

CONSTRUCTION TERMS AND CONDITIONS

These Terms and Conditions, applicable to both small and large purchase construction procurements, are an essential part of this Purchase Order ("Order" or "Contract"). Acceptance of this Order is acceptance of these Terms and Conditions, which shall supersede and replace any and all terms and conditions offered by Contractor, without exception.

1. Contractor's Obligation. The general obligation of the Contractor shall be to transfer and deliver the goods and services specified in accordance with the terms, conditions, and specifications of the solicitation.

2. Buyer's Obligation. The general obligation of the Greater Cleveland Regional Transit Authority ("GCRTA") shall be to accept conforming delivery and conforming goods and services and to pay in accordance with the terms, conditions and specifications.

3. Indemnification. To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense indemnify, defend, and satisfy all judgments and hold harmless the GCRTA and its agents, representatives and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits arising out of or resulting from the performance of this Contract. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

4. Patents. Contractor shall pay all royalties and license fees attributable to the use of goods, materials, equipment or processes used to perform its obligations hereunder and, if it cannot timely secure the right for GCRTA to use them, it shall provide GCRTA equivalent non-infringing replacements at no additional cost to GCRTA. Contractor agrees to defend and hold harmless the GCRTA from and against all claims of infringement.

5. Warranties. Contractor warrants that for a period of one (1) year (or for such longer period as prescribed by the specifications or commercially offered by the manufacturer or Contractor) following first use of the goods and services delivered hereunder, the goods and services are free of defects in materials and workmanship and further warrants that such goods and services are suited for the particular purpose(s) intended and are of merchantable quality. Contractor further warrants that it holds good and marketable title in the goods delivered, and that such goods are free of all liens, security interests or other encumbrances. Contractor agrees that in the event the goods or services are not as warranted, it will promptly cure the defect at Contractor's sole cost and expense. Contractor further agrees to indemnify GCRTA for all costs and damages, both incidental and consequential, resulting from the delivery of goods and services that fail to meet the aforesaid warranties. It is agreed that the goods and services provided hereunder are regarded as consumer goods and services.

6. Quantity and Quality. Contractor agrees to deliver goods and services of the kind and quality specified and in the quantities specified. In the case of a requirements Contract, the solicitation specifies estimates of the GCRTA's needs for the Contract duration. It is agreed that such estimates are not to be considered firm requirements. Actual requirements may exceed or be less than these estimates.

7. Delivery. Contractor shall tender delivery in the manner and at the place and time specified in the solicitation. All deliveries are to be F.O.B. destination, or as otherwise designated on the bid form by GCRTA. It is agreed that the bid prices include freight.

8. Debarment & Suspension. For any transaction of \$25,000 and above, Contractor must disclose to GCRTA any debarment and/or suspension.

9. Interest of Members 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.

10. Covenant Against Contingent Fees and Gratuities. The Contractor warrants that no person or selling agencies has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission or bonafide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price, or otherwise recover the full amount or such commission, percentage, brokerage, or contingent fees. Contractor further warrants that it, its agent, and/or its subcontractor, have not and will not accept a gratuity in relation to this agreement.

11. Prohibited Interest. No officer, member or employee of the GCRTA and no members of its governing body, and no other public office or employee of the governing body of the locality or localities included within the GCRTA, during his or her tenure, shall have any interest, direct or indirect, in this solicitation, any Contract negotiated subsequently, or the proceeds thereof.

12. Inspection. The GCRTA reserves the right and shall be at liberty to inspect all materials and workmanship to determine whether they conform with the specifications provided. However, the GCRTA is under no duty to make such inspection. Whether or not GCRTA conducts an inspection, no such inspection shall relieve Contractor of any obligation to furnish materials and workmanship strictly in accordance with the specifications. GCRTA will receive conforming deliveries for purposes of inspection. Acceptance of goods and services will not occur until after inspection or until a reasonable time for inspection has elapsed. The risk of loss shall remain with Contractor until acceptance.

GCRTA may test deliveries before or after acceptance for conformance with the specifications. Such tests may be performed by independent laboratories. Where test results indicate non-conforming goods, the delivery and the goods will be rejected and the cost of the test charged to Contractor. Where acceptance has preceded testing, acceptance is deemed conditional and subject to revocation. GCRTA may reject goods and services and revoke its acceptance without testing.

13. Payment. GCRTA shall be entitled to any and all discounts stated on the face hereof. Payments will be made against approved invoices generally within thirty (30) days of receipt of invoice. Late payments will accrue no interest. Payment will only be made for goods and services accepted. For goods and services accepted, when acceptance is later revoked prior to payment, payment will be withheld until defects in the nonconforming goods or services are cured and accepted. In the case of serial deliveries and serial invoicing, GCRTA reserves the right to deduct overpayments from current invoice amounts. Payment does not constitute acceptance nor does it serve to waive a later revocation of acceptance.

All invoices submitted to GCRTA for payment shall include the purchase order number. Invoices shall be payable at Cleveland, Ohio and mailed to: Accounts Payable, Greater Cleveland Regional Transit Authority, 1240 West 6th Street, Cleveland, Ohio 44113-1331.

The GCRTA is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price or a trade discount from catalog list prices shall be exclusive of all such taxes and will be so construed.

14. Assignment. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof without prior written consent of the GCRTA endorsed thereon or attached thereto, and any such attempt at assignment shall be void.

15. Compliance with Laws and Regulations. All materials and supplies furnished pursuant to the specifications shall be in compliance with the laws and regulations of the United States and State of Ohio. Contractor shall, if requested by the GCRTA, supply certification and evidence of such compliance. The Contract shall be construed pursuant to the laws of the State of Ohio. This Contract

may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Urban Mass Transportation Administration Act of 1964 and amendments (49 U.S.C. 1601 et seq.) and Surface Transportation Assistance Acts of 1982 and 1987. When so funded this Contract shall be subject to all rules and regulations promulgated pursuant thereto.

16. Safety Belt Use. Pursuant to Federal Executive Order No. 13043, Contractor is encouraged to adopt and promote on-the-job seat belt use for its employees and other personnel operating vehicles involved in the project.

17. Termination. The GCRTA may, by written notice to the Contractor, terminate the whole or any part of this Contract.

18. Termination for Default. GCRTA may terminate this Contract for default, if within ten (10) days after receiving notice from the GCRTA, Contractor fails to make delivery of conforming goods or to perform the services as required within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress so as to endanger performance of this Contract in accordance with its terms. Thereafter, the GCRTA may have the work completed and the Contractor shall be liable for any resulting cost to the GCRTA.

19. Termination For Convenience. GCRTA may terminate performance of work under this Contract in whole or in part for its convenience for any reason or for no reason at all without obligation to Contractor other than for Contractor's prior performance. GCRTA requires Contractor to perform prior to the date GCRTA gives notice of such termination to Contractor.

20. Social Security Act. The Contractor 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 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 to persons employed by the Contractor 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 hereafter may be issued or promulgated under said respective laws by all duly authorized State or Federal officials, and said Contractor also agrees to indemnify and save harmless GCRTA from any such contributions or taxes or liability therefore.

21. Shipments. Should equipment, materials or commodities provided hereunder be transported by ocean vessel, Contractor shall comply with the requirements of PL 109-304 and 46 CFR Part 381 regarding the use of privately owned U.S. Flag commercial vessels. Should equipment, materials or commodities provided hereunder be transported by air carrier, Contractor shall comply with 41 CFR Sections 301-10.131 through 301-10.143.

22. Non-Discrimination. 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 accordance with the following Federal Statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. 2000d) and VII (42 U.S.C. 2000e); Age Discrimination Act of 1975, as amended (42 U.S.C. 6102); Age Discrimination in Employment Act of 1967 as amended, (29 U.S.C. 623); Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12132 and 42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. 5332); Executive Order 11248, as amended by Executive Order 11375 (42 U.S.C. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.

23. Socio-Economic Development. For purchases in excess of \$25,000, Contractor agrees to comply with applicable federal and state laws/regulations that afford competitive opportunities for a Contractor that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women's business enterprise, or small business.

24. Wage and Hour. All contractors and subcontractors must compute wages based on a standard workweek of 40 hours. Work in excess of 40 hours must be paid at a rate not less than one and one-half times the basic rate of pay. Compliance with 40 USC Sec. 3702, 29 CFR Part 5, and 40 USC Sec 3701(B)(3)(A)(iii) is required of all contractors and subcontractors.

25. Hazardous Materials. Where the goods or services procured involve the use or storage of hazardous materials on RTA premises in Cleveland, Contractor agrees to meet the requirements of Cleveland Codified Ordinance Section 394. Contractor shall:

Label the containers of hazardous or toxic substances that it delivers in accordance with the requirements of Federal and State 394.06 (A).

Provide labels and placards for use by GCRTA when deliveries are made in bulk and are to be stored by GCRTA in stationary containers pursuant to C.O.C. Section 394.06(B).

Provide the hazard warnings applicable to the delivered goods that are required C.O.C., Section 394.06(d).

Provide all material safety data sheets required C.O.C., Section 394.09

The delivery of the aforesaid information must accompany the delivery of the goods. Goods will not be inspected or accepted unless tendered in said manner.

26. Integrated Agreement. The Purchase Order/Contract in which these General Terms and Conditions are incorporated into, together with any other documents incorporated by reference, constitute the entire agreement between the parties and supersedes and replaces any prior written or oral communication. Additional terms and conditions submitted by the Contractor are disregarded unless specifically accepted by GCRTA in writing. Contractor acknowledges that to the extent of conflict the GCRTA terms shall prevail, take precedence over, supercede and replace any conflicting or additional terms or contingencies proposed by Contractor.

This Contract may be amended in writing by change notice or by a replacement purchase order.

Should any part or parts of this agreement be held unenforceable by any competent judicial body, such determination shall not affect the remainder thereof and the balance of this agreement shall remain in full force and effect.

27. Audits and Inspection. The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulation Parts 30 and 31. The GCRTA, the U.S. Government, and the State Government or their authorized representatives shall have access, at all times during normal business hours, to such books, records documents and other evidence for the purpose of inspection, audit and copying. The Contractor will provide proper facilities for such access and inspection. The rights granted GCRTA and the government under this provision shall remain in full force and effect for three (3) years after termination of this Contract for whatever reason.

28. Recycled Products/Energy Conservation. Contractor agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act, 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 subject matter of this Contract. Contractor further agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with 42 USC Sections 6321 et seq.

29. No Obligation by the Federal Government. Contractor and GCRTA 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 of 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 GCRTA, the Contractor or any other party pertaining to any matter resulting from the underlying Contract; Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

30. Program Fraud and False or Fraudulent Statements or Related Acts. Contractor agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions and those of its subcontractor(s) pertaining to this Contract; Contractor further agrees to include this clause without modification, in any subcontract issued hereunder.

31. Required Provisions Deemed Inserted. Each and every clause required by Federal or State statute or regulation to be inserted into this Contract is deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or it not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

32. Governing Law/Venue. This Contract shall be governed by and interpreted pursuant to the laws of the United States, the State of Ohio, and the Courts of Cuyahoga County, as appropriate, notwithstanding any provisions or such law relating to jurisdiction. Should any part or parts of this Contract be held unenforceable by any court of competent jurisdiction, such determination shall not affect the remainder thereof and the balance shall remain in full force and effect.

33. Insurance. Contractor must have minimum insurance coverage, as identified herein below.

The Contractor shall purchase and maintain from the date of receipt of order until the date of final payment the following minimum insurance coverages. Such insurance shall protect the Contractor from claims which may arise out of Contractor's performance of the Contract and for which the Contractor may be legally liable, whether such performance be by the Contractor or a Subcontractor or by anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable.

- a. Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit each occurrence for bodily injury and/or property damage with a \$1,000,000 annual aggregate. Said policy shall also include:
 - Premises / Operations coverage
 - Personal Injury coverage
 - Liability for independent Contractors
 - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 2 years from the date of final payment.
 - Contractual liability coverage insuring the "hold harmless" provision set forth in this Contract.

Said policy shall be written on an "occurrence" basis.

Owner will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.

- b. Automobile Liability Insurance in the amount of \$1,000,000 combined single limit each accident for bodily injury and /or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this Contract and under the control of the Contractor. Employers' Liability coverage in the amount of \$500,000 per accident / \$500,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial commission and Bureau of WC, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. ***If the Contract involves the provision of any professional services to GCRTA (e.g. design, professional consulting, analysis):*** Professional Liability / Errors & Omissions Insurance in the amount of \$2 million per claim. The definition of wrongful acts must be applicable to the work performed hereunder. As this insurance is written on a claims-made basis, the policy must be maintained for a minimum of two years following completion of the work.
- e. ***If the Contract involves work within 50 feet of the GCRTA (or any other Railroad) tracks:*** Railroad Protective Liability insurance naming GCRTA (or the other railroad, as applicable) as an insured and having limits of no less than \$2 million per occurrence and \$6 million in the aggregate to cover bodily injury liability, property damage liability and physical damage to property.
- f. ***With written permission from the GCRTA Contract Administrator ONLY: Alternative to Railroad Protective Insurance:*** In many instances, it is possible for an organization to address this exposure by an endorsement to its commercial general liability policy *if it is not in the construction business per se or if it does not customarily work in proximity of a railroad right-of-way*. The applicable endorsement is CG 24 17 – Contractual Liability – Railroads. A copy of the endorsement must be attached to the required Certificate of Insurance.
- g. General Requirements: The Contractor shall not commence work herein until it has obtained the required insurance in a form satisfactory to the GCRTA. It shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). The Contractor shall provide at least fifteen (15) days prior written notice if the insurance should be changed or cancelled. Such notice shall be mailed by certified mail, return receipt requested, to the GCRTA care of the Director of Procurement.

The policy of insurance shall:

- Name the GCRTA as an additional insured for coverages required under a. and b. above, for claims arising out of the performance of the Contract
- Contain a waiver of subrogation in favor of the GCRTA.
- Specific reference to the subject Contract
- Specific reference to all deductibles & Self Insured Retentions (SIR)
- Shall be primary and non-contributing to any insurance possessed or procured by owner and any self-insurance program maintained by owner

An insurance company having less than a A-X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by the GCRTA. The

GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements & approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of the Contractor.

- h. Approval by the GCRTA: Approval of the insurance by the GCRTA shall not relieve or decrease the liability of the Contractor hereunder. It is to be understood that the GCRTA does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Contractor's interests or liabilities.
- i. In the event Contractor neglects, refuses or fails to provide the insurance required under the Contract documents, or if such insurance is canceled for any reason, the owner shall have the right but not the duty to procure the same, and cost thereof shall be borne by Contractor.

34. Reporting of Fraudulent/Improper Acts. If Contractor suspects or has knowledge of unethical, improper and/or fraudulent acts by GCRTA personnel, including but not limited to conflicts of interest, bribery, fraud, waste, abuse, extortion, and kickbacks, the Contractor shall contact the GCRTA Executive Director of Internal Audit on the GCRTA Fraud Hotline (216-781-4080).

35. Documents and Records (Paper and Electronic). Documents and records, including electronic records, created and maintained by the Contractor under this Contract may be subject to the Ohio Public Records Act, Ohio Rev. Code § 149.43 *et seq.* The Contractor shall maintain all documents and records related to this Contract, including electronic records, in accordance with GCRTA's records retention policy and schedule. Under that policy, contracts are retained for fifteen (15) years. Prior to destruction of any documents or records related to this Contract, the Contractor shall comply with the provisions of GCRTA's records retention policy relating to destruction of records.

To the extent that the Contractor becomes aware of actual or potential litigation related to this Contract, the Contractor shall immediately notify the Authority's Deputy General Manager for Legal Affairs. The Contractor shall preserve any and all records, including electronic records, created or maintained under this contract until advised by the GCRTA Legal Department, in writing, that they are no longer needed. Any suspension issued under this paragraph shall supersede any previously or subsequently established destruction schedule for such records.

36. Construction Contracts. For special federal requirements related to construction contracts, see Special Terms & Conditions, attached hereto and incorporated herein as Attachment A, if applicable.

END OF TERMS AND CONDITIONS

Attachment A

SPECIAL TERMS & CONDITIONS – CONSTRUCTION CONTRACTS

1. Bonding. Unless stated otherwise by GCRTA, if the contract is over \$25,000.00 Contractor will be required to provide the following:

- (a) Bid Guarantee – equivalent to ten percent (10%) of the bid price.
- (b) Performance Bond – in the amount of one hundred percent (100%) of the contract price.
- (c) Payment Bond – in the amount of one hundred percent (100%) of the contract price.

2. Anti-Kickback. Contractor must comply with provisions of the Copeland “Anti-Kickback” Act. Contractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled.

3. Prevailing Wage. For contracts over two thousand & 00/100 dollars (\$2,000.00), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics. Award of any contract with GCRTA is conditioned upon acceptance and approval that Contract has met the DOL prevailing wage determination. For contracts over one hundred thousand dollars (\$100,000.00), wage and hour requirements regarding forty hour work weeks and overtime apply. See 29 CFR Part 5.

4. Seismic Safety. Construction of new buildings or additions to existing buildings must be constructed in accordance with DOT regulations on Seismic Safety, 49 CFR Part 41 at Sections 41.117 and 41.120.

5. Buy America. For contracts over one hundred thousand dollars (\$100,000.00), Contractors must comply with “Buy America Requirements.” 49 CFR Part 661.