The successful bidder shall procure and furnish, before the execution of the contract, satisfactory evidence that he is keeping in full force and in effect during the term of the contract, a liability insurance policy containing a contractual liability coverage endorsement covering his operations and his assumed liability and an Owner's protective liability policy, with the RTA as the insured, providing protection against claims arising out of the performance of this contract, or in any way connected therewith, in amounts not less than \$1,000,000 combined bodily injury and property damage coverage per occurrence.

**WORKERS' COMPENSATION:** The Contractor shall take out and maintain during the life of the contract, workers' compensation insurance for his employees before the time of the execution of the contract.

**DOCUMENTS AND PROCUREMENT AFTER EXECUTION OF CONTRACT:** Within ten (10) days after the execution of the contract, the Contractor shall furnish the RTA:

1. List of materials the bid is based upon and supplier.
2. List of proposed subcontractors.
3. An itemized Schedule of Values including labor, materials, and equipment, for all items in the bid.
4. Name of foreman or superintendent.
5. List of emergency (24-hour) telephone numbers(s).

**WAIVERS OF CLAIMS:** The Contractor's obligation to perform the work and complete the project in accordance with the Contract Document shall be absolute. Neither approval of any progress or final payment by the RTA, nor the issuance of a list of work to be completed or corrected, nor any payment by the RTA to the Contractor under the Contract Document, nor any use or occupancy of the project or any part thereof by the RTA, nor any act of acceptance by the RTA shall constitute an acceptance of work not in accordance with the contract document.

The making and acceptance of final payment shall constitute:

1. A waiver of all claims by the Contractor against the RTA, other than those previously made in writing and still unsettled.
2. A waiver of all claims by the RTA against the Contractor other than those arising from unsettled liens, from faulty or defective work appearing after final payment, or from failure to comply with the requirements of the Contract Documents, or the terms of any special guarantees therein.

**COMPLIANCE:** The Contractor agrees to comply with all applicable federal, state and local laws in the conduct of work thereunder. The Contractor accepts full responsibility for payment of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, pension deductions, and any and all employees engaged by the Contractor for the performance of the work authorized by this agreement.

**TESTS AND INSPECTIONS:** If the Contract Document, law, ordinances, rules, regulations, or directives of the RTA or any public authority having jurisdiction require any work to be specifically inspected, tested or approved by someone other than the Contractor, the Contractor will give RTA timely notice of readiness thereof. The Contractor will furnish the RTA the required certificates of inspection, testing, or approval.

The cost of all such inspections, tests, and approvals shall be borne by the Contractor unless otherwise provided. Neither observation by the RTA, nor inspections, tests or approvals by persons other than the Contractor shall relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents.

**CERTIFIED PAYROLLS:** The Contractor shall provide the RTA with Contractor and subcontractor certified copies of each weekly payroll within seven (7) days after the regular payroll date. Following a review by the RTA for compliance with state and federal labor laws, the payroll copy shall be retained at the project site for later review by FTA.

A Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form", which provides for all the necessary payroll information and certifications. This Department of Labor form may be purchased at a nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, the Contractor may use his own payroll form provided it includes the same information and certifications as the Department of Labor form WH-348, "Statement of Compliance".

**WARRANTY OF CONSTRUCTION:** See Section II, Instructions to Bidders, Clause 18.

**COPELAND ANTI-KICKBACK:** Contractor must comply with the COPELAND Anti-Kickback Act, which prohibits the Contractor from inducing any persons employed on the project to give up any portion of their pay.

**DAVIS-BACON ACT:** The Contractor will pay all laborers and mechanics employed on the project at least once a week and at a rate not less than the minimum wage specified in a wage determination formally issued by the Secretary of Labor. A copy of this determination is included in this solicitation, and the award of the contract is to be conditioned upon the Contractor accepting the terms of this wage determination schedule.

**RTA'S RIGHT TO PERFORM WORK:** The Contractor hereby acknowledges that it is the RTA's right to enter said site to perform necessary and vital work at any time, to perform such works as installation of trolley coach electrical system, etc., with its own workforces, providing the RTA does not interfere with the Contractor's performance.

**CONTRACT WORK HOURS AND SAFETY ACT:** Mechanics and laborers are required to be paid on the basis of a standard 8-hour workday and a 40-hour workweek. Any work in excess of eight (8) hours a day or 40 hours a week must be compensated at a rate of no less than 1-1/2 times the worker's base rate. Further, no laborer or mechanic will be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous, as determined under the standards established by the Secretary of Labor.

**CODE COMPLIANCE:** The Contractor shall give all required notices to the proper authorities (including those for traffic obstruction), obtain all official inspections, permits, and licenses made necessary by the work and shall comply with all laws, ordinances, rules, and regulations pertaining thereto.

**MANUFACTURER'S DIRECTIONS:** All manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, adjusted and conditioned as directed by the manufacturer unless herein specified to the contrary.

**CLEANING UP:** The Contractor shall at all times keep the work area, including the storage area, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the RTA.

Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Project Manager. Clean up shall take place daily.

**UTILITIES:** The Contractor shall determine the presence of underground utilities by utilizing the Ohio Utilities Protection Service 1-800-362-2764 at least 48 hours prior to excavation.

**PRICES:** The prices quoted shall be "FIRM" for the term of the contract.

**SECTION VI**  
**CONTRACT EXAMPLE**

**CONTRACT – EXAMPLE**

**GREATER DAYTON REGIONAL TRANSIT AUTHORITY**

**CONTRACT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Greater Dayton Regional Transit Authority, Dayton, Ohio, a political subdivision organized and existing under and by virtue of the laws of the State of Ohio, hereinafter call "RTA", and \_\_\_\_\_, hereinafter called "Contractor".

The parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I – SCOPE**

The Contractor shall sell, and the RTA shall purchase, the following described goods and/or services:

**UNDERGROUND STORAGE TANK REPLACEMENT PROJECT**

all as more fully described in Legal Notice IFB No. 23-15R.

All goods and/or services to be sold pursuant to this contract shall satisfy completely each and every specification appearing in the specifications and all other requirements, which may appear in the Contract Documents.

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment, and services which may be necessary to perform completely all services, and to deliver and install, if necessary, all goods to be sold pursuant to this Contract, all in strict accordance with the Contract Documents.

**ARTICLE II – CONTRACT**

Contract Documents shall consist of the following:

- |  |                                    |
|--|------------------------------------|
| A) This contract   | E) Signed Copy of Bid              |
| B) Invitation to Bid   | F) Performance Bond                |
| C) General Conditions of Contract and Special Conditions include Instructions to Bidders | G) Addenda Issued                  |
| D) Drawings & Project Manual, Including Technical Specifications                         | H) Contractor's Technical Proposal |

The Contract Documents form the entire contract between the parties hereto, any oral understandings or agreements to the contrary notwithstanding.

**ARTICLE III - TIME FOR PERFORMANCE**

Time is of the essence in the performance of this contract. The Contractor shall fully perform all of his obligations, including, without limitation the satisfactory delivery and installation of all goods to be sold, and the satisfactory performance of all work to be done but not later than \_\_\_\_\_ . This article applies even in the event of a union or employee strike, as this is a foreseeable circumstance that can be prevented, mitigated, and expected by the Contractor.

**ARTICLE IV - METHOD OF PAYMENT AND MAXIMUM COMPENSATION**

The maximum aggregate compensation payable by RTA to Contractor shall not exceed

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The Contractor shall, for the payment of all sums due under this contract, look solely to the monies provided the RTA from tax revenues resulting from duly authorized taxes which shall now or hereafter be levied by the RTA, and from grant contract funds, if any, which may actually be received by the RTA from the federal government under the Urban Mass Transportation Act of 1964, as amended, for the purpose of underwriting, in whole or in part, the RTA's costs pursuant to this contract.

It is expressly understood that the RTA shall be under no obligation whatsoever for any excess costs arising from changes, modifications or extra work orders not specifically approved by the RTA in one or more writings in which the excess cost or costs is specifically set forth.

The RTA will make payment to the Contractor within thirty (30) days after its acceptance of all of the goods and/or services to be sold pursuant to this contract.

**ARTICLE V - TERMINATION OF CONTRACT FOR DEFAULT**

If, through any cause, the Contractor shall fail to perform fully, timely and in proper manner its obligations under this contract, or if the Contractor shall breach any of the covenants, conditions or agreements contained in the contract, the RTA shall thereafter have the right to terminate this contract by giving notice in writing which shall specify the effective date thereof, to the Contractor of such termination. In such event, any goods delivered and/or installed by the Contractor under this contract shall, at the option of the RTA, become the RTA's property and the Contractor shall be entitled to receive just and equitable compensation therefor, not to exceed the amount payable therefor under Article IV hereof. In the event of a termination pursuant to this Article, the RTA may elect instead to remove any goods delivered and/or installed and redeliver the same to the Contractor, all at the Contractor's sole expense, including reasonable charges for any time and/or labor expended by the RTA's employees.

Notwithstanding the above, the Contractor shall not be relieved of any liability to the RTA for damages sustained by the RTA by virtue of any breach of contract or warrants, or of both, by the Contractor for the purpose of setoff and/or recoupment until such time as the exact amount of damages due the RTA from the Contractor is determined.

**ARTICLE VI - TERMINATION FOR CONVENIENCE OF THE RTA**

The RTA may terminate this contract any time by a notice in writing that shall specify the effective date thereof, from the RTA to the Contractor, at least thirty (30) days before the effective date of such termination. In that event, any goods accepted by the RTA prior to the effective date of the termination shall become the RTA's property and the Contractor shall be entitled to receive just and equitable compensation therefor and for any services accepted by the RTA prior to the effective date; provided, nevertheless, that the amount of such compensation shall not, in any event, exceed the amount of the total contract price, as set forth in Article IV, above, properly attributable to the goods and/or services so accepted.

Neither the acceptance, by the RTA, of any goods and/or services; the payment, by the RTA, for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the Contractor for any breach of contract, of warranty, or both of contract and of warranty.



**ARTICLE VII - CONTRACT CHANGES**

Any proposed change in this contract shall be submitted to the RTA for its prior approval, and shall not become effective unless it is contained in a writing signed by the Chief Executive Officer of the RTA.

**ARTICLE VIII - INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

**ARTICLE IX - PROHIBITED INTEREST**

No member, officer or employee of the RTA or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

**ARTICLE X - EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. The Contractor shall take Affirmative Action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**ARTICLE XI - DISADVANTAGED BUSINESS ENTERPRISE**

In connection with the performance of this contract, the Contractor will cooperate with the RTA in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that minority, women or other disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work, if any, and for the supply of materials or services, if any, which may be necessary or desirable for the performance of this contract.

**ARTICLE XII - ASSIGNABILITY**

The terms and provisions of the Contract Documents shall be binding upon RTA and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having obtained the written approval by RTA of the subcontractor, which approval shall not be unreasonably withheld. RTA may assign its rights and obligations under the Contract to any successor to the rights and functions of RTA or to any governmental agency to the extent required by applicable laws and governmental regulations or to the extent RTA deems necessary or advisable under the circumstances.

**ARTICLE XIII - SUBCONTRACT APPROVAL**

The Contractor shall not subcontract or otherwise transfer any part of or interest in this contract (whether by assignment or notation) without the prior written consent of the RTA. Any such transfer without the prior written consent of the RTA shall be void and of no effect.

## ARTICLE XIV – NONDISCRIMINATION

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, creed, sexual orientation, gender identity, disability, age, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further grantee contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order, of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary

of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### ***ARTICLE XIV - AUDIT AND INSPECTION OF RECORDS***

In the event a single bid is received, the following will be considered part of the contract.

In the case of all negotiated contracts, and contracts for construction, reconstruction, or improvement of facilities and equipment, which entered into under other than competitive bidding procedures, Contractor agrees that the grantee, the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination shall be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts with regard to the project.

Further, Contractor agrees to maintain all required records for at least three years after grantees make final payments and all other pending matters are closed.

**IN WITNESS WHEREOF**, the parties to this contract have set their hands to triplicate copies on the day and year hereinabove written with each copy to be considered an original.

Greater Dayton Regional Transit Authority  
*RTA*

\_\_\_\_\_  
*Contractor*

By: \_\_\_\_\_  
Robert Ruzinsky  
Chief Executive Officer

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFICATE OF FUNDS**

I hereby certify that the funds estimated to be required to meet the payment called for in the Contract between the Greater Dayton Regional Transit Authority and \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, lawfully appropriated for that purpose and are in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances.

\_\_\_\_\_  
Mary Kay Stanforth  
Chief Financial Officer

Date: \_\_\_\_\_

**SECTION VII**  
**TECHNICAL SPECIFICATION**  
(SEE ATTACHMENTS 1 AND 2)

**SECTION VIII**  
**GENERAL SAFETY RULES**

## Greater Dayton Regional Transit Authority

### GENERAL SAFETY RULES

1. ACCIDENTS or INJURIES, regardless of their nature, shall be reported to the supervisor for immediate attention.
2. HARD HATS shall be worn at all times while on the construction site.
3. EXCAVATIONS and TRENCHES:
  - A. Inspection of the excavation or trench, adjacent areas, and protective systems must be made by a competent person daily or as required by changing conditions before employees are permitted to enter the excavation or trench.
  - B. No employee is to enter a trench that is five feet or more in-depth unless it is in stable rock or is protected by one of the following means: sloped (laid back), shored, sheeted, boxed, or by an engineered system designed to prevent a cave-in.
    - A. Covered, secured and clearly marked as “floor opening”, or
    - C. An access/egress ladder will be placed in all trenches 4 or more feet in depth and shall not be more than 25 feet from those employees working in the trench.
4. FALL PROTECTION is required when:
  - A. The walking-on or working surface is six (6) feet or more above the next lower level.
  - B. Working above any hazardous equipment or machinery regardless of height.
5. FLOOR OPENINGS shall be:
  - C. Protected by a standard guardrail system.
6. CONFINED SPACE ENTRY is prohibited without the permission of your supervisor.
7. TOOLS shall be operated by authorized personnel, with guards furnished by the manufacturer in place.
  - A. Electric powered tools: shall be plugged into a circuit that is positively grounded or is protected by a ground fault circuit interrupter. Tools and cords are to be inspected for damage prior to use.
  - D. Hand tools: shall not be used for any other purpose than that intended, and all damaged and worn parts are to be promptly repaired and/or replaced.
  - E. Power actuated tools: shall be used by qualified personnel who have been instructed and trained in their safe use.
8. GOOD HOUSEKEEPING shall be practiced on all projects. Walkways, stairways and ladder accesses shall be kept clear of debris and rubbish.

9. NAILS shall be turned down or removed from lumber.
10. SAFETY GLASSES, GOGGLES OR FACE SHIELDS shall be worn on grinding, chipping, welding, or other operations where eye injuries may result.
11. HEARING PROTECTION shall be worn when exposed to noise hazards.
12. SHOES shall be first grade, hard soles, and ankle-high.
13. GLOVES shall be worn by those handling debris, old lumber, and rough or sharp-edged material.
14. CLOTHING shall be appropriate to the duties being performed. Cuffed trousers, torn or loose clothing is not recommended. Shorts or cutoffs, tennis shoes and working without a shirt are prohibited.
15. ACCESS LADDERS shall have side rails extending three feet above the landing area and shall be securely fastened. The ladder feet shall be placed on a substantial base. The area around the top and bottom of the ladder shall be kept clear of debris and materials.
16. TAGLINES shall be used when raising or hoisting material or equipment.
17. FIGHTING, HORSEPLAY or PRACTICAL JOKES shall not be permitted on the job.
18. INTOXICATING BEVERAGES AND DRUG POSSESSION or use, before or during working hours are strictly forbidden.
19. COMPRESSED GAS CYLINDERS must be stored upright, secured, capped and separated.
20. HAZARDOUS MATERIALS: Information on specific hazardous materials used on this project is available upon request. Material Safety Data Sheets will be maintained in the job site offices or a designated location.
21. ASBESTOS REMOVAL is forbidden. If asbestos is encountered or is suspected, notify your supervisor immediately.
22. HOISTING of PERSONNEL on heavy equipment by unapproved methods is prohibited. Riding on a crane hook/ball or on a load will result in the dismissal of the rider and the operator.
23. REPORT ANY VIOLATIONS of the safety rules to your immediate supervisor for correction, including any hazards not specifically listed herein.
24. SANITARY FACILITIES: Employees shall use proper restroom facilities.
25. ALL POSTED SAFETY RULES shall be obeyed and shall not be removed except by management's authorization.

**Violation of any of the SAFETY WORK RULES and/or any other safety work rules may be cause for immediate termination of any contractor.**



**SECTION IX**

**ATTACHMENTS**

**ATTACHMENT 1**

***TECHNICAL SPECIFICATIONS***

**ATTACHMENT 2**

***DRAWINGS***

**ATTACHMENT 3**

***PREVAILING WAGE RATES***

**ATTACHMENT 4**

***BID FORM***

**ATTACHMENT 5**

***SITE MAP***

**ATTACHMENT 6**

***SOIL BORINGS MATERIAL ANALYSIS***

**ATTACHMENT 7**

***SOIL BORINGS REPORT***

**ATTACHMENT 8**

***PRIME CONTRACTOR – REQUEST FOR INFORMATION  
(SEE NEXT PAGE)***

