



**REQUEST FOR BIDS**  
**TRANSIT BUS TIRE LEASE SERVICES**  
**DULUTH TRANSIT AUTHORITY**

**Addendum #2**

May 10, 2023

**Please note:** The Bid Due Date has been changed to **1:00 p.m.** on **Tuesday, May 16, 2023.**

Clarifications to date:

1. Technical Specifications, T-3, "General Conditions." Subparagraph 1. Please add the word "*applicable*" before the words "U.S. Government" and before the words "federal, state and local laws and regulations."
2. Technical Specifications, T-7, "Materials Furnished." Paragraph 1, please add the word "*applicable*" before the words, federal, state and local laws..."
3. The DTA presently uses Freylube Perma No Rim Rust for tire lubrication.
4. Technical Specifications T-11, Work Space and Storage of Tires. A nominal number of tires is approximately 300 tires.
5. Technical Specifications, T-18, "Tire Ownership and Disposal." Please add the word "*applicable*" before the words "federal, state and local environmental laws..."
6. Technical Specifications T-19, "Loss and Damaged Tire Billings." Please modify paragraph 2 as follows:  
*"The DTA will strive to provide Contractor access to all Contractor tires during business hours, unless access is unavailable due to a Force Majeure event, access is unsafe, or tires are unavailable due to circumstances beyond the DTA's control."*
7. Technical Specifications, T-22, "Contract Adjustments." Please DELETE the following:  
~~The Contractor warrants that the prices charged to DTA do not exceed prices charged by the Contractor to any other customer purchasing the same product or service in like or similar quantities and under similar terms and conditions."~~
8. Technical Specifications T-26, "Liquidated Damages."

Please delete the paragraph and insert the following:

T-26, "Tire Ordering, Liquidated Damages"

*"Upon award of the contract, DTA and Contractor shall meet and prepare a summary of the DTA's annual tire needs to project tire usage under this contract, including estimated dates when the tires must be delivered to the DTA. DTA shall provide a minimum of a 30 day advance written notice of tire needs for the succeeding 9 months, including snow tires. Contractor shall have 30 days to respond with concurrence on the timing of the tire delivery for each type of tire. Except for conditions noted in Paragraph 22, "Force Majeure" herein, if Contractor is not able to provide tires on the requested timeline, Contractor shall provide a 30-day prior written notice of the anticipated delivery date to notify the DTA of delays in tire delivery. Failure to provide notice is considered a default under this Contract."*

*Upon Contractor's written notice of delay to the DTA, DTA may either cancel the tire request, agree to an extension to the delivery timeline, accept a partial delivery, or negotiate an alternative resolution for tire delivery.*

*If Contractor fails to provide advance notice to DTA or fails meet the DTA the DTA operational needs due to insufficient tire inventory not due to Force Majeure, the Contractor will be assessed Liquidated Damages at the rate of \$100.00 per day for each day of delivery delays.*

*The maximum amount of liquidated damages to which the Contractor is subject to under this Contract is \$10,000. In the event this Contract has not already been terminated, the DTA will consider the Contract terminated when the Liquidated Damages exceed \$10,000, unless otherwise waived by the DTA General Manager."*

9. Technical Specifications, T-27, Annual Inventory. The physical inventory will include all tires either mounted on the buses or housed at the DTA for spare stock. Please add the words "*and spare inventory*" after the words "all leased tire stock".

10. Requested changes to the FTA Required contract clauses:

a. FTA Required Clause A.1, "Access to Records". Please add the following:

*"e. Access to Contractors records pursuant to this Section shall be upon 10 days prior written notice, and shall be conducted during normal business hours at the expense of the accessing party."*

b. FTA Required Clause A.25, "Termination". The DTA will not agree to a mutual termination provision. Tires are a critical component of the operation and we cannot be subject to an unplanned termination and be unable to operate the system due to a lack of tires.

c. FTA Required Clause A. 25, "Termination." Please modify the clause as follows:

"Termination for Convenience (General Provision)

The Duluth Transit Authority may terminate this contract in whole or in part, any time *upon thirty days prior written notice* to the Contractor when it is in the Duluth Transit Authority's best interest. The Contractor shall be paid its costs, including contract close out costs, profit, *and remaining value of tread on leased tires mounted on buses and in spare stock. The Contractor shall conduct an inventory of its tires leased to the DTA and* promptly submit its termination claim to the Duluth Transit Authority to be paid the Contractor *that includes the remaining value of tread on leased tires mounted on buses and in spare stock.* If the Contractor has any property in its possession bellowing to the Duluth Transit Authority, the Contractor will account for the same and dispose of it in the manner the Duluth Transit Authority directs."

d. FTA Required Clause A. 25, "Termination." Please add the following paragraph:

Termination for Default (Breach or Cause) (General Provision)

*“If the Duluth Transit Authority fails to make any undisputed payment to the Contractor, the Contractor may, at its option and without waiving or limiting any of its other rights or remedies under this contract or at law, declare all of the Duluth Transit Authority’s indebtedness and obligations to the Contractor to be due and payable within 15 days of invoice acceptance by the DTA, and may terminate this contract by giving a thirty day written notice to the Duluth Transit Authority to that effect. Upon termination of this contract for default by either party, the Contractor shall be paid its close out costs, including the value of the remaining tread on leased tires mounted on buses and in spare stock, less any outstanding credits or adjustments that may be due to the Duluth Transit Authority.”*

e. FTA Required Clause A.25, “Termination.”

“Opportunity to Cure (General Provision)”

Please delete the words “~~ten (10)~~” days and insert “*thirty (30)*” days to cure the defect.

f. The DTA will not allow changes to the FTA Required Clause A.26, “Violation and Breach of Contract”, but has added language in Article 18 of the Contract regarding dispute resolution.

#### 11. Requested changes to the Example Contract.

a. Article 3, Term. Please delete the following words:

~~“or until all obligations set forth in this Contract have been satisfactorily fulfilled, whichever occurs first”.~~

b. Article 5, “Payments to Contractor.” Please add the following:

The DTA may withhold payment for Contractor’s services *after written notice to the Contractor and a 10-day opportunity to cure* where the services are in dispute...”

c. Article 9, “Reports and Inspection.” Paragraph D, please add the following: *“Any access to Contractor’s records pursuant to this Section shall be upon 10 days advance notice and at the sole cost and expense of the accessing party.”*

d. Article 10, “Indemnification”. Please delete the existing paragraph in its entirety and replace it with the following:

*“The Contractor shall defend, indemnify and save the DTA and ATE Management of Duluth, Inc., harmless from all costs, charges, damages, and loss arising out of Contractor’s acts and omissions in the performance of this Contract. Said obligation does not include indemnification of the DTA and ATE Management of Duluth Inc. for claims of liability arising solely out of the negligent or intentional acts or omissions of the DTA and /or ATE Management of Duluth, Inc. In additions, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the work to be done and things to be supplied hereunder.”*

e. Article 11, “Insurance”. Please revise paragraph (a)(2) as follows

(2) ~~Public~~ *Commercial* General Liability and Automobile Liability Insurance with term

limits of not less than *\$2,000,000 Single Limit or \$1 million single limit and \$1,000,000 umbrella with a form following provision.* Please delete the words “~~and twice the legal limits provided when a claim arises out of the release or threatened release of a hazardous substance.~~”

f. Article 11, Insurance, paragraph (a) (3): Please revise as follows:

“DTA and ATE Management of Duluth, Inc. shall be *included by way of a blanket endorsement as* a named ~~an~~ Additional Insured under the Commercial General Liability, ~~Excess Umbrella Liability~~ and Automobile Liability...”

g. Article 11, “Insurance”. Please delete paragraph (a)(4) in its entirety:

~~“(4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the DTA without fail not less than thirty (30) days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DTA will render any such change or changes in said policy or coverages ineffective as against the DTA and ATE Management of Duluth, Inc.”~~

h. Article 11, “Insurance”. Please add the following to the end of paragraph (b) as follows:

*“Contractor will give DTA 30-day notice prior to cancellation, modification or non-renewal of the above coverages.”*

i. Article 11, “Insurance”, Please delete paragraph (d) in its entirety:

~~d) Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA and ATE Management of Duluth, Inc.~~

j. Article 11, “Insurance”. Please modify paragraph (g) as follows:

If the Contractor is self-insured, a **Certificate letter** of Self-Insurance must be provided to the DTA, for the DTA’s approval in a form and amount acceptable to the City Attorney. ~~Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or~~

~~she deems to provide the highest level of insurance protection to the DTA and ATE Management of Duluth, Inc.~~

k. Article 12, "Subcontracting and Assignments. Please delete the paragraph:

~~*Contractor shall not subcontract or assign this Contract or any portion thereof, without the prior written consent of the DTA General Manager.*~~

Please insert the following:

~~Neither Contractor or the DTA shall delegate any duties or obligations under this Contract, nor assign, transfer or convey, sublet, subcontract or otherwise dispose of the Contract or its right, duty, title or interest in, or the same or any part thereof, without prior consent of the other party. This provision does not apply to the DTA if they are required to do so by law or a government agency with jurisdiction.~~

l. Article 15, "Force Majeure". Please amend the paragraph as follows:

~~"The Contractor shall not be liable for any excess costs *or delay* if the failure to perform the Contract arises out of causes beyond the Contract and without the fault and negligence of the Contractor. Such causes must be clearly documented to the satisfaction of the DTA General Manager, and may include, but are not restricted to Acts of God or the public enemy, acts of the U.S. Government in its sovereign capacity or the DTA in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather, *or inability to obtain raw materials or supplies*, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor."~~

m. Article 18, "Rights and Remedies." Please add the following paragraph:

~~*"The Duluth Transit Authority and the Contractor intend to resolve all disputes under this Contract to the best of their abilities in an informal manner. If a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. The Contractor shall not be bound by any decision of the Duluth Transit Authority, nor shall the Contractor be required to exhaust all administrative remedies before commencing litigation in a court of competent jurisdiction within the state in which the Duluth Transit Authority is located."*~~

n. Article 22, "Cancellation." Please add the following:

~~*"In the event of the unavailability of funding, the DTA, upon termination, will pay for all unused mileage in the relevant tires and take title to such tires as is."*~~

12. A copy of the RFB with the changes noted and a clean copy is available on the DTA website at [www.duluthtransit.com](http://www.duluthtransit.com).