



Greater Dayton Regional Transit Authority

Invitation For Bid

DIESEL EXHAUST FLUID

CONTRACT BID NO. GD 23-25

November 9th, 2023

IFB Boilerplate Revised 11.2.23

Greater Dayton Regional Transit Authority

4 S. Main Street, Dayton, OH 45402 • P: 937-425-8400 • F: 937-425-8416 • www.irderta.org

November 9th, 2023

DEAR PROSPECTIVE BIDDERS:

Re: Invitation for Bids (IFB)
DIESEL EXHAUST FLUID
IFB No. 23-25

The Greater Dayton Regional Transit Authority (RTA) is soliciting bids for **DIESEL EXHAUST FLUID**. Your firm has been invited to submit a bid.

Please send your completed bid clearly marked "DIESEL EXHAUST FLUID" to the undersigned by 11:00 AM, Dayton (Eastern) Time, December 14th, 2023. 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 will be attending the bid opening, plan to arrive at least 20 minutes early as there is no parking available at our facility and you will need to locate parking.

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. Although the DBE goal for this procurement is 0%, RTA welcomes DBE participation.

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) on the basis of 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.

CONTRACT TERM: The successful bidder, approved by the Board of Trustees, will be offered a contract effective on or about February 6, 2024. The duration of the contract shall not exceed 1062 days from notification of award or notice to proceed.

Please Note: This bid package and any addenda are available on the Procurement Department website, <http://proc.greaterdaytonrta.org>. Please continue checking the website for any updates or addenda. If you receive this bid package via email or regular mail, all addenda will also be sent 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 go to <http://proc.greaterdaytonrta.org> and click on Vendor Registration (left side of page) and email completed form to ngreer@greaterdaytonrta.org.

Please contact me with any questions or comments concerning the IFB at (937) 425-8311.

Sincerely,

Noah Greer

Senior Purchasing Agent

GREATER DAYTON REGIONAL TRANSIT AUTHORITY

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GD 23-25

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SECTION I
INVITATION FOR BID

Legal Notice GD 23-25
INVITATION FOR BID

Sealed bids will be received in the office of the Director of Procurement, Greater Dayton Regional Transit Authority, 4 S. Main Street, Dayton, Ohio 45402 until 11:00 AM local time, December 14th, 2023, for the purchase of the following:

DIESEL EXHAUST FLUID

In accordance with specifications on file at the Greater Dayton Regional Transit Authority (RTA).

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 that 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.

Bid forms, specifications and further information must be obtained at the offices of the Greater Dayton Regional Transit Authority. All bidders will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

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 in response and will not be subjected to discrimination on the basis of race, religion, color, creed, sex, disability, age or national origin in consideration for an award.

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 all bids and to waive defects or irregularities in bids received and to award the contract to the lowest responsive and responsible bidder as determined by its Board of Trustees.

Deborah Howard
Director of Procurement

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 including parts of Greene County.

Governing Body

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

**THE GREATER DAYTON REGIONAL TRANSIT AUTHORITY
BID FORM**

<p align="center">BIDS WILL BE RECEIVED UNTIL 11:00 AM EST ON DECEMBER 14, 2023, AND THEN PUBLICLY OPENED AT:</p> <p align="center">4 S. Main Street Dayton, OH 45402</p> <p align="center"><i>BID BOND REQUIREMENT:</i> A BID BOND, CASHIER'S CHECK OR CERTIFIED CHECK MUST ACCOMPANY THIS BID FOR NOT LESS THAN \$ 0.00 OF THE BASE BID PRICE.</p>	<p align="center">BID NUMBER: GD 23-25</p> <p align="center">CURRENT DATE: November 9th, 2023</p> <p>PERFORMANCE BOND REQUIREMENT: IN THE EVENT BID IS ACCEPTED, A PERFORMANCE BOND WILL BE REQUIRED IN THE AMOUNT OF 0% OF THE CONTRACT AMOUNT WITHIN <u>TEN (10) CALENDAR DAYS AFTER</u> <u>NOTIFICATION OF AWARD.</u></p>
--	--

GENERAL: BASE BID			
As defined in Contract Documents			
	Unit Price	QTY (Est.)	Extended Amount (\$)
YEAR 1	\$		\$
OPT. YEAR 1	\$		\$
OPT. YEAR 2	\$		\$
TOTAL BID	\$		\$
			<i>(Basis of Award)</i>
<hr/> <i>(Total bid shown here is to be written out)</i>			
The Engineer's Estimate for Base Bid Category:			

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.

(Form continued onto next page)

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) on the basis of each individual item, or any combination of items, or in the aggregate of all items.

TERMS OF PAYMENT:

Payment terms of net 30 days after installation/delivery and acceptance.

DELIVERY:

See Special Conditions. Product will be delivered FOB Destination.

The undersigned understands that any condition stated in the bid, clarification made to the bid, or information submitted on or with this form, other than requested, may render the bid non-responsive and it may be rejected; and further agrees that this bid may not be withdrawn for a period of ONE HUNDRED TWENTY (120) days after the date set for the opening of the bids.

(Form continued on next page)

OFFER: By execution below, Bidder hereby offers to furnish the goods and/or services as indicated herein.

Name of Individual, Partner or Corporation (PLEASE PRINT)

Address

City, State and Zip Code

Telephone Number

Fax Number

E-mail Address

Mobile Phone Number

Authorized Signature

Title

Printed Name

Printed Title

The 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.

- _____ Bid Form
- _____ Summary of Bid Requirements
- _____ Addendum Acknowledgment
- _____ City of Dayton Affirmative Action Assurance (AAA) Certification **(If approval email is not received, enter "Pending")**
- _____ Affidavit of Intended Disadvantaged Business Enterprise
- _____ Affidavit of Disadvantaged Business Enterprise
- _____ DBE Unavailability Certification
- _____ Non-Collusion Affidavit
- _____ Personal Property Tax Affidavit
- _____ Buy America Certification
- _____ RTA Clean Air Policy Verification
- _____ Certification of Restrictions on Lobbying
- _____ Certification of Procurement Integrity
- _____ Certification of Contractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion
- _____ Certification of Lower-Tier Participants (Subcontractor) Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion
- _____ Bid Bond (as required)
- _____ Bidder's Warranty Information (as required)

SIGNATURE: _____

PRINTED _____

TITLE: _____

COMPANY: _____

DATE: _____

The Greater Dayton Regional Transit Authority

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 V, 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) and complete the online AAA form. To obtain CityBOTS login credentials, vendor must go to 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 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's HRC.

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.

Bid Requirement

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

Refer to Section V, Paragraph 8

NOTE: All bidders must complete and submit with their bid one (1) or more of the DBE forms on the following pages. Failure to complete these forms may cause your bid to be considered non-responsive and, therefore, rejected.

Greater Dayton Regional Transit Authority

AFFIDAVIT OF INTENDED DISADVANTAGED BUSINESS ENTERPRISE

State of _____

County of _____

Comes now _____ of lawful age, and being duly sworn

(Name of 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 _____ day of _____, 20_____.
this _____ 0_____

(Notary Public)

My Commission Expires: _____ (SEAL)

The Greater Dayton Regional Transit Authority

AFFIDAVIT OF DISADVANTAGED BUSINESS ENTERPRISE

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 disadvantage business enterprise as defined by The Greater Dayton Regional Transit Authority in the Instructions to Bidders Contract No. GD 23-25 and that I will provide 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 _____, 20 _____, before me,

_____, known to me to be the person described in the foregoing affidavit, 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 Expires: _____ (SEAL)

The Greater Dayton Regional Transit Authority
DBE UNAVAILABILITY CERTIFICATION
(See Good Faith - Section III, Paragraph 8, D.)

_____ *(Affiant)* _____ *(Date)*
of _____ certify that prior to
_____ *(Prime or General Bidder)*
the bid opening date, I contacted the following DBE contractors to obtain a bid/proposal for services/supplies necessary to be performed on the Greater Dayton Regional Transit Authority Legal Notice No. GD 23-25.

Disadvantaged Service/Supplies		
Date	Contractor <i>(Must be DBE)</i>	Item(s) Sought <i>(i.e., Unit Price, Material & Labor, Labor Only, etc.)</i>

Attach a detailed narrative of efforts made to involve disadvantage contractor(s), subcontractor(s) and suppliers which should answer, but not be limited to, the specific affirmative action steps, as detailed in Section II Paragraph 30, C.

To the best of my knowledge and belief, said disadvantaged contractor(s) was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid/proposal for the following reasons:

Signature: _____
(Prime or General Contractor)

Date: _____

_____ was offered an opportunity
(DBE firm)
participate on the above identified Legal Notice on _____ by _____
(date) *(Source)*

The Greater Dayton Regional Transit Authority

Bid Requirement

NON-COLLUSION AFFIDAVIT

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

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

STATE OF _____ }
_____ COUNTY } SS: **NON-COLLUSION AFFIDAVIT**

_____ being first 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 _____, and that State of _____ he, 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 addresses of all persons interested in said proposed contract:

(Form continues on next page)

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:

Partnership only: Affiant further says that the following is a complete and accurate list of the names and addresses of 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): _____

(Form continued on the next page)

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 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 _____ day of _____,
this _____
20 _____ .

(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):

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

to whom a contract pursuant to Invitation for Bid No. **GD 23-25** for **DIESEL EXHAUST FLUID** was awarded; and further states that, at the time the bidder's bid was submitted (check and complete as required):

bidder was not charged with any delinquent personal property taxes on the general tax list of personal property of _____
(County, State)

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 _____, 20_____.

(Notary Public's Signature)
My Commission Expires: _____ (SEAL)

**The Greater Dayton Regional Transit Authority
Bid Requirement**

(Required for Bids over \$150,000)

**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
Bid Requirement
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 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 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 federal 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 be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 _____, 20 _____.

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

E-Mail Address: _____

Name Printed: _____

Authorized Signature: _____

Title: _____

**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. GD 23-25). As required by Subsection 27(d)(1)(B) of the Act, I further certify that each officer, employee, agent, representative, and consultant of:

_____ who has participated personally and
(Name of Offeror)

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)*

Date

*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
Bid Requirement**

**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 certification, 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 Company: _____
Address: _____
City, State, Zip: _____
Signature of Authorized Official: _____
Printed Name _____
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.

SECTION II: SPECIAL CONDITIONS

I. 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) on the basis of each individual item, or any combination of items, or in the aggregate of all items.

II. CONTRACT AWARD

- A. 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 to the lowest bidder the RTA deems responsive and responsible.
- B. In awarding a contract(s), the RTA reserves the right to consider all elements entering into the determination of the responsibility of the bidder(s). 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.
- C. It is anticipated that the contract for this procurement will be for two (2) years beginning **March 1, 2024**.
- D. The bid shall include all costs and delivery to the Greater Dayton Regional Transit Authority.

SECTION III: SPECIFICATIONS

The Greater Dayton Regional Transit Authority (RTA) is seeking bids for a three (3) year contract with one (1) base year and two (2) option years for diesel exhaust fluid for Greater Dayton RTA's diesel fleet. Any diesel exhaust fluid submitted must meet all specifications and requirements of this procurement.

See the following attachments for more detailed information.

- Attachment 1: RTA DIESEL EXHAUST FLUID TECHNICAL SPECIFICATION
- Attachment 2: Cummins Diesel Exhaust Fluid (DEF) Specifications

SECTION IV

REQUIREMENTS & CONDITIONS TO BIDDERS

The Greater Dayton Regional Transit Authority, hereinafter called "RTA", requests bids for: DIESEL EXHAUST FLUID per the bid specifications, drawings and the following requirements and conditions, which shall be considered an essential part of the contract documents.

1. *A Request for Bid*

Bids are requested for DIESEL EXHAUST FLUID per the special conditions, specifications, and drawings.

2. *Administration of Sealed Bids*

Sealed bids shall be submitted in an envelope marked "Sealed Bid No. **GD 23-25** for **DIESEL EXHAUST FLUID** opening at **11:00 AM** Dayton (Eastern) time, on **December 14th, 2023**, 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 ONE HUNDRED TWENTY (120) days from the date on which the bids were opened.

- A. Bids may be withdrawn by personal, written, or telegraphic requests received from bidders prior to bid opening date. No bid may be withdrawn for ONE HUNDRED TWENTY (120) 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.
- B. 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 bids received and to award a contract(s) in the best interest of the RTA.
- 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. In determining the successful bidder, consideration will be given to the price, 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.
- E. 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 successful bidder.

- F. 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 bidder.
- G. With respect to actions prior to award of a contract, only the RTA's Chief Financial Officer, Director of Procurement, Purchasing Agents, or Chief Executive Officer have the authority to take action on behalf of the RTA. Only the RTA's Board of Trustees has the authority to award a contract(s) in excess of \$100,000.

3. *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.

4. *Appearance*

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

5. *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.

6. *Bid Security "Guarantee"*

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 0 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(s) 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(s) 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(s) 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.

7. *Bid Submission*

The bid submitted shall contain: (1) The Bid Form; (2) Summary of Bid Requirements; (3) Affidavit of Intended Disadvantaged Business Enterprise (if applicable); (4) Affidavit of Disadvantaged Business Enterprise (if applicable); (5) DBE Non-availability Certification (if applicable); (6) Non-Collusion Affidavit; (7) Personal Property Tax Affidavit; (8) Buy America Certification (if applicable); (9) RTA Clean Air Policy Verification; (10) Certification of Restrictions on Lobbying; (11) Certificate of Procurement Integrity; (12) Certification of Contractor Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion (13) Addenda Acknowledgment; (14) City of Dayton, Affirmative Action Assurance Certification; (15) Bid Bond (if applicable); and (16) Bidder's Warranty Information (as required); and all other information required herein. 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.

8. *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 therefore. 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.

9. *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.

10. *Contract Award*

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 the bids received and to award a contract 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 into the determination of the responsibility of the bidder(s). 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 60 calendar days from the date upon which bids were opened to the lowest bidder(s) the RTA deems responsive and responsible. The successful bidder will be required to execute the attached contract within ten (10) 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. A 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 RTA has the right to make award(s) on the basis of each individual item, or any combination of items, or in the aggregate of all items.

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

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.

11. *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 of 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.

12. *Descriptions*

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

Bidders shall be prepared to furnish any additional specifications or information concerning the items to be purchased under the terms of this bid, if so requested by the RTA.

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

13. *Duration of Contract*

If the contract is a contract to provide all of the RTA's requirements for particular goods and/or services, then the duration of contract shall be for a period of 3 Years.

14. *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 Purchasing Agent.

15. *Entire Agreement*

This contract contains the entire agreement between the RTA and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Only a written instrument signed by both RTA and the Contractor may amend this contract.

16. *Environmental Violations*

For all contracts and subcontracts in excess of \$100,000, 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).

17. *Federal Participation and Terms of Contract Award*

Any contract awarded pursuant to these specifications will be subject to the applicable terms and conditions of RTA's financial assistance grant contracts with the U.S. Department of Transportation, Federal Transit Administration (FTA).

18. *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 that will affect bidder's work in any way.

19. *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.

20. *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.

21. *Insurance*

**GREATER DAYTON REGIONAL TRANSIT AUTHORITY
SUPPLIERS AND VENDORS INSURANCE REQUIREMENTS**

The Vendor 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. Vendor 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 Vendor 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.

Vendor 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. Vendor 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. 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 Vendor, 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.

3. Commercial Auto Liability Insurance. Vendor 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 Vendor.

4. Excess/Umbrella Insurance. Vendor 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 \$1,000,000 combined single limit. The Excess/Umbrella policy is subject to all requirements of the underlying policies as set forth herein.

5. Pollution Liability Insurance. If the Work under this Contract includes the transportation of hazardous substances (including but not limited to fuel and oil) to, from or about RTA's premises, and/or the disposal of such substances at a waste disposal site, Vendor 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 Vendor's Commercial General Liability or Commercial Automobile Liability policy. RTA shall be afforded protection under this policy as an additional insured, including coverage for claims arising out of Vendor's products and completed operations.

6. Aircraft/Watercraft Liability Insurance. If the Vendor is using aircraft or watercraft in performance of the Work under this contract, Vendor shall disclose this to RTA prior to contract execution. Vendor 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 Vendor.

7. Fidelity Bond/Crime. If Vendor or its employees will be on the premises of RTA in connection with performance of the Work under this contract, Vendor shall carry no less than \$100,000 in Third Party Crime Coverage for the benefit of the RTA in the event of theft or other intentional harm to RTA's property by Vendor's employees.

8. Requirements common to all policies.

a. Vendor 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 Vendor's policy. Any deductibles or self-insured retentions in excess of \$5,000 must be disclosed and approved in writing by RTA.

b. Vendor 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 Vendor'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 Vendor's insurance coverages are in compliance with the insurance requirements set forth below must be completed by the Vendor'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 Vendor) shall not be construed as a waiver of Vendor's obligations to maintain such insurance. RTA shall have the right, but not the obligation, to prohibit Vendor 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. Vendor shall provide certified copies of all insurance policies required above within ten (10) days of written request from RTA.

f. By requiring insurance herein, RTA does not represent that coverage and limits will necessarily be adequate to protect Vendor, and such coverage limits shall not be deemed as a limitation on Vendor'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.

22. *Laboratory Tests*

The RTA reserves the right to test all supplies delivered under the proposed contract, at an independent laboratory to be designated by the RTA. This laboratory test shall include each item of the specifications to determine whether the supplies delivered are in conformity therewith. Tests shall be made on supplies selected at random from deliveries made under the proposed contract(s). Where the results of such tests show that the supplies delivered are not equal to the specifications, then the Contractor shall pay the expense of making such test. If the results of any test show that the supplies delivered and tested conform to the specifications, then the expense of making such test shall be paid by the RTA.

23. *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.

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.

24. *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 Contractor to do so.

25. *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.

26. *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 CFR. 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, employees' time spent on the project, and itemization of applicable fringe benefit expenses.

27. *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.

28. *Option to Extend the Term of the Contract*

The Greater Dayton Regional Transit Authority may extend the term of this contract by written notice to the Contractor within 30 days, provided that the RTA shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the RTA to an extension. If the RTA exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____.

29. *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 re-use 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.

30. *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 their class.

31. *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.

32. *Payment Terms*

Net 30 days after date of delivery of an order. Payment for products or services delivered to and accepted by RTA shall be at the contract price. RTA shall order materials by use of 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.

33. *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 deductions, if any, as herein provided, within thirty (30) days.

34. *Performance Bond*

The successful bidder(s) 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 all goods and/or services 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.

35. *Price Complete*

The price quoted shall include all items of labor, material, tools, equipment and other costs necessary to fully complete the manufacture, delivery and installation (if applicable) for the goods and/or services being procured 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 considered to 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 that goes to make goods and/or services complete and ready for service or use. All parts shall be new, and in no case will 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 services to be furnished, pursuant to the provisions of the contract documents. Any such changes that 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.

36. *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 DBE and non-DBE subcontractors.

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

- i. Language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- ii. 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.
- iii. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.
- iv. Other applicable mechanisms as necessary.

37. *Proposal/Bid Protest Procedures*

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.

1. 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.

2. PROTEST DEFINITIONS

➤ **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.

➤ **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.

➤ **Post-Award**

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

3. SUBMITTAL PROCESS

1. Before Protest

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

2. 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.

3. Protest Submittals

The protest shall include, at a minimum:

- 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;
- 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;
- The name and number of the solicitation/contract;
- A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- A complete discussion of the basis for the protest, including all supporting facts, documents, or data;
- A statement of the specific relief requested;
- State if an informal conference is wanted to discuss the protest with RTA.
- 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.

4. Protest Determination

5. Director of Procurement or designee will review the protest submittal to determine if sustainable.
6. If not sustainable, the protester will be notified in writing **within ten (10) business days** of receipt of the protest.
7. 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.
8. 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.

9. Request for Reconsideration

- 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.

- 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.

38. *Quantity and Time of Delivery*

- A. Delivery shall be made: Will be scheduled by RTA project manager.
- B. In the event the DIESEL EXHAUST FLUID, delivered and installed (if applicable) 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 DIESEL EXHAUST FLUID or any portion, in which case the goods/services/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.
- C. Further, if the DIESEL EXHAUST FLUID **IS/ARE** delivered and installed incomplete or contain(s) 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 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 that should have been done by the Contractor, the Contractor agrees to reimburse RTA all costs incident thereto including material, labor and overhead.
- D. In case the DIESEL EXHAUST FLUID 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.
- E. Acceptance of the DIESEL EXHAUST FLUID 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 that do 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.
- F. Contractor shall make all deliveries in accordance with the time requirements and other terms and conditions set in all applicable specifications and special conditions.

39. *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.

40. *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-contractor 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:

1. RTA is a 24-hour per day operation.
2. 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.
3. Operators of all equipment are expected to be certified to operate appropriate equipment.
4. Restrictive rules apply to running of engines inside all buildings.
5. Restrictive storm water pollution rules apply.
6. 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".
7. Building evacuation procedures.
8. Fire safety and prevention procedures.
9. First aid procedures.
10. Hazardous material safety.

41. *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 CRF 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.

42. *Specified Material and "Approved Equals"*

- A. In all cases the DIESEL EXHAUST FLUID 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 approved equal must be submitted in writing to RTA **TEN (10) DAYS** prior to bid opening date, and acceptance of the substitute will be

at RTA's discretion. The bidder(s) shall supply RTA with performance data, samples and special guarantees as a condition of acceptance of any proposed substitutions.

- B. For all items listed and which are described or defined by dimensions or other 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 for inclusion in the specifications by addendum.
- D. All details must be settled before the bid opening date. The RTA shall have the power to reject the DIESEL EXHAUST FLUID furnished under the contract which, do not conform to the terms and conditions as set forth in the contract documents.
- E. Approved equals, changes or modifications to the specifications will be made by written addendum and sent to all bidders holding specifications.

43. *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.

44. *Statement of Qualification*

RTA reserves the right to award a contract to the low bidder(s) it deems responsive and responsible. The bidder(s) may be required, upon request, to prove to the satisfaction of

the RTA that the bidder(s) has the skill and experience and the necessary facilities and financial resources to perform the contract in a responsible and satisfactory manner.

45. *Subcontracts Approval*

Prime bidders are to report the name/addresses and any other pertinent information of all firms who quote to them on subcontracts.

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 into 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 of 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 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 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 Contractor. The provisions of this clause in no way limit the provision of the clause entitled "Substitution of DBE Subcontractors".

Prime bidders are to report the name/addresses and any other pertinent information of all firms who quote to them on subcontracts.

46. *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(s) upon request.

47. *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 Form. 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 unavoidable delays clause to be computed as follows: **\$ See Director of Procurement.**

48. *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 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.

49. *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.

50. *Warranty and Guarantee*

- A. All materials, specialties, equipment, parts and accessories supplied by the Contractor shall be of the same design and model on all equipment purchased under this specification. The Contractor shall assume all responsibility for these materials, specialties, parts, equipment and accessories whether manufactured by the Contractor or purchased by him from another source.
- B. The Contractor shall provide: _____. Any and all specialties, parts, equipment or accessories that prove to be defective in normal operation within the above referenced period shall be replaced or repaired by the Contractor free of any and all cost to the RTA, including all materials, 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.

SECTION V

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CLAUSES

55. *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.

51. *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.

52. *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 in all of 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.

53. *Federal 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.

54. *Contract Termination*

1. 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 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.

2. Termination for Convenience

RTA may terminate this Contract at any time at its convenience by giving notice in writing to 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 Contractor shall be credited against any amounts determined to be due to 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.

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

55. *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 FTA 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 (A) through (F) 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 subcontract or procurement as the RTA or the FTA 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.

56. *Nondiscrimination*

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

Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, creed, sexual orientation, gender identity, disability, age, national origin, or retaliation. 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 in accessible places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. 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 in accessible places available to employees and applicants for employment. 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 non-compliance 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.

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 non-compliance, 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.

57. *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 -0-** percent 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.

C. *Procedure*

Where there is a disadvantaged business enterprise (DBE) goal, the apparent low bidder must complete and notarize the DBE forms within five (5) days after the bid opening. Failure to submit these forms may render your firm non-responsible.

DBE's are required to be certified, prior to submission of 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:

- (a) 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;
- (b) Whether the contractor/supplier solicited this interest within sufficient time to allow the DBEs to respond to the solicitation;
- (c) Whether the contractor/supplier took appropriate steps to follow up initial solicitations.
- (d) 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);
- (e) 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;
- (f) Whether the contractor/supplier negotiated in good faith with interested DBEs.
 - 1. 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.

2. 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.
- (g) 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.
 - (h) 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.
 - (i) Whether the contractor/supplier made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (j) 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.
 - (k) 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. Assurances

- (a) Federal Financial Assistance Agreement Assurance:

1. 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 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.).

(b) Contract Assurance:

1. 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.

F. *DBE Program Definitions, as used in the contract:*

(a) Disadvantaged Business Enterprise means a *small business concern*:

1. 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
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) *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).

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

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

2. Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "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;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "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.
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) 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.

G. *Disadvantaged Business Enterprise Substitutions*

It is strictly prohibited that a Contractor change 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:

- (a) 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:

1. A committed DBE was found unable to comply with the contract within the required timeframe.
 2. A DBE was discovered not to be bona fide.
 3. The DBE desires to make significant changes in the contract.
- (b) 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.
 - (c) 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 request an interview.
 - (d) 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.
 - (e) The RTA will not approve additional monies for escalated costs incurred by a Contractor when a substitution is necessary.

58. *Contract Assurance (Nondiscrimination)*

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.

59. *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, 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 Greater Dayton RTA to be in violation of the FTA terms and conditions.

60. *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 have a financial interest in this Project which exceeds \$25,000 or have had a critical influence on or substantive control over the Project and submit evidence that the appropriate certificate has 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.

61. *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.

62. *Disputes*

Any dispute arising under this contract which is not disposed 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, Contractor shall proceed diligently with the performance with this contract.

63. *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 \$100,000.

The Contractor and all subcontractors in receipt of contracts exceeding \$100,000 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 subcontractors, 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.

64. *Clean Water Act/Clean Air Act*

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 applicable 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.

65. *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.

66. *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 sections 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 – 301-10.143.

67. *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.

68. *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 designated in Subpart B of 40 CFR Part 247.

69. *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.

70. *Americans with Disabilities Act (ADA)*

The Contractor agrees to comply with, and assure that any subcontractor under this Project complies with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. Sections 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 CFR 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. 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 regulations, "Construction and Alteration of Public Buildings," "Accommodations for 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 Commission 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.

71. *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.

72. *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."

73. *Safe Operation of Motor Vehicle*

65. **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.

66. **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.

67. *Veterans Preference*

As provided by 49 U.S.C. Section 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans , as defined in 5 U.S.C. Section 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project

supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

68. *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 Subrecipients 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.

69. *Prohibition on certain telecommunications and video surveillance services or equipment*

- RTA is prohibited from obligating or expending loan or grant funds to:

24. Procure or obtain;

25. Extend or renew a contract to procure or obtain; or

26. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity

owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

SECTION VI

CONTRACT - EXAMPLE

GREATER DAYTON REGIONAL TRANSIT AUTHORITY

CONTRACT

Agreement made this _____ day of _____, 20____, 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 called "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:

DIESEL EXHAUST FLUID

all as more fully described in Legal Notice IFB No. **GD 23-25**.

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) Instructions to Bidders and Special Conditions | (If required) |
| D) Specifications | G) Addenda Issued |

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 _____.

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 which shall specify the effective date thereof, from the RTA to the Contractor 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 in direct, 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 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. 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.
- (3) 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.

- (4) 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.
- (5) 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.
- (6) 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 subcontract or 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 XV - 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.

<u>Greater Dayton Regional Transit Authority</u> <i>RTA</i>	_____
<i>Contractor</i>	
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 _____, 20____, 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: _____
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