

STANDARD FORM OF BID  
DIESEL FUEL & GASOLINE  
FOR  
METRO REGIONAL TRANSIT AUTHORITY  
and other  
TRANSIT AUTHORITIES

BIDS DUE:

10:00 AM

December 5th, 2019

IFB #2019-10

# METRO

**METRO REGIONAL TRANSIT AUTHORITY**

416 Kenmore Boulevard  
(330) 762-7267

Akron, Ohio 44301-1099  
(330) 762-0854 FAX

## LEGAL NOTICE

Notice is hereby given that the METRO Regional Transit Authority along with other Transit Authorities are requesting proposals for:

### DIESEL FUEL & GASOLINE

Detailed specifications are available by contacting Dana Gibitz, Manager of Procurement at (330) 564-2261. A request may also be made by emailing [dana.gibitz@akronmetro.org](mailto:dana.gibitz@akronmetro.org).

All bids must be submitted in accordance with requirements set forth in this bid documentation, and must be received in the offices of METRO or before December 5th, 2019, at 10:00 AM.

In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, or handicap.

The Regional Transit Authorities have not set a DBE goal for this procurement.

The Regional Transit Authorities reserves the right to solicit or to waive a new solicitation, for new bids if sufficient effort, as determined by the Regional Transit Authorities, has not been made to comply with the DBE goals and other requirements.

All bidders are certifying that they are not on the Comptroller General's list of ineligible Contractors by signing the proposal page.

A five hundred (\$500.00) dollar bid bond or cashier check is required at the time of bid submission. Bid security furnished in bond form, shall be issued by a surety company or corporation licensed in the State of Ohio to provide said surety.

The Regional Transit Authorities reserves the right to reject any and/or all proposals, to re-advertise for proposals and to waive any informality in any proposal and to determine the most responsive proposal by its own criteria, as described within the specification.

The Authorities further advise prospective bidders that all bids must be filed on the forms provided by the Authority and that all bids must be clearly marked on the lower left side of the outermost envelope with the words, **ATTN: IFB# 2019-10**



Dawn S. Distler,  
EXECUTIVE DIRECTOR/SECRETARY-TREASURER

**STANDARD FORM OF BID  
FOR THE PURCHASE OF DIESEL FUEL & GASOLINE**  
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1) ADVERTISEMENT FOR PROPOSALS

Advertisement for proposals for **the purchase of Diesel Fuel & Gasoline** by the METRO Regional Transit Authority (METRO), the Portage Area Regional Transit Authority (PARTA), the Stark Area Regional Transit Authority (SARTA), Western Reserve Transit Authority (WRTA), LAKETRAN and Medina County, appeared in the Beacon Journal on November 7th, 2019 and November 14th, 2019.

2) DURATION OF CONTRACT

Duration of the proposed contracts shall be for deliveries covering the January 1<sup>st</sup> to December 31<sup>st</sup>, 2020 contract period. Each Transit Authority will issue its own contract(s), which will be awarded by their respective Board of Trustees.

3) PROPOSAL

Sealed bids for the above will be received at the METRO's general office until 10:00 AM on December 5th, 2019, and thereafter will be publicly opened and read in the VERN ODOM BOARD ROOM located at 416 Kenmore Blvd, Akron, OH 44301.

4) BID BOND

Each bid shall be accompanied by a certified or cashiers check on a solvent bank in an amount which shall not be less than **five (\$500.00) hundred dollars**, as assurance that a contract will be entered into. Said check shall be made payable to the METRO Regional Transit Authority.

A bid or proposal bond in an amount not less than **five (\$500.00) hundred dollars** is acceptable in lieu of the certified or cashiers check.

Bid Bond Requirements

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to METRO and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by METRO to reject any and all bids, or part of any bid. It is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of METRO.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within ninety (90) days after the bid opening without the written consent of METRO, or if the bidder shall refuse or be unable to enter into this Contract, as provided above, or unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or adequate and acceptable insurance, they shall forfeit their bid security to the extent of METRO

damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

5) DISPOSITION OF CERTIFIED OR CASHIERS CHECK

Said certified or cashiers check to be forfeited to METRO as agreed amount of liquidated damages in case of failure to enter into a contract as above described. The check will be released or returned to the bidder in the case of the proposal being rejected.

In case the proposal is accepted, the check will be returned after the contract has been signed. The check of the next lowest bidder will be retained until the lowest responsible bidder has signed. If they fail to do so, said check shall be further retained until the second lowest responsible bidder shall have signed; and in default thereof, the check shall be forfeited to METRO as liquidated damages.

6) PERFORMANCE/PAYMENT BOND (Not Applicable)

7) FORM OF PROPOSAL

Every proposal must be made upon the blank proposal form attached hereto and must contain the full name of every person, firm, or corporation interested in the proposal, and the address of the person, firm, or the president and secretary of the corporation bidding; and if a corporation, the name of the State in which it is incorporated.

8) NAME OF BIDDER

Each proposal must be clearly signed with the full name and address of each person interested in it. In case of a partnership, the firm name and address of each individual party must be given.

9) SIGNATURE OF BIDDER

Firm, corporate, or individual name of the bidder must be signed by the bidder in the space provided for the signature on the proposal blank. In case of a corporation, the title of the officer signing must be stated and each officer must be thereunto duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name, using the term "member of firm." In case of an individual, use the term "doing business as" or "sole owner."

10) BIDDER AFFIDAVITS

Bidder is required to submit with their bid an affidavit stating that neither they nor their agents, nor any other party for them has paid or agreed to pay, directly or indirectly, any persons, firm, or corporation any money or valuable consideration for assistance in procuring or attempting to procure the contract herein referred to and further agreeing that no such money or reward will be hereafter paid. This affidavit must be on the form attached hereto and made part of this proposal.

Each bidder, who is a foreign corporation, i.e., a corporation not chartered in Ohio, but licensed to do business in Ohio, is required to submit with their bid an affidavit duly executed by the President or Executive Director of the corporation, stating in said affidavit that said foreign corporation had, in accordance with the provisions of the Revised Code of the State of Ohio, obtained a certificate authorizing it to do business in the State of Ohio. The certificates, or certified copies of same, are obtainable from the Office of the Secretary of State, Columbus, Ohio.

11) SPECIFICATIONS TO BE PART OF THE CONTRACT

Specifications, statements, and the proposal, which accompany the bids, which are accepted therewith, and which do not conflict with the provisions herein contained, shall be part of any contract that is entered into.

12) EXPLANATIONS (WRITTEN AND/OR ORAL)

Should a Bidder find a discrepancy in or omissions from these specifications, or should there be any doubt as to their meaning, Bidder shall at once make inquiry of the Manager of Procurement.

13) WITHDRAWAL OF PROPOSAL

No bid will be allowed to be withdrawn for ninety (90) days after it has been deposited with the Chief Accountant.

14) CONSIDERATION OF BID

All proposals received in conformity with these specifications shall, as soon as possible be tabulated.

15) REJECTION OR ACCEPTANCE OF BIDS

The Executive Director reserves the right to accept or reject any or all bids, and any parts of any bid. In awarding a contract, the Executive Director reserves the right to consider all elements entering into the question of determining the responsibility of the bidder. Any bid which is incomplete, conditional, obscure, or which contains additions not called for, or irregularities of any kind, may be cause for rejection of the bid. In case of any discrepancy between the price written in the bid and that given in figures for any item, the price in writing will be considered as the bid.

16) UNACCEPTABLE BIDS

No bid will be accepted from or contract awarded to any person, firm, or corporation that is in arrears or is in default to METRO upon any debt or contract, or that is a defaulter as surety or otherwise upon any obligation to said Authority or has failed to perform faithfully any previous contract with the Authority.

17) WORKERS' COMPENSATION ACT

The Bidder shall comply with the State Law known as the Workers' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act or elect and maintain status as a Qualified Self Insured as allowed by the Act to cover all employees furnishing said services to METRO, and under the control of the Bidder, and shall relieve METRO from any costs due to accidents and other liabilities mentioned in said Act.

18) SOCIAL SECURITIES ACT

The Bidder shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, and old age retirement benefits or annuities now or hereafter imposed under any State and Federal law which are measured by the wages, salaries, or other remunerations paid to persons by the Bidder on work performed under the terms of this contract, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said Bidder also

agrees to indemnify and save harmless the Board of Trustees from any contributions or liability therefor.

19) EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project/Contract, the bidder/respondent may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age or national origin. Such action 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.

20) DISADVANTAGED BUSINESS ENTERPRISE

1. The Federal Fiscal Year goal has been set by METRO in an attempt to match projected procurements with available qualified disadvantaged businesses. METRO goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by METRO as set forth by the Department of Transportation Regulations 49 CFR Part 26, and are considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Specifications. If the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, METRO may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract, but DBE participation is still a requirement.

- (a) Policy - It is the policy of the Department of Transportation and METRO that Disadvantaged Business Enterprises, as defined in 49 CFR Part 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. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of METRO to promote the development and increase the participation of businesses owned and controlled by the disadvantaged. DBE involvement in all phases of METRO procurement activities is encouraged.

- (b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with

49 CFR Part 26, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- (c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, METRO may declare the Contractor noncompliant and in breach of contract.
  - (d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with METRO's DBE Program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of METRO and will be submitted to METRO upon request.
  - (e) METRO will provide affirmative assistance as may be reasonable and necessary to assist the prime Contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
    - Identification of qualified DBEs
    - Available listing of Minority Assistance Agencies
    - Holding bid conferences to emphasize requirements
2. DBE Program Definitions, as used in the contract:
- (a) "Disadvantaged business" means a small business concern:
    - i. Which is at least fifty-one (51%) percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least fifty-one (51%) percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
    - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.or
    - iii. Which is at least fifty-one (51%) percent owned by one or more women individuals, or in the case of any publicly owned business, at least fifty-one (51%) of the stock of which is owned by one or more women individuals; and
    - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
  - (b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
  - (c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents), who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or

individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

- 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, 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, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- v. "Subcontinent Asian-Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

21) DBE PARTICIPATION REQUIREMENTS

All prime or general Contractors are hereby notified that they must show that all reasonable good faith efforts were made to have DBE participation or meet the minimum DBE participation goals on this contract, if applicable.

For a list of qualified DBEs please visit the State of Ohio's web site at [www.ohioucp.org](http://www.ohioucp.org).

Please contact Lori Stokes, DBE Officer, (330) 762-7267 ext 3033, if you need assistance.

<This affidavit must be on the form provided by METRO, which is enclosed with this bid package>

22) AWARD OF CONTRACT

The contract shall be awarded to the lowest and best overall bid meeting the minimum requirements as set forth in the specifications. METRO will pay no interest, finance, or carrying charges on our unpaid balance. There will be no down payment or prepayment made as part of this award.

23) PATENT AND DATA RIGHTS (Not Applicable)

24) INELIGIBLE CONTRACTORS/DEBARMENT AND SUSPENSION

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may pursue available remedies, including suspension and/or debarment.



3. The prospective lower tier participant shall provide immediate written notice to METRO if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction", "participant", "persons", "lower tier covered transaction", "principal", "proposal" and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29].
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by METRO.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by the U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, METRO may pursue available remedies including suspension and/or debarment.

<This affidavit must be on the form provided by METRO, which is enclosed with this bid package>

25) BUY AMERICA (Not Applicable)

26) AUDIT AND INSPECTION OF RECORDS

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Bidder agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Bidder agrees to provide the Purchaser, the FTA

Administrator or his authorized representatives, including any PMO Contractor, access to the Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Bidder shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
4. The Bidder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
5. The Bidder agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Bidder agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
6. FTA does not require the inclusion of these requirements in subcontracts.

27) SUBCONTRACT APPROVAL

Any subcontract the Bidder may wish to enter into must be approved by METRO prior to the execution of the subcontract, and all the requirements of the FTA third party contracts must be included within said subcontracts to gain approval of METRO.

28) OWNERSHIP OF DOCUMENTS

METRO and FTA (if funded by federal funds) will become owners of all documents prepared by the Bidder upon payment for same by METRO, except any documents which may be protected by patent, lease or other written documents which provide proof of ownership.

29) AMENDMENTS TO THE CONTRACT

This agreement may be amended at any time, providing any amendment is in writing and approved by the Executive Director and the Bidder.

30) CARGO PREFERENCE (WHERE APPLICABLE)

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.)

- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
- d. requires Bidders and subcontractors at every tier to use United States flag air carriers, to the extent service by these carriers is available. When the contract may involve the international transportation of goods, equipment, or personnel by air, the contract must abide by 49 U.S.C. 40118 and 4 CFR Part 52.

31) ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

The Bidder and all of its subcontractors shall recognize mandatory standards and policies relating to the following requirements:

Energy Requirements

The Bidder agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state of Ohio energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water

- (1) The Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Clean Air

- (1) The Bidder agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Bidder agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Bidder also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Recovered Materials

The Bidder 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.

32) SEISMIC SAFETY REQUIREMENTS (Not Applicable)

33) TERMINATE/BREACH OF CONTRACT

- a. Termination for Convenience (General Provision)  
METRO may terminate this contract, in whole or in part, at any time, with 30 days prior

written notice to the Contractor, when it is in the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to METRO to be paid to the Contractor. If the Contractor has any property in its possession belonging to METRO, the Contractor will account for the same, and dispose of it in the manner that METRO directs.

b. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule. If the contract is for services, the Contractor fails to perform in the manner called for in the contract. If the Contractor fails to comply with any other provisions of the contract, METRO may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by METRO that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, METRO, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision)

METRO in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to METRO's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten (10) days after receipt by Contractor or written notice from METRO setting forth the nature of said breach or default, METRO shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude METRO from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach

In the event that METRO elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by METRO shall not limit METRO's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

e. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, METRO may terminate this contract for default. METRO shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of METRO.

In the event of a tie, METRO shall award to the firm: 1) with the largest labor surplus in its metropolitan area; 2) the highest DBE participant; or 3) a business registered as a small business with the Small Business Administration.

In the event of a tie and after the aforementioned, the Bidder that submitted their bid first shall be awarded the contract.

35) RIGHT TO PERFORM PRE-AWARD SURVEY

METRO retains the right to review the apparent low Bidder's production schedule and past delivery performance to determine responsibility.

36) RIGHT TO VERIFY PROPOSAL SINGLE BID

METRO shall verify proposals in the event of a single bid response, which shall automatically convert this solicitation to a negotiated purchase, which shall require the Contractor/bidder to negotiate a fair and equitable price. METRO retains the right to request certifiable/cost analysis data, which the bidder must provide.

37) RIGHT TO AUDIT

METRO retains the right to audit the Bidder's proposal to determine that prices proposed are fair and equitable.

38) RIGHT TO ADJUST COST

If METRO determines during the life of the contract that data submitted by the Bidder is not current, incomplete, or is inaccurate, METRO and Bidder shall negotiate a mutually agreeable adjustment in cost.

39) CONTRACT CHANGE ORDERS

Written Change Orders: Oral change orders are not permitted. No change in this contract shall be made unless METRO's Executive Director gives prior written approval. The Bidder shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly approved by written notice.

Change Order Procedure: Within thirty (30) calendar days after receipt of a written change order request, the Bidder shall submit a detailed price and schedule proposal for the work to be performed. The proposal shall be accepted or modified by negotiations between the Bidder and METRO. At that time both parties shall execute a detailed agreement in writing.

40) DEVIATION FROM SPECIFICATIONS

All proposals shall be based upon strict adherence to the specifications contained herein. Any proposer finding it necessary or desirable to deviate from the specifications in any manner (including requests for approved equals) or simply desiring an interpretation of the Contract Documents, shall submit a written request to METRO to be received no later than ten (10) work days prior to the due date for proposals detailing the desired deviation or interpretation. Proposers must identify those relevant physical, functional, or other characteristics of the requested change from specified services, materials or equipment that would enable the change to satisfy the specification. Minor differences in design, construction, or features, which do not effect reliability of the product from its intended use, may be accepted. METRO will render a prompt decision upon each request and will notify Proposers within five (5) work days of the due date for proposals. Only written communications will be authorized and binding. Any approved equal or

deviation allowed, and all interpretations will be published to all prospective Proposers in the form of amendments to the specifications, to be issued as part of the contract. All Proposers must acknowledge receipt of all amendments.

41) PROTESTS

It is the policy of METRO to prepare specifications for invitation to bid or for requests for proposals that are not discriminatory in nature. All solicitations are to be open and free to all competing vendors whereby all have a reasonable chance to be successful and be awarded a contract.

If a Bidder that has submitted a proposal feels that a particular solicitation is unfair, the following procedure must be followed to register a proper protest, and said procedure shall be part of all solicitations:

Pre-Bid Protest

STEP 1. Protest must be made in writing and addressed to the Secretary/Treasurer of METRO's Board of Trustees no later than five (5) business days before the scheduled bid or RFP due date. Such protest must cite what the solicitation was for, and for what reason the protest is lodged.

STEP 2. The Secretary/Treasurer shall make all reasonable attempts to resolve the protest prior to the award of a contract, and may reschedule the bid opening date solely at their discretion if deemed necessary. The Secretary/Treasurer must make their decision no later than three (3) working days from date the protest is lodged.

Continue to Step 3 under Post-Bid procedures below.

Post-Bid Protest

STEP 1. Protest must be made in writing and addressed to the Secretary/Treasurer no later than five (5) business days after the scheduled bid due date. Such protest must cite what the solicitation was for, and for what reason the protest is lodged.

STEP 2. The Secretary/Treasurer shall make all reasonable attempts to resolve the protest prior to the award of a contract. The Secretary/Treasurer must make their decision no later than five (5) business days from date the protest is lodged.

STEP 3. If the protest is not satisfactorily resolved at Step 2, the person or firm making the protest may request a hearing with their legal counsel and METRO. With METRO's legal counsel serving as arbitrator on the matter. Request for such a hearing must be made within ten (10) business days of the original date the protest was filed.

STEP 4. If the protest is not satisfactorily resolved at Step 3, the person or firm making the protest may appeal, within thirty (30) working days of the original protest date, the matter to the Board of Trustees of the Transit Authority, who shall assign the matter to the appropriate standing committee of the Board who shall hold a hearing within fifteen (15) business days on the matter and make recommendation to the full Board to be considered at its next regularly scheduled meeting.

The decision of the Board shall be final and binding on all parties. Appeal from the decision of the Board or any request by an adversely affected party may be submitted in writing to the Federal Transportation Administration (FTA). FTA's recourse shall only consider protest appeals where the local protest procedure does not exist or where the local procedure was not followed.

42) INVOICING

All requests for payment from METRO shall be mailed to:

Accounts Payable  
METRO Regional Transit Authority  
416 Kenmore Boulevard  
Akron, Ohio 44301-1099

Invoices can also be emailed to [accountspayable@akronmetro.org](mailto:accountspayable@akronmetro.org)

NOTE: No finance charges shall be paid by METRO, and payment will be made in a reasonable length of time after approval of the METRO Board of Trustees and receipt of funds from FTA or the State of Ohio, where applicable. There will be no prepayments or down payments made on this procurement.

Payment will be made by METRO via ACH when possible. Please complete the ACH payment form.

<This form is provided by METRO, which is enclosed with this bid package>

#### Prompt Payment

The Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than ten (10) days from receipt of each payment the Contractor receives from METRO. The Contractor agrees further to return retainage withheld to ensure satisfactory completion of the work to each subcontractor within thirty (30) days after subcontractor completes the specified work as verified by payment from METRO.

#### 43) DELINQUENT PERSONAL PROPERTY STATEMENT

Each Bidder is required to submit with its proposal a statement affirmed under oath that they are not charged at the time their bid was submitted with any delinquent personal property taxes on the general tax list of personal property in Summit County, Ohio. Bidder shall indicate, if applicable, 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, copy of the statement shall be transmitted to the county treasurer within thirty (30) calendar days of the date it is reviewed.

<This affidavit must be on the form provided by METRO, which is enclosed with this bid package>

#### 44) DISCLOSURE OF LOBBYING ACTIVITIES

Bidders who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

<This affidavit must be on the form provided by METRO, which is enclosed with this bid package>

#### 45) NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Bidder 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 to 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.

(2) The Bidder 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.

46) USE OF FEDERAL FUNDS

Please note that federal funds may be used with regard to this specification.

47) DRUG AND ALCOHOL TESTING (Not Applicable)

48) TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (Not Applicable)

49) SCHOOL BUS REQUIREMENTS (Not Applicable)

50) RECORD RETENTION

The successful Bidder must retain in its files of business activity records for a period of three (3) years per 49 CFR § 18.36 (i) (11).

51) PRE-AWARD AND POST-DELIVERY AUDIT (Not Applicable)

52) CIVIL RIGHTS

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their



race, color, creed, national origin, sex, or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### 53) NOTICE OF FEDERAL REQUIREMENTS

Bidder 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 (20) dated October 2013), as they may be amended or promulgated from time to time during the term of this contract. Bidder's failure to so comply shall constitute a material breach of this contract.

#### 54) AMERICANS WITH DISABILITIES ACT

The Bidder agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) 42 USC § 11401 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 19 USC § 792, 49 USC § 5301(d); and the Federal Regulations including any amendments thereto: 49 CFR Part 27, 49 CFR Part 38; 28 CFR Part 35; 28 CFR Part 36; 41 CFR Subpart 101-19; 29 CFR Part 1630; 47 CFR Part 64, Subpart F; and 49 CFR Part 609.

#### 55) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- (1) The Bidder 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 CFR 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.
- (2) The Bidder 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.

- (3) The Bidder 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.

#### 56) PRIVACY

The following requirements apply to the Bidder and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Bidder agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Bidder agrees to obtain the express consent of the Federal Government before the Bidder or its employees operate a system of records on behalf of the Federal Government. The Bidder understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Bidder also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

#### 57) LABOR PROVISIONS

Pursuant to Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR, Part 5, and pertaining to all federally-assisted non-construction contracts of \$2,500 let by THE AUTHORITY, the affected Contractor shall comply with the following provisions:

- a. Overtime Requirements.  
No Bidder or subcontractor, contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic, in any work week in which he or she is employed on such work, to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such work week, unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 1/2) the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such work week, whichever is greater.
- b. Violation; liability for unpaid wages; liquidated damages.  
In the event of any violation of the clause set forth in Subparagraph (b) (1), 29 CFR, Section 5.5, the Bidder and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a Territory, to such District or to such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Subparagraph (b) (1) of 29 CFR, Section 5.5, in the sum of ten (\$10) dollars for each calendar day in which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard

work week of forty (40) hours without payment of the overtime wages required by the clause set forth in Subparagraph (b) (1) of 29 CFR, Section 5.5.

- c. Withholding for Unpaid Wage and Liquid Damages.  
DOT or the recipient shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Bidder or subcontractor under any such contract or any other Federal contract with the same price Contractor, or any other Federally assisted contract subject to the contract work hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Subparagraph (b) (2) of 29 CFR, Section 5.5.
- d. Subcontracts.  
The Bidder or subcontractor shall insert in any subcontracts the clauses set forth in subsections A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Bidder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subsections A through D of this Section.
- e. Non-Construction Contracts.  
In addition to the clauses contained in 29 CFR, Section 5.5 (b) or subsections A-D of this Section, in any contract subject only to the contract work hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR, Section 5.1, THE AUTHORITY shall insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, Social Security Number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, THE AUTHORITY shall require the Contracting Officer to insert in any such contract a clause providing that the records to be maintained under this subsection shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of DOT and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

- 58) LIQUIDATED DAMAGES (Not Applicable)
- 59) FLY AMERICA (Not Applicable)
- 60) CHARTER BUS (Not Applicable)
- 61) BUS TESTING (Not Applicable)
- 62) ASSIGNMENT OF OPTIONS (Not Applicable)
- 63) INSURANCE AND TAXES

The Bidder shall obtain and maintain in full force and effect throughout the term of the contract, such insurance and Workers Compensation Insurance as set forth herein. The Proposer shall assume full financial responsibility for its personnel, including all deductions of Social Security and withholding taxes and required contributions to state and federal unemployment compensation funds. Awarded Proposer shall include all Subcontractors as insured under its policies or shall furnish separate certificates or endorsements for each Subcontractor. All Subcontractors shall be subject to all of the requirements stated herein.

Proposer shall indemnify, hold harmless and defend the public entity, its officers, employees, agents and volunteers against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which METRO, its officers or employees may hereafter sustain, incur or be required to pay, arising solely out of or by reason of any act or omission of Proposer, its agents, servants or employees, in the execution, performance or failure to adequately perform Proposer's obligations pursuant to this contract.

Bidder shall provide Certificates of Insurance evidencing such coverage to METRO before the commencement of any work under any Contract resulting from this proposal.

- A. Comprehensive General Broad Form or Commercial General Liability: \$1,000,000 combined single limits per occurrence and \$1,000,000 annual aggregate covering bodily injury, personal injury and property damage.
- B. Automotive Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, or split limits of \$500,000 per person/\$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage.

METRO and its officers, employees and agents shall be endorsed to above policies as Additional Insured for such liability as may be incurred on the performance of any Contract resulting from this proposal.

- C. Workers' Compensation Statutory coverage, if and as required according to the State Labor Code. The policy shall be endorsed to waive the insurer's subrogation rights against METRO.

Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by METRO's Executive Director.

Each of the above-required policies shall be endorsed to provide METRO with thirty (30) days prior written notice of cancellation. METRO is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of the awarded Proposer to furnish insurance during the term of any Contract resulting from this proposal.

These requirements assume that standard insurance policy forms, terms, and conditions will apply to cover the expected risk exposures for the intended Scope of Work. Additional qualifying policy conditions or special endorsements may be specified in a Contract resulting from this proposal depending on the final Scope of Work agreed on by METRO and the awarded Proposer.

64) **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, 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 METRO requests which would cause METRO to be in violation of the FTA terms and conditions.

65) **PUBLIC RECORDS**

Under State of Ohio law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) submitted in response to this request for proposals (the “documents”) become a public record after the procurement process has been completed, subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law.

66) GRATUITIES

Neither the Bidder nor any person, firm, or corporation employed by the Bidder shall give, directly or indirectly, to any employee or agent of METRO, any gift, money, or anything of value, or any promise, obligation, or contract for future reward or compensation, during the proposal process or during the performance of any contract period resulting from this proposal.

67) GOVERNING LAW

The Agreement, which may ensue under this solicitation, shall be governed exclusively by the federal laws of the United States of America and the laws of the State. THIS AGREEMENT WILL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OR BY THE PROVISIONS OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE, THE APPLICATION OF WHICH IS EXPRESSLY EXCLUDED.

The laws of the State shall govern the rights, obligations, and remedies of the parties. Whenever there is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then Federal common law, including the law developed by Federal boards of contract appeals, the United States Claims court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue of any action shall lie exclusively in the County of Summit, Ohio. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

Should either party institute any action to enforce this Agreement, or any provision hereof, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorney’s fees.

68) VETERANS PREFERENCE

Veterans Employment.

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

69) “RESPONSIBILITY” REQUIREMENTS

**In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U. S. C. Section 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. METRO may require, prior to the award of a contract, documentation of the apparent lowest responsive bidder’s financial stability.**

THE FOLLOWING PAGES MUST  
BE FILLED OUT COMPLETELY  
BY THE BIDDER:

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

## - Lower Tier Covered Transaction

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 CFR § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The bidder respondent and all subcontractors hereby certify that he/she has not been debarred or suspended from participation in Federal contracts. Please note - separate certification may be photo copied and submitted by each subcontractor. (Pursuant to 49 CFR, Part 29)

CERTIFIED (Contractor)

CERTIFIED (Sub-Contractor(s))

Company

Signed By

Name & Title

Date

Company

Signed By

Name & Title

Date

# DELINQUENT PERSONAL PROPERTY STATEMENT

\_\_\_\_\_, hereby affirms under oath, pursuant to Ohio Revised Code Section 5719.042, that at the time the bid was submitted by \_\_\_\_\_ (company) was / was not (please circle one) charged with delinquent personal property taxes on the General Tax List of Personal Property for Summit County, Ohio.

If such charge for delinquent personal property tax exists on the General Tax List of Personal Property for Summit County, Ohio, the amount of such due and unpaid delinquent taxes, including due and unpaid penalties and interest shall be set forth below. A copy of this statement shall be transmitted to the Summit County Treasurer within thirty (30) days of the date it is submitted. If a contract is entered into, a copy of this statement shall also be incorporated into the contract between METRO and the bidder and no payment shall be made with respect to any contract unless such statement has been so incorporated as a part thereof.

\$  Delinquent Personal Property Tax \*

\$  Penalties \*

\$  Interest \*

\$  Total \*

Company

Signed By

Name & Title

Date

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

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

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

\_\_\_\_\_  
MY COMMISSION EXPIRES

\* Mark "N/A" if not applicable



# DISCLOSURE OF LOBBYING ACTIVITIES

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (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 an 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 making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

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

Name of Bidder

Address

City/State/Zip

Name of Contractor's Authorized Official

Signature of Contractor's Authorized Official

Title of Contractor's Authorized Official

MUST BE COMPLETED BY BIDDER

# NOTE

The bidder hereby agrees that the Executive Director of the Authority has the right to reject any and all bids and to waive informality in any bid and that the bidder shall not dispute the correctness of the quantities used in computing the lowest and best bid.

NAME OF BUSINESS

ADDRESS

CITY, STATE, ZIP CODE

SIGNATURE OF OFFICER, PARTNER, OR OWNER

NAME AND TITLE

MUST BE COMPLETED BY BIDDER

# NON-COLLUSION AFFIDAVIT

This affidavit is to be filled out and executed by the bidder; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should always appear on the line marked "Name of Affidavit." The affidavit's capacity, when a partner or officer of a corporation, should be inserted on lines marked "Capacity." The affidavit should sign individual name at end not partnership or corporation name, and swear to said affidavit before a notary public, who must attach his/her seal.

State of \_\_\_\_\_,  
County of \_\_\_\_\_,

I, \_\_\_\_\_ being first duly sworn, do hereby state that  
(Name of Affidavit)

I am \_\_\_\_\_ of \_\_\_\_\_  
(Capacity) (Name of Firm, Partnership, Corporation)

whose business is \_\_\_\_\_

and who resides at \_\_\_\_\_

and that \_\_\_\_\_  
(Give names of all persons, firms, or corporation interested in the bid)

is/are the only person(s) with me/us in the profits of the herein contained contract; that the contract is made without any connection or interest in the profits thereof with any persons making any bid or proposal for said work; that the said contract is on my/our part, in all respects fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.

\_\_\_\_\_  
SIGNATURE OF AFFIDAVIT

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

\_\_\_\_\_  
MY COMMISSION EXPIRES

# CERTIFICATE OF DBE ASSURANCE

In connection with the contract to be awarded as a result of the invitation to bid issued by the METRO Regional Transit Authority:

I hereby certify that I am the \_\_\_\_\_ (title) and

duly authorized representative of \_\_\_\_\_ (name of firm)

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

I do hereby assure METRO that I have read and am familiar with the requirements for disadvantaged business participation by companies contracting with METRO.

I understand that METRO has not established a goal for Disadvantaged Business Enterprise participating on this contract.

I further understand that METRO is not requiring documentation to be submitted with this procurement and this does not eliminate the obligation of the Bidder to include DBE participation.

NAME OF BUSINESS

SIGNED BY

NAME AND TITLE

# PROPOSAL

PROPOSAL SHEET FOR DIESEL FUEL

This is a joint purchase and each Transit Authority has a right to award or not award a contract. If an award is made the vendor(s) will enter into separate firm fixed price contracts with each organization. **The lowest responsive vendor for each product will be awarded a contract.** The vendor responding agrees to furnish the product as specified within the specifications. The annual consumption is an estimate and the Transit Authorities reserve the right to purchase only the quantities necessary, whether more or less than the estimated amount needed.

METRO	465,000
PARTA-ULSD	190,000
PARTA -87 Unleaded	52,000
SARTA	370,000
WRTA-ULSD	295,000
WRTA-87 Unleaded	70,000
MEDINA	55,000
LAKETRAN - 87 Unleaded	30,000
LAKETRAN - Diesel	385,000

Option A

Firm-Fixed - Per Gallon cost in figures

ULSD Fuel Jan 1 - Dec 31, 2020	47 Cetane	Gasoline (w/ Diesel Delivery)	Gasoline Delivery Only
METRO			
PARTA			
SARTA			
WRTA			
MEDINA			
LAKETRAN			

NOTE: BIDDER SIGNING BELOW AGREES TO PROVIDE THE ABOVE-NOTED PRODUCT AT THE PRICE QUOTED. PRICES QUOTED ARE EXCLUSIVE OF ALL TAXES AND MUST INCLUDE ANY AND ALL DELIVERY COST, ADDITIVE COST, AND ENVIRONMENTAL REGULATORY COST.

Bidder hereby acknowledges receipt of all addenda's by date received and number.

\_\_\_\_\_  
DATE      NUMBER                  DATE      NUMBER                  DATE      NUMBER

Bidder hereby acknowledges that the proposal pages have been completed and included. Bidder hereby acknowledges that the appendices have been completed and included.

COMPANY NAME

NAME

SIGNATURE

TITLE

DATE

ADDRESS

CITY/STATE/ZIP CODE

PHONE NUMBER

FAX NUMBER

EMAIL ADDRESS

SIGNED IN MY PRESENCE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ BY

\_\_\_\_\_.

\_\_\_\_\_

SIGNATURE OF NOTARY

# **SPECIFICATIONS**



## SPECIFICATION – ULTRALOW SULFUR DIESEL FUEL

<u>ASTM Method</u>	<u>Characteristics and Properties</u>	<u>Limits</u>
D 93	Flash Point, ° C	37.7 min
D 2709	Water, % Volume (Note 1)	0.02 max
D 86	Distillation Range, Temperature, F (C)	
	IBP	375 (191)
	10%	430 (221)
	50%	510 (256)
	90%	625 (329) max
	EP	675 (357) max
	Recovered Volume, %	98.0 min
D 445	Viscosity, Centistokes @ 40 ° C	1.3 to 2.4 range
D 482	Ash, % mass	0.01 max
D 130	Copper Corrosion	No 3a, max
D 613	Cetane No.	See proposal page
D1319 or D5186	Aromatics, %	27 max
D 524	Carbon Residue, on 10% distillation residue, mass	0.15 max
D 2622 (Note 6)	Sulfur, (% wt)	0.0015 Max
D 2500 (Note 2)	Cloud Point	Note 3
D 4359	Filter Plugging Point	Note 4
D 6468	DuPont Pad Test, Reflectance at 150 ° C, (High Temperature Stability)	70 max
D 2274	Accelerated Storage Stability, mg/L	15 max
D 287	API Gravity	37 to 44 range
D 1298	Specific Gravity, g/ml, @ 60 ° F	0.806 - 0.840 range
D 6078 (Note 5)	Lubricity, Load, gms	3100 min
D 6079	Wear Scar, mm	460 max

Notes to the Table:

1. No free water visible
2. Alternatively, flow may be measured by Low Temperature Flow Test ASTM D 4539 at -20 ° F.
3. Winter requirement from November 1<sup>st</sup> to March 1<sup>st</sup>. The cloud point shall be 10 ° F (6 ° C) below the lowest temperature to prevent clogging of filters by wax crystals.
4. The filter plugging point temperature shall be equal to or below the lowest expected fuel temperature.
5. Alternatively, lubricity may be measured by ASTM D 6079.
6. Alternatively, Sulfur may be measured by ASTM D 4294.

## 2) SPECIFICATION – 87 E10 GASOLINE FUEL

### 3) Up to 10% Ethanol Added

#### 4)

<u>ASTM Method</u>	<u>Characteristics and Properties</u>	<u>Limits</u>
D 130	Silver Corrosion	1.0 max
D 130	Copper Strip Corrosion	1.0 max
D 381	Exist. Gum, mg/100ml	5.0 max
D 525	Oxidation Stability, Min	240.0 min
	R+M/2	87.0 min

<b>ASTM Method</b>	<b>Characteristics and Properties</b>	<b>Limits</b>
D 2622	Sulfur, Mass%	0.0030 max
D 7039	Sulfur, mg/kg	30.0 max
	Color, Visual	dyed
D 3237	Lead Content, g/US gal.	0.05 max
D 3231	P Content, g/US gal.	0.005 max
D 4952	Doctors Test	Sweet
D 6729 or E168	Ethanol Content (Vol%)	9.0 – 10.0 range
D 86	Distillation, ° F	
	10% Evaporated, ° F	122 max
	50% Evaporated, ° F	150 – 230 range
	End Point, ° F	437 max
D 5188	T v/L = 20, ° F	105 min
D 5191	Vapor Pressure, psi	15.0 max
D 4814	Drivability Index, ° F	1200 max

NOTE: PLEASE READ THE FOLLOWING NOTES THAT ARE PART OF THIS PROCUREMENT

**Note 1:** Diesel Fuel MUST contain a Lubricity additive, meeting the standard BOCLE Test according to ASTM D5001 testing procedure reference to SAE Technical paper series 932691.

**Note 2:** Bidder MUST institute a winterization program for fuel shipped to the RTA's during the months of November, December, January, and February. This winterization is to prevent crystallization of fuel during sub-zero temperatures.

**Note 3:** Fuel MUST meet all current and future federal, state, and local EPA requirements during contract term.

**Note 4:** Capacity (Diesel Fuel)

<b>Transit</b>	<b>Total Capacity</b>	<b>Fuel Tank Configuration</b>
METRO	20,000 gallons	Two 10,000 gallon surface tanks
PARTA	10,000 gallons	Two 5,000 gallon surface tanks
SARTA	20,000 gallons	One 20,000 gallon underground tank
WRTA	15,000 gallons	One 15,000 gallon underground tank
MEDINA	10,000 gallons	One 10,000 gallon underground tank
LAKETRAN	20,000 gallons	One 20,000 gallon underground tank

**Capacity (Gasoline Fuel)**

<b>Transit</b>	<b>Total Capacity</b>	<b>Fuel Tank Configuration</b>
PARTA	4,000 gallons	One 4,000 gallon surface tanks
WRTA	10,000 gallons	One 10,000 gallon surface tank (AST) – pump required

**Note 5: Delivery loads**

	Delivery Loads	Approximate Loads per month
METRO	7,500+/- gallons	8 to 10
PARTA - Diesel	Less than 5,000 gallons	4 to 5
PARTA - Gasoline	Less than 2,000 gallons	4 to 5
SARTA	7,500+/- gallons	4 to 6
WRTA - Diesel	7,500+/- gallons	4 to 5
WRTA - Gasoline	7,500+/- gallons	1 to 2
MEDINA	5,500+/-gallons	1 to 2
LAKETRAN	7,500+/-gallons	4 to 5

**Note 6: Delivery location and times**

Transit	Delivery Address	Delivery days/time
METRO	416 Kenmore Boulevard Akron, Ohio 44301 330-762-7267	Monday – Saturday 8:00 AM to 2:00 PM
PARTA	2000 Summit Road Kent, Ohio 44240 330-678-7745	Monday – Friday 8:00 AM to 1:30 PM
SARTA	1600 Gateway Boulevard SE Canton, Ohio 44707 330-454-6132	Monday – Friday 8:00 AM to 3:00 PM
WRTA	604 Mahoning Avenue Youngstown OH 44502 330-744-4571 x113	Monday – Friday 7:00 am - 4:00 pm
MEDINA	6100 Wedgewood Rd., SR 162 Medina, OH 44256 330-764-8780, x 2108	Monday - Friday 7:00 am - 3:00 pm
LAKETRAN	555 Lakeshore Blvd Painesville, OH 44077 440-350-1036	Monday - Friday 7:00 am - 5:00 pm

**Note 7:** Do not make any changes to the proposal page. The Transit Authorities only want pricing for fuel as stated in the specifications.

**Note 8:** After the contract award, the successful vendor will be required to provide METRO and the other agencies four (4) fuel testing kits so the agencies can perform quarterly testing on their fuel. The agencies that require the test kits have been indicated below. These

test kits must have the capacity to test for cetane index, API Gravity, Appearance, Water by Karl Fischer, Distillation, Flashpoint, Microbial Growth, Particulate Contamination, Viscosity @ 40C Water and Sediment and Sulfur. The testing kits and testing must be done by a Third Party testing lab. The results will be sent to the appointed contact at each agency. They are:

**METRO-John Sutherland, Fleet Manager, email**  
[john.sutherland@akronmetro.org](mailto:john.sutherland@akronmetro.org)  
[dana.gibitz@akronmetro.org](mailto:dana.gibitz@akronmetro.org)

**PARTA-Brian Trautman, Director of Operations, Maintenance & Facilities, email** [btrautman@partaonline.org](mailto:btrautman@partaonline.org)

**SARTA-Julie Juszli, Capital Projects/Procurement Manager, email**  
[juliej3@sartaonline.com](mailto:juliej3@sartaonline.com)

**LAKETRAN-Keith Bare, Director of Maintenance, email**  
[kbare@laketran.com](mailto:kbare@laketran.com)  
[aaaby@laketran.com](mailto:aaaby@laketran.com)

**WRTA – Matthew Kotanchek, Director of Maintenance, email**  
[mkotanchek@wrtaonline.com](mailto:mkotanchek@wrtaonline.com)

Note 9: The successful vendor will be responsible to provide spill/hazmat cleanup for any incidents caused by the vendors delivery of fuel. The vendor is also responsible to determine the correct tank capacity at each agency and to evaluate the fill flow rates and fuel tanks ability to hold the amount ordered. The agencies will be responsible for the gauge maintenance at each location as well as the reading accuracy.

Note 10: Any agency that does not award a contract by 3 PM the day of the bid opening, reserves the right to negotiate with the original low bidder a new price based on current market conditions at the time the agency makes an award. This right shall be in place until December 31, 2018.

Note 11: Western Reserve Transit Authority (WRTA) does not require diesel additive as described in notes 1 & 2. WRTA pricing shall be for delivery without diesel additives. Transport drivers are to pick up diesel additive at WRTA's maintenance office prior to delivering product.