

**GREATER DAYTON REGIONAL  
TRANSIT AUTHORITY**

**GENERAL TERMS AND CONDITIONS**



**REVISED APRIL 16, 2012**

## TABLE OF CONTENTS

<b>PART I - TERMS AND CONDITIONS .....</b>	<b>4</b>
SECTION 1: DEFINITIONS.....	4
SECTION 2: RTA BACKGROUND .....	5
2.1 <i>History</i> .....	5
2.2 <i>Governing Body</i> .....	5
SECTION 3: INFORMATION.....	6
3.1 <i>Basis for Contract Negotiation</i> .....	6
3.2 <i>Receipt of Proposals</i> .....	6
3.3 <i>Proposal Modifications</i> .....	6
3.4 <i>Rejection of Proposals</i> .....	6
3.5 <i>Addenda to RFP</i> .....	6
3.6 <i>Requests for Clarification</i> .....	6
3.7 <i>Non-Collusion Affidavit</i> .....	7
3.8 <i>Contract Award</i> .....	7
3.9 <i>Sales Taxes</i> .....	7
3.10 <i>Personal Property Taxes</i> .....	8
3.11 <i>Timetable</i> .....	8
3.12 <i>Project Manager</i> .....	8
3.13 <i>Proposers Conference</i> .....	8
3.14 <i>Evidence of Qualifications</i> .....	8
3.15 <i>Proprietary Information</i> .....	9
3.16 <i>Cost of Proposal Preparation</i> .....	9
SECTION 4: REQUIRED CLAUSES.....	10
4.1 <i>Changes</i> .....	10
4.2 <i>Audit and Inspection of Records</i> .....	10
4.3 <i>Disputes</i> .....	11
4.4 <i>Interest of Members of or Delegates to Congress</i> .....	11
4.5 <i>Prohibited Interest</i> .....	11
4.6 <i>Disadvantaged Business Enterprise Participation</i> .....	11
4.7 <i>Affirmative Action Assurance Plan</i> .....	16
4.8 <i>Substitution of Disadvantaged Subcontractors</i> .....	16
4.9 <i>Contract Termination</i> .....	17
4.10 <i>Ownership of Documents</i> .....	17
4.11 <i>Maintenance of Records</i> .....	18
4.12 <i>Payments</i> .....	18
4.13 <i>Covenant Against Contingent Fees</i> .....	18
4.14 <i>Indemnifications</i> .....	18
4.15 <i>Laws of Ohio</i> .....	18
4.16 <i>Homeland Security</i> .....	19
4.17 <i>State Industrial Compensation</i> .....	19
4.18 <i>Independent Contractor</i> .....	19
4.19 <i>Nondiscrimination</i> .....	19
4.20 <i>Subcontracts Approval</i> .....	20

4.21	<i>Price Complete</i> .....	22
4.22	<i>Limited Liability</i> .....	22
4.23	<i>Contract Duration</i> .....	22
4.24	<i>Option to Extend the Term of the Contract</i> .....	22
4.25	<i>Entire Agreement</i> .....	22
4.26	<i>Protest Procedures</i> .....	23
4.27	<i>Energy Conservation</i> .....	25
4.28	<i>Clean Water Act/Clean Air Act</i> .....	25
4.29	<i>Insurance</i> .....	25
4.30	<i>Assignability</i> .....	27
4.31	<i>Title VI, Civil Rights Act of 1964, Compliance</i> .....	27
4.32	<i>Safety</i> .....	28
4.33	<i>Compliance with RTA Security Measures</i> .....	29
4.34	<i>Americans with Disabilities</i> .....	30
4.35	<i>Recycled Products</i> .....	30
4.36	<i>Fly America</i> .....	31
4.37	<i>Environmental Violations</i> .....	31
4.38	<i>Debarment and Suspension</i> .....	31
4.39	<i>Lobbying</i> .....	32
4.41	<i>Trade Secret Notification</i> .....	32
4.42	<i>Program Fraud and False or Fraudulent Statements or Related Acts</i> .....	32
4.43	<i>No Obligation by Federal Government</i> .....	33
4.44	<i>Time For Performance</i> .....	33
4.45	<i>Changes in the Work/Change Orders</i> .....	34
4.46	<i>Late Submissions, Modifications, and Withdrawals of Proposals</i> .....	34
4.47	<i>Confidentiality of Proposals</i> .....	34
4.48	<i>Duty to Inform</i> .....	35
4.49	<i>Federal Changes</i> .....	35
4.50	<i>Incorporation of Federal Transit Administration (FTA) Terms</i> .....	35
4.51	<i>Drug and Alcohol Rules</i> .....	35
4.52	<i>Parts</i> .....	36
4.53	<i>Prompt Payment</i> .....	36

REQUEST FOR PROPOSAL

FOR

**PROCUREMENT NAME**

ISSUED BY

GREATER DAYTON REGIONAL TRANSIT AUTHORITY

4 SOUTH MAIN STREET

DAYTON, OHIO 45402

RELEASE DATE

LEGAL NOTICE RFP NO. GD YY-NO

## **PART I - TERMS AND CONDITIONS**

### **Section 1: Definitions**

#### *1.0 Definitions*

Unless otherwise specifically stated, the following terms shall have the following definitions.

#### *1.1 RTA or RTA*

Greater Dayton Regional Transit Authority.

#### *1.2 RFP*

Announcement of Request for Proposals as issued by RTA on RELEASE DATE.

#### *1.3 Proposal*

Documents offered by Proposer to RTA pursuant to this Request for Proposal, including narrative, and related material.

#### *1.4 Proposer*

Firm or firms who, at RTA's request, offer a Proposal pursuant to this RFP.

#### *1.5 Contractor or Consultant*

The successful Proposer who will enter into a negotiated contract with RTA at the conclusion of the Proposal selection process.

## **PART I - TERMS AND CONDITIONS**

### **Section 2: RTA Background**

#### *2.0 RTA Background*

#### *2.1 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 September 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 September 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 of all purposes of the RTA, the boundaries of the RTA were extended to be co-extensive with the boundaries of the County.

#### *2.2 Governing Body*

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

## PART I - TERMS AND CONDITIONS

### Section 3: Information

#### 3.0 *Information*

#### 3.1 *Basis for Contract Negotiation*

This RFP and the resulting Proposals shall be used as the basis for contract negotiation.

#### 3.2 *Receipt of Proposals*

Sealed Proposals marked "PROCUREMENT NAME" will be received at the office of the Manager of Procurement, Greater Dayton Regional Transit Authority, 4 S. Main Street, Dayton, OH 45402, until **TIME DUE**, Dayton (Eastern) time, on **DUE DATE**. Proposals received by RTA after that date and time will not be opened or considered. **An original and four (4) copies** of the Proposal shall be submitted.

#### 3.3 *Proposal Modifications*

Written changes to submitted Proposals will be accepted if received by RTA prior to the Proposal deadline, but only if submitted in a sealed envelope and plainly marked "PROCUREMENT NAME". All changes received after the Proposal deadline will not be opened or considered.

#### 3.4 *Rejection of Proposals*

RTA reserves the right to reject any or all Proposals. Issuance of this RFP does not bind RTA to award a contract, nor does RTA in any way assume liability for expense incurred by Proposer in preparation of its Proposal.

#### 3.5 *Addenda to RFP*

Any clarifications or further instructions to Proposers, whether as a result of questions raised by Proposers or initiated by RTA itself, will be sent to all Proposers in addendum form.

#### 3.6 *Requests for Clarification*

All requests for clarifications or changes must be submitted in writing in time to be received by the RTA Procurement Department **at least ten (10) calendar days** prior to the date on which the proposals are due. Proposers should address such requests to RTA, Attention: RTA REP, 4 SOUTH MAIN STREET, Dayton, Ohio 45402.

Any information given to a proposer concerning the RFP will be furnished to all prospective proposers as an addendum of the RFP if such information is necessary to proposers in submitting proposals on the RFP or if the lack of such information would be prejudicial to uninformed proposers.

### 3.7 *Non-Collusion Affidavit*

Proposer shall submit, with its Proposal, an affidavit stating that neither Proposer nor its agents, nor any other party on its behalf, has paid or agreed to pay, directly or indirectly, any person, firm, or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract that may result from this RFP, and further agrees that no such money or consideration will be hereafter paid. This affidavit must be on the form provided by RTA, which is made a part of this RFP.

### 3.8 *Contract Award*

3.8.1 The RTA reserves the right, as the interests of the Authority may require, to postpone, accept or reject any and all proposals and to waive any informalities in the proposals received, and to award the contract(s) to the best responsive and responsible proposer.

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

3.8.3 Contract(s) for the purchase of goods and/or services may be awarded within 90 calendar days from the date upon which proposals were received to the best proposer(s) the RTA deems responsive and responsible.

3.8.4 In the event a single proposal is received, the RTA will conduct a price and/or cost analysis of the proposal. 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 proposal. It should be recognized that a price analysis through comparison to other similar procurements must be based upon an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a 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 proposal be received.

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

3.8.6 Competent and experienced auditors or price analysts shall make the price and/or cost analysis -- an engineer's estimate or comparison of the prices involved is insufficient.

### 3.9 *Sales Taxes*

The RTA is a tax-exempt institution and is free from all state and federal taxes. No such taxes shall be included in the Contractor's charges to the RTA. However, the Contractor



may be liable for the payment of sales and use taxes on materials purchased for fulfilling this contract.

*3.10 Personal Property Taxes*

The person making a proposal shall submit to the RTA's 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 proposal was submitted with any delinquent personal property taxes on the general 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 30 days of the date it is submitted. This affidavit must be on the form provided by RTA, which is made a part of this RFP.

*3.11 Timetable*

Release Request for Proposal	RELEASE DATE
Pre-proposal Conference	PRE-MEETING DATE, PRE-MEETING TIME
Final date for Request for Information and Clarification	CLARIFICATION DATE
Proposal Due Date	DUE DATE AT TIME DUE
Estimated Award Date	AWARD DATE

*3.12 Project Manager*

The Project Manager for this procurement is RTA PROJECT MANAGER, Greater Dayton Regional Transit Authority (RTA), 600 Longworth Street, Dayton, Ohio 45402.

*3.13 Proposers Conference*

It is recommended that all proposers attend the pre-proposal conference at 4 S. Main Street, Dayton, OH 45402, on PRE-MEETING DATE, at PRE-MEETING TIME, in the LOCATION conference room.

Clarification about the RFP intent and any questions about the RFP may be addressed at the Pre-Proposal Conference. Answers to questions at the Pre-Proposal Conference are for discussion only. Answers furnished will not be considered official until verified in writing by the RTA in addenda form. Answers that change or substantially clarify the RFP will be affirmed in writing. Copies of the questions and answers will be provided to all prospective proposers in addenda form.

*3.14 Evidence of Qualifications*

Each proposal must contain evidence of the Proposer's qualifications to do business in the State of Ohio or covenant to obtain such qualification prior to award of the contract.

*3.15 Proprietary Information*

If a proposal includes proprietary data or information that the proposer does not want disclosed to the public, such data or information must be specifically identified as such on every page on which it is found. Data or information so identified will be used by RTA solely for the purpose of evaluating proposals and conducting contract negotiations. Disclosure of any proprietary information by RTA shall be in strict accordance with the laws and regulations regarding disclosure in the State of Ohio.

*3.16 Cost of Proposal Preparation*

The cost of preparing a response to this RFP, including site visits, will not be reimbursed by the RTA.

## **PART I - TERMS AND CONDITIONS**

### **Section 4: Required Clauses**

#### *4.0 Required Clauses*

The following clauses shall be incorporated into any contract that results from this RFP. These clauses are prepared by federal, state or local regulations, and are not subject to negotiation.

#### *4.1 Changes*

Any proposed change in this contract shall be submitted to RTA for its prior approval and RTA will make the change by a contract modification.

RTA may, at any time, by a written order and without notice to the sureties, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by Contractor of the notification of change provided, however, that RTA, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse Contractor from proceeding with the contract as changed.

#### *4.2 Audit and Inspection of Records*

Contractor shall permit the authorized representatives of RTA, its member entities, the City of Kettering, Ohio, 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 its subcontracts hereunder, a provision to the effect that the subcontractor agrees that RTA, its member entities, the City of Kettering, Ohio, the 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) subcontracts 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 of.

#### 4.3 *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.

#### 4.4 *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.

#### 4.5 *Prohibited Interest*

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

#### 4.6 *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 proposer that fails to comply with the goal or make good faith efforts shall not be eligible to be awarded this contract.

C. *Procedure*

DBE's are required to be certified 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 [www.dot.state.oh.us/contract](http://www.dot.state.oh.us/contract), or by calling 614/728-8498. 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 proposer 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-proposal 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 DBEs 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 proposer 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 proposer'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 proposer 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 proposer'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 proposer 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 proposals 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 proposer has made good faith efforts, the RTA may take into account the performance of other proposers in meeting the

contract. For example, when the apparent successful proposer 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 proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, the RTA may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

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

F. *Disadvantaged Business Enterprise Substitutions*

It is strictly prohibited that a Contractor change the DBE(s) identified in a contract. If proposer(s) 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 DBEs.

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.

#### 4.7 *Affirmative Action Assurance Plan*

All proposers will be required to comply with all Equal Employment Opportunity laws and regulations and file with RTA's DBE Officer, if requested, an Affirmative Action Assurance Plan, consistent with RTA's non-discriminatory policy, subject to RTA approval. All proposers must submit with their proposal, a letter from the City of Dayton Human Relations Council, stating that they have an approved Affirmative Action Assurance Plan.

Failure to furnish the letter from the City of Dayton's Human Relations Council may cause for rejection of your proposal. If a proposer is not on the approved list, please contact the following office to obtain an application:

City of Dayton, Ohio  
Human Relations Council  
371 W. Second Street  
Dayton, OH 45402  
(937) 333-1403

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

#### 4.8 *Substitution of Disadvantaged Subcontractors*

4.8.1 In the event of a DBE Subcontractor's inability to perform, Contractor shall notify RTA immediately of the default. The notice to RTA shall also contain an express of intent to exercise good faith to replace the defaulting DBE with another DBE, if it is possible to do so. Contractor shall contact available DBE referral services and individual DBEs in furtherance of its good faith efforts. If a new DBE is obtained, Contractor shall notify RTA with copies of a new or amended contract and a new certification form. Contractor shall obtain RTA approval to ensure use of a certified DBE as a substitute. RTA reserves the right to disqualify the proposed substitute on grounds other than DBE eligibility.

4.8.2 Upon approval of the proposed substitute, RTA shall notify Contractor of such findings.

#### 4.9 *Contract Termination*

##### 4.9.1 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.

##### 4.9.2 Termination for Convenience

Termination for convenience of RTA. 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.

4.9.3 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.

#### 4.10 *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.

#### 4.11 *Maintenance of Records*

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

#### 4.12 *Payments*

The payment terms of the contract shall be net 30 days. Invoices shall be sent to: Greater Dayton Regional Transit Authority, Attn: Accounts Payable, 4 South Main Street, Dayton, OH 45402. On a monthly basis, RTA will pay the contractor:

- A. The monthly charge covering the contractor's fixed costs. The first invoice covering the first month of the contract shall be sent to RTA no earlier than the 15th of the month. Subsequent monthly invoices shall be sent to RTA no earlier than the 15th of the month in which the monthly charge covers.
- B. No more than two invoices per month shall be sent to RTA.

#### 4.13 *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.

#### 4.14 *Indemnifications*

Contractor shall indemnify and save harmless RTA, its trustees, officers and employees from and against all loss, 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.

#### 4.15 *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.

#### 4.16 *Homeland Security*

Contractor shall comply with Homeland Security, Ohio Revised Code 2909.33 as applicable which requires that any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization that conducts any business with or receives funding in an aggregate amount greater than one hundred thousand dollars annually from the state, any instrumentality of the state, and any political subdivision of the state, excluding the amount of any personal benefit, shall certify that it does not provide material assistance to any organization on the United States department of state terrorist exclusion list. Additional information can be found at <http://www.homelandsecurity.ohio.gov>.

#### 4.17 *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.

#### 4.18 *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.

#### 4.19 *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, sex, disability, age or national origin. 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, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; lay-off 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, sex, 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, 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, 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 cancelled, 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, 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, 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.

#### *4.20 Subcontracts Approval*

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

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

4.20.3 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 that 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).
- 4.20.4 The advance notification required by the above shall include: A description of the supplies or services to be called for by the subcontract;
- 4.20.5 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;
- 4.20.6 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
- 4.20.7 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.
- 4.20.8 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.
- 4.20.9 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.
- 4.20.10 Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost plus a percentage-of-cost basis.

4.20.11 Strict compliance with the provisions of this paragraph shall be a condition or 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".

4.21 *Price Complete*

The price quoted in any proposal submitted shall include all items of labor, materials, tools, equipment and other costs necessary to fully complete the services pursuant to this RFP. Any items omitted from the RFP which are clearly necessary for the services and their intended use shall be considered a portion of such services although not directly specified or called for in this RFP. No advantage shall be taken by the Proposer in the omission of any part or detail that makes the services complete.

4.22 *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, Greater Dayton Regional Transit Authority, shall be liable hereunder.

4.23 *Contract Duration*

The duration or term of this contract shall be for a CONTRACT DURATION commencing CONTRACT DATE. It is anticipated that the RTA will present this procurement to the RTA Board of Trustees for approval on AWARD DATE. The contract will be awarded to one (1) firm with an effective date upon execution of the contract.

4.24 *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 \_\_\_\_\_.

4.25 *Entire Agreement*

This contract contains the entire agreement between 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.

#### 4.26 *Protest Procedures*

A. The RTA will hear and consider a bona fide bid protest regarding its procurement actions in accordance with the following 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. The RTA intends to provide a thorough review of all bona fide bid protests. The RTA's primary concern is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of bid protests to unnecessarily delay the procurement process.

Parties are encouraged to exhaust all methods described in the bid documents for resolving a procurement issue before filing a formal bid protest with the RTA.

1. RTA reserves the right to postpone bid openings/proposal due dates for its own convenience and to reject any and all bids/proposals received.
2. Changes to the specifications/Scope of Work, will be made by addendum only and sent to all bidders/proposers of record.
3. Prime bidders/proposers may make appointments to discuss the specifications/scope of work; however, this does not relieve proposers/bidders from submitting the written documentation required below.
4. Protests may be filed during the pre-award, award or post-award phases of the procurement. Bidders/proposers may protest a bid/proposal award as soon as practical, but not later than five (5) business days following the receipt of proposed recommendation of award or receipt of rejection notification. All protests must be submitted in writing and be addressed to RTA's Executive Director.

The protest shall:

- Name the protester;
- Name the solicitation/contract (e.g., GD 10-XX);
- State the grounds of the protest; and
- State the relief sought.

The protester shall submit with the protest any and all documents which he/she believes supports the protest. The protester shall state further if it wishes an informal conference in which to discuss the protest with the RTA.

5. If any information is omitted or incomplete, the RTA will notify the protester in writing and the protester shall be required to provide such information within (3) business days if the protest is to be further considered.
6. The Executive Director shall give consideration to all facts and issues involved. The RTA's Manager of Procurement shall present all relevant facts and issues to



the Executive Director. The Executive Director may, at his/her own discretion, form a committee which may include the general counsel and the department or division head, who will benefit from the Contract, or any combination thereof.

7. If an informal conference is requested, the Executive Director shall give the protester written notice of the place, location and time of the informal conference, which shall be within three (3) business days of such notice. Any information to be considered in the protest decision must be submitted in writing within twenty-four (24) hours after the conference.
8. The Executive Director will return a written decision to the protester within ten (10) business days of the receipt of the protest including the submission of additional written information submitted to RTA under these rules as part of the protest process. The written response from the RTA shall address each substantive issue raised in the protest. Such decision is final unless a request for reconsideration is filed.
9. If the protester is dissatisfied with the initial decision made by RTA, it may request in writing a reconsideration based on data which was not previously known, or because there has been an error of law or regulation. The request shall be delivered to the Executive Director within three (3) business days of receipt of the initial decision made by the Executive Director. The request shall state the reason(s) why the decision should be reconsidered and any information to support such a position. The Executive Director, in the manner provided above for an initial protest, shall consider and decide the request for reconsideration and shall issue a written decision to the protester within ten (10) business days. The protester will be notified of the decision and all substantive issues, will be addressed that were raised in the request for reconsideration. Such a decision is final.
10. FTA will only entertain a protest that alleges RTA has failed to have or adhere to a protest procedure. A protest to FTA must be filed in accordance with FTA Circular 4220.1F.
11. RTA may only proceed with the procurement, when a protest is pending, when the conditions spelled out in FTA Circular 4220.1F have been met. RTA will not award prior to resolution of a protest, or open bids or proposals prior to resolution of a protest filed before bid opening/proposal due date, except as provided in FTA Circular 4220.1F.
12. Potential bidders/proposers will be advised of a pending protest if made before award.
13. Should the protester be dissatisfied with the decision rendered by the RTA, and the protest sent to the FTA has not been taken or relief granted thereunder, the

protest would have to be taken to the appropriate state or local administrative or judicial authority.

14. All protest documents shall be faxed, hand delivered or sent by overnight courier with return receipt requested to the RTA Executive Director or the protestor and shall be deemed received on date delivered by fax, hand delivery, or overnight courier.

Potential protesters and other interested parties include all interested bidders/proposers and any subcontractor or supplier with a substantial economic interest in a portion of the IFB/RFP.

The FTA will be notified of any and all protests received. RTA will keep FTA informed of the status of the project.

#### 4.27 *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 (P.L. 94-163).

#### 4.28 *Clean Water Act/Clean Air Act*

Contractor must comply with the requirements of Section 508 of the Clean Water Act and Section 306 of the Clean Air Act which prohibits the use of facilities included in the Environment Protection Agency (EPA) "List of Violation Facilities." This provision also requires the reporting of any violations to RTA and the EPA.

#### 4.29 *Insurance*

### **PROFESSIONAL SERVICE INSURANCE REQUIRMENTS**

The Professional (including but not limited to attorneys, accountants, architects, engineers, computer and systems support services, advertising, insurance service providers, and other consultants) shall maintain, at its own expense, throughout the period of the Contract and any extensions thereof the following minimum insurance coverage of the types and in the amounts described below that are applicable to the scope of work being performed:

- 1. Workers Compensation.** Professional 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 Professional 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.

**2. Commercial General Liability Insurance.** Professional 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 in the aggregate.

**3. Commercial Auto Liability Insurance.** Professional 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.

**4. Professional Liability Insurance.** Professional shall carry Professional Liability/Errors & Omissions/Malpractice Insurance in an amount of no less than \$1,000,000 per occurrence and in the aggregate.

**5. Fidelity Bond/Crime.** If Professional or its employees will be on the premises of RTA in connection with performance of the Work under this contract, Professional 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 Professional's employees.

**6. Requirements common to all policies.**

**a.** Professional shall be solely responsible for reimbursing any deductible amount to the insurer. Any deductibles or self-insured retentions in excess of \$5,000 must be disclosed and approved in writing by RTA, other than the Professional Liability policy, which may carry a deductible of up to \$25,000 without written approval of the RTA.

**b.** Professional 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 Professional'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 Professional's insurance coverages are in compliance with the insurance requirements set forth below must be completed by the Professional's insurance agent, broker, or insurance company and accompany the proposal. 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.

**e.** Failure of RTA to 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 Professional) shall not be construed as a waiver of Professional's obligations to maintain such insurance. RTA shall have the right, but no the obligation, to prohibit Professional 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. Professional 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 Professional, and such coverage limits shall not be deemed as a limitation on Professional's liability under the indemnities granted to RTA.

#### 4.30 *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.

#### 4.31 *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, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 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 proposers that it will affirmatively ensure that, in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals 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, 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 proposal 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, 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.
- G. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any 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.

#### 4.32 *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.

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

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

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.

#### 4.33 *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.

#### 4.34 *Americans with Disabilities*

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 of 1990 (ADA), 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;
- 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.

#### 4.35 *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.

#### 4.36 *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 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, 41 C.F.R. § 301-3.61(b), and any later regulations at 41 C.F.R. § 301-10.131 et seq.

#### 4.37 *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.

#### 4.38 *Debarment and Suspension*

The Contractor agrees to comply with U.S. Department of Transportation regulations, "Government Debarment and Suspension (Nonprocurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the proposer to submit the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matter for all projects when the total aggregate value of the Contract exceeds \$100,000 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; and 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.



#### 4.39 *Lobbying*

During the term of this Contract, the Contractor agrees to comply with the provisions of 31 USC Section 1352, which prohibits the use of federal funds for lobbying by any official or employee of any federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20 and include these requirements in any subcontract which exceeds \$25,000.

The Contractor and all subcontractors in receipt of contracts exceeding \$25,000 shall submit Standard Form LLL quarterly to RTA. The Contractor shall also submit with each request for payment 1) a list of each contractor and subcontractor that is subject to the Lobbying Certifications, 2) certifications or evidence of certification for all 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.

#### 4.41 *Trade Secret Notification*

Under Ohio Law, a proposal 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 proposer must notify the RTA in all of their proposal documents as to which portions of their proposal documents constitute trade secrets and are to be treated as confidential. As proposer, it is your responsibility to mark those parts of the proposal 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.

#### 4.42 *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.

#### *4.43 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.

#### *4.44 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 Proposal Document. The Contractor and the RTA recognize it will be difficult to compute the RTA's damage resulting from unexcused delays in the performance of the contract, particularly in view of the fact that the RTA is not a profit-making entity. Accordingly, it is agreed that the RTA will have the right to recover liquidated damages for delay in the completion of this contract beyond the date specified and not subject to the contract excusable delays clause to be computed as follows: **\$ See Procurement Manager**. Costs caused by delays or defective construction shall be borne by the party responsible thereafter.

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

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

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

#### *4.45 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.

#### *4.46 Late Submissions, Modifications, and Withdrawals of Proposals*

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

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

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

Proposals may be withdrawn by written or telegraphic request received from proposers prior to the time set for the receipt of proposals. Proposals may be withdrawn in person by a proposer or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

#### *4.47 Confidentiality of Proposals*

During the evaluation, negotiation and selection process, evaluation committee members may not disclose any information in regards to the procurement. Except for the identity and background of the successful proposer and the contract price, all information provided by proposers remains confidential after the conclusion of the process, to the extent permitted by law.

The RTA will exempt from disclosure of proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial or financial information, which the proposer believes should be exempted from disclosure, shall be

specifically identified and marked as such. Blanket type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

#### 4.48 *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 Procurement Rep.

#### 4.49 *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.

#### 4.50 *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, 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.

#### 4.51 *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 40 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."

4.52 *Parts*

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

4.53 *Prompt Payment*

We will include the following clause in each DOT-assisted prime contract:

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.

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