

Duluth Transit Authority
REQUEST for BIDS
FOR
TRANSIT BUS TIRE LEASE SERVICES

March 30, 2023

Duluth Transit Authority
2402 W. Michigan St · Duluth, MN 55806
(218) 623-4329 fax: (218) 722-4428
email: nbrown@duluthtransit.com

Duluth Transit Authority Request for Bids Transit Bus Tire Lease Services

The Duluth Transit Authority is seeking qualified firms to provide commercial grade tires, including snow tires, for Duluth Transit Authority heavy duty buses. Sealed bids must be received no later than **2:00 p.m. on Thursday, May 4, 2023**. Specifications are available at the DTA and may be emailed or mailed to prospective Bidders. Contact the DTA at (218) 623-4329 or email nbrown@duluthtransit.com.

The DTA is committed to ensuring that no person excluded from participation in or denied the benefits of its programs and services on the basis of race, creed, color, national origin, sex, age, disability, or veteran's status, and encourages the participation of small and disadvantaged business enterprises in the performance of this contract. The DTA reserves the right to accept or reject any and/or all bids in the best interest of the Authority.

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Section 1. **General Conditions & Mandatory Clauses:**

G-1 **REQUEST FOR BIDS**

- a) Sealed Bids are requested from qualified firms to provide Transit Bus Tire Leasing Services for the Duluth Transit Authority.
- b) Bids shall be on the rates and costs for the project under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents.
- c) The Duluth Transit Authority (DTA) reserves the right to accept or reject any or all Bids in the best interest of the DTA.
- d) Bid prices shall be good for 90 days after the Bid opening.
- e) Bid opening will be **2:00 p.m. on Thursday, May 4, 2023** at the offices of the DTA.
- f) The DTA intends to award the contract to the responsible Bid as early as May 31, 2023.
- g) Throughout these specifications the words "equipment", "materials", and "work" can be interpreted as interchangeable.
- h) This contract is funded in part by a grant from the Federal Transit Administration, ("FTA"), Assistance Listing #20.507, and Minnesota Department of Transportation grants in an estimated annual amount of an estimated \$85,000.

G-2 **INQUIRIES**

All inquiries and other correspondence relating to this Request for Bids shall be emailed to nbrown@duluthtransit.com or addressed to the Duluth Transit Authority Procurement Manager, 2402 West Michigan St, Duluth, MN 55806

G-3 **DEFINITION OF TERMS**

Whenever the following terms are used in these Bid specifications, the intent and meaning of them shall be interpreted as follows:

1. DTA, Customer, Buyer, Lessee, or Operator shall mean the Duluth Transit Authority.
2. Project Manager shall mean DTA Project Manager for all work performed.
3. Manufacturer, Supplier, Vendor, Dealer, Bidder, Lessor, Contractor, or Consultant shall be interchangeable.

G-4 **SUBSTITUTIONS AND OR EQUAL**

- a) Where proprietary names are used in these specifications, it is understood that they are followed by the words "or equal". If brand, manufacturer or product names are indicated in the specifications, they are only for the purpose of establishing identification and a general description of the item(s) sought. Items of equal quality, not bearing such name may be substituted with the approval of the DTA.
- b) DTA officials are not authorized to discuss this RFB with interested Bidders. All questions related to the RFB and requests for clarifications must be a written, documented request required by paragraph c) below. Where prior approval is called for in the specifications, it means prior to Bid opening.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager via email (preferred) or regular mail no later than **2:00 p.m. on Wednesday April 26, 2023**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item under consideration. The supporting evidence for the approved equal must be submitted with the request for approval.
- d) The replies to request under paragraph c) above will be posted in the form of an addendum to this RFB on the DTA website at www.duluthtransit.com/doingbusinesswithus on **Thursday, April 27, 2023**.
- e) It is at the sole discretion of the DTA Project Manager to accept or deny requests for "approved equals." The Contractor cannot challenge the DTA Project Manager's

- denial of an approved equal submittal either before Proposal opening or after award of the Contract.
- f) It should be understood that using a specified brand name component and/or equipment in the specifications does not relieve the Contractor from its responsibility to accomplish the work in accordance with the warranty and other Contract requirements herein. The Contractor is responsible for notifying the DTA Procurement Manager of any inappropriate brand name component and/or equipment that may be called for in the specifications, and for proposing a suitable substitute for consideration.
 - g) No oral explanation or interpretation will modify any of the requirements or provisions of the Contract documents. The DTA will assume NO responsibility for oral instructions or suggestions. Changes to the specifications will be made **only** by **written** addendum. Addendum will be posted on the DTA website at www.duluthtransit.com.

G-5 **PREPARATION OF BID**

Bids must be submitted on the forms attached. All blanks in the Bid form must be completed with ink or typewriter. Bids containing alterations or erasures may be rejected unless the alteration or erasure is corrected by crossing out the error, inserting the correction adjacent thereto with ink or typewriter and initialing the correction in ink by the person signing the Bid. In the event any price term is expressed by the Bid in both written and numerical form, the written representation shall govern in the event of an inconsistency.

Bids and other documents submitted by the Bidder shall not stipulate any condition not contained in the specifications.

Each Bid and all papers bound and attached thereto shall be emailed in a portable document format (".pdf") attachment and emailed to nbrown@duluthtransit.com, OR placed and securely sealed in an envelope marked: "**Transit Bus Tire Lease Services**" and mailed or delivered to:

DTA Procurement Manager
2402 West Michigan Street
Duluth MN 55806

Bids must be received no later than **2:00 p.m. on Thursday, May 4, 2023**. Time means local time in Duluth, Minnesota. Bids received after such time will not be considered. The DTA reserves the right to accept or reject any and/or all Bids in the best interest of the DTA.

No Bid may be modified after submission except by written modification physically received by the DTA prior to the time set for the opening of Bids. Modifications must be signed by the person submitting the Bid or accompanied by an explanation as to why it is not and must indicate that it modifies the original Bid. Modifications shall be submitted in a .pdf attachment in an email to nbrown@duluthtransit.com or securely sealed envelope marked as indicated on the Bid Form.

G-6 **WITHDRAWAL OF BIDS**

A Bidder may withdraw his Bid at any time before the time set for the opening of the Bids only by written notice addressed to the bid opening marked "WITHDRAWAL OF BID" and emailed or physically received by the DTA prior to the time for the opening of Bids.

G-7 **CONSIDERATION OF BID**

The DTA reserves the right, in the determination of the lowest responsive and responsible Bidder, to consider the ultimate economy of the Bid within the guidelines of these specifications, the best

interests of the DTA and such other factors as may be reasonably determined to affect the ultimate economy of the award as stipulated in the Technical Specifications.

In its sole discretion, the DTA reserves the right, in determination of the most responsive and responsible Bidder, to reject any and/or all Bids for no reason or any reason, including, but not limited to the determination that the Bid is incomplete, non-responsive, obscure or lacking necessary details and specificity; that the Bidder lacks the qualifications, experience and/or responsibility necessary to provide the goods or services; or that the Bidder failed or neglected to complete and submit any information within the time specified.

The DTA may cancel the RFB, issue subsequent RFBs, or waive any errors or informalities in any Bid, in the best interests of the DTA.

G-8 BID DOCUMENTS, ADDENDA

It is the Bidder's responsibility to assure the receipt of all procurement documents, including addenda, pertaining to this Request for Bids. All documents will be posted online at www.duluthtransit.com/doingbusinesswithus. In addition, Bidders may inspect and/or obtain copies of the Bid documents at the DTA offices, 2402 West Michigan Street, Duluth, MN 55806, during business hours. The DTA may, at its sole discretion, limit the number of people at one time inspecting the Bid documents, and/or may require Bidders to wear high visibility vests or other PPE that may be reasonably necessary to ensure safety of DTA staff and Bidders.

G-9 CONTRACT FORM AND CHANGES

A sample Contract is included in this RFB. Any proposed changes to this Contract shall be submitted to the DTA Procurement Manager no later than ten (10) days prior to Bid due date for DTA consideration. Approval of requested changes shall be solely at the DTA's discretion. Only written change orders, amendments or addenda, signed by the Procurement Manager and/or General Manager of the DTA shall be binding upon the DTA.

The Bidder shall at once report to the Procurement Manager any error, inconsistency, or omission it may discover in the Contract Documents. Failure to report such errors, inconsistencies or omissions immediately when the Bidder discovers them, or should have discovered them if the Bidder had conducted the Due Diligence required of the Bidder will void any claim by the Bidder for an equitable adjustment based on the errors, inconsistencies or omissions. Additionally, if the failure to report such errors, inconsistencies or omissions results in damages to the DTA, the selected Vendor will be responsible to compensate DTA for those damages to the extent that the damages could have been avoided had the Vendor reported the errors, inconsistencies or omissions when it first discovered them, or should have discovered them.

G-10 BONDING REQUIREMENTS

No bonds are required for Bid submittal.

G-11 PRICE COMPLETE

The price quoted in any Bid submitted shall include all items of services, labor, material, alterations, tools, equipment and other costs necessary to fully complete the production and delivery of the equipment or services pursuant to these specifications. It is the intention of these specifications to provide and require complete equipment and/or services of the type prescribed herein. Any items omitted from the specifications which are clearly necessary for the performance of the Contract shall be considered included in the Bid specifications although not directly specified or called for in these specifications. No advantage shall be taken by the Bidder

in the omission of any part or detail which goes to make the equipment complete and ready for service or use, or to perform the services as herein required.

The DTA shall not be under any obligation for payment of pre-contractual expenses, including expenses for preparing or submitting a Bid in response to this request, negotiating with the DTA in any matter related to this Bid, and/or other expenses incurred by the Bidder prior to the date of award.

G-12 DOCUMENTATION

The Contractor shall provide a complete listing of all products used.

G-13 STATE, FEDERAL, OSHA SAFETY REQUIREMENTS

All work performed under this contract shall conform to all latest local, state, and federal safety requirements and shall, in all cases, meet OSHA requirements. It shall be the Contractor's responsibility to ensure complete compliance with these requirements.

G-14 PROTEST PROCEDURES

Protests will only be accepted from prospective bidders or offerors whose direct economic interest would be affected by the award of a contract or refusal to award a contract. The DTA General Manager will consider all such protests, whether submitted before or after the award of a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protest must include at least the following information:

- Name, address, and telephone number of protestor
- Identification of the solicitation or contract number
- A detailed statement of the legal and factual grounds of protest including copies of relevant documents
- A statement as to what relief is requested

All protest documents received by the DTA General Manager shall be stamped with date and time received and logged into a protest file folder with a copy to the Master File.

PROTESTS BEFORE AWARD

Protests before award must be submitted within the time as specified herein. If the written protest is not received by the time specified, the evaluation process shall continue in the normal manner unless the DTA Finance Director, upon investigation, finds that remedial action is desirable, in which event such action shall be taken.

The protests addressing the adequacy of Invitation for Bids or Request For Proposals, including, without limitation, the pre-award procedure, the Instructions to Bidders or Proposers, General Terms and Conditions, Technical Specifications and Scope of Work, must be filed at the DTA Finance Department no later than three (3) days before the scheduled opening date or the bid or proposal. Thereafter, such issues are deemed waived by all interested parties.

Notice of protest and the basis therefor shall be given to all bidders or proposers. In addition, when a protest against the making of an award is received and the DTA Finance Director determines to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance of their bids or proposals, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for readvertising.

When a written protest against the making of an award is received, award shall not be made until five (5) days after the matter is resolved, unless the DTA General Manager determines that:

- the items to be procured are urgently required; or
- delivery or performance will be unduly delayed by failure to make the award promptly; or
- failure to make prompt award will otherwise cause undue harm to DTA or the State or the Federal Government.

In the event the DTA General Manager determines that the award is to be made during the five-day period or during the pendency of protest, he/she shall notify the FTA prior to make such award. FTA preserves the right not to participate in such procurement.

If award is made, the DTA Finance Director shall document the file to explain the need for an award and shall give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned.

PROTESTS AFTER AWARD

Protests against award must be filed at the DTA Finance Department within five (5) days immediately following the award. The DTA Finance Director shall review the protests. The contractor shall be furnished with the notice of protest and the basis therefor. Also, when it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to DTA's interest, the DTA Finance Director shall inform the contractor that DTA will not be responsible if the award is set aside and that the contractor proceeds with performance at his/her own risk.

DECISION ON PROTEST

The DTA General Manager shall render his/her decision in writing within fourteen (14) days from the receipt of the written protest and shall provide written notice of such decision to all interested parties.

Following an adverse decision by the DTA General Manager, the protestor may file a protest with FTA. For details, see FTA Circular 4220.1F, as amended, which states that FTA will only review protests regarding the alleged failure of a grantee (here, the DTA) to have written protest procedures or alleged failure to follow such procedures. Also see the applicable provisions of 2 C.F.R. Part 200 for further information.

G-15 ORGANIZATION CONFLICTS OF INTEREST

1. An organization conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the DTA, or the Contractor's objectivity in performing the contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Organizational conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective assistance is or may be impaired or may otherwise result in a biased work product because of any past, present or planned interest, financial or otherwise, in the DTA.

2. The Contractor is responsible for maintaining and providing up to date conflict of interest information to the DTA's Director of Finance. If, after award of this contract or task order, the Contractor discovers a conflict of interest with respect to this contract or task order which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the DTA's Director of Finance as set forth below.

3. The Contractor's notice called for in paragraph 2 above shall describe the actual, apparent or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict and shall set forth any other information which the Contractor believes would be helpful to the DTA's Director of Finance in analyzing the situation.

4. The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the DTA's Director of Finance, for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest. Corporate counsel review of the proposed mitigation plan is necessary to ensure a timely review and final determination by the DTA's Director of Finance.

5. If the DTA's Director of Finance, in his/her discretion, determines that the Contractor's actual, apparent or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the DTA's Director of Finance will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of contract performance, the DTA's Director of Finance has the discretion to terminate the contract for default. No determination by the DTA's Director of Finance under this clause shall be reviewable under FAR Clause 52.233-1, "Disputes Clause (May 2014)," which is also incorporated by reference herein. See also 2 CFR Part 200.

6. The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

G-16 TAXES

All local sales and use taxes which are due are to be paid by the Contractor and should be included in the Proposal price. The DTA is exempt from payment of the Federal excise, transportation tax, Minnesota State sales tax and City of Duluth City sales tax. The Proposer shall include sales tax for materials included in its Proposal and shall retain records of the amount of sales tax paid for materials for DTA review. The DTA may, at its sole discretion, elect to purchase and take immediate possession of the materials directly for incorporation into the project. An IC134 form completed by the MN Department of Revenue is required with the final application for payment.

G-17 SUBCONTRACTORS

The Proposer shall disclose all subcontractors and their involvement in the project at the time of Bid submittal.

The Contractor shall insert the required Federal and State provisions in every subcontract.

Contractor shall provide with each pay application submitted to the DTA, a separate, itemized summary of all retainage Contractor has withheld from subcontractors and suppliers on the project.

G-18 PROMPT PAYMENT TO SUBCONTRACTORS.

In accordance with Minnesota § 337.10 (3), Contractor shall pay any subcontractor or material supplier within ten (10) days of receipt by the party responsible for payment of payment of undisputed services provided by the party requesting payment. The Contractor shall pay interest of at least one and one-half percent (1-1/2%) per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment shall pay the actual penalty due to the party requesting payment. A party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment must be awarded its costs and disbursements, including attorney's fees incurred in bringing the action.

G-19. SINGLE BID RESPONSE

If only one Bid is received in response to this RFB, a detailed cost/price analysis may be requested of the Bidder. A cost or cost and price analysis and evaluation and/or audit of the cost may be performed in order to determine if the price is fair and reasonable. If the DTA determines a cost analysis is required,

Bidder must be prepared to provide, upon request, cost summaries of estimated costs (i.e. labor, equipment, supplies, overhead costs, etc.) and documentation supporting all cost elements.

SIGNIFICANT DATES OF PROCUREMENT

Item	Date	Time
Date of Release	March 30, 2023	
Request for Clarifications	April 26, 2023	2:00 pm
Response to Clarifications	April 27, 2023	10:00 a.m.
Proposal Opening	May 4, 2023	2:00 pm
Award	May 31, 2023	

Section 2. FEDERAL TRANSIT ADMINISTRATION Contract Clauses

A.1 ACCESS TO RECORDS **49 U.S.C. § 5325(g)**

Applicability to Contracts

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and subcontract at every tier.

Flow Down

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

a. Records Retention. The Contractor will retain, and will requires its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract; including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) 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 records shall be maintained until the disposition of all such litigation claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

e. Access to Contractor's records pursuant to this Section shall be upon ten days prior written notice during normal business hours and at the sole cost and expense of the accessing party.

A.2 BONDING REQUIREMENTS **2 CFR §200.325** **31 CFR Part 223**

No Bonds are Required for this Procurement

A.3 BUS TESTING **49 U.S.C. 5318(E), 49 CFR Part 665** Does not apply to this contract

A.4 BUY AMERICA REQUIREMENTS **49 U.S.C. 5323 (J), 49 CFR Part 661**

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Clause

Buy America

The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless all steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. §661.11.

The Bidder or Offeror must submit to the Duluth Transit Authority the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

A.5 CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. §55.05
46 C.F.R. Part 381**

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material or commodities by ocean vessel.

Clause

Cargo Preference- Use of United States-Flag Vessels

The Contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least fifty percent (50%) 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) days following the date of loading of shipments originating outside of 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 sub-contractor's bill-of-lading); and
- 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.

A.6 CHARTER SERVICE

49 U.S.C.5323(d) and (r)
49 C.F.R. Part 604

Does not apply to this procurement

A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

49 U.S.C §§7401-7671q
33 U.S.C §§1251-1387
2 C.F.R. Part 200, Appendix II (G)

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and subcontracts at every tier.

Clause

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387.)

A.8 CIVIL RIGHTS LAWS AND REGULATIONS

Flow Down

The Civil Rights requirements flow down to all third-party contractors and their contract at every tier.

Clause

Civil Rights and Equal Opportunity

The Duluth Transit Authority is an Equal Opportunity Employer. As such, the Duluth Transit Authority agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Duluth Transit Authority agrees to comply with the requirements of 49 U.S.C. §5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 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 C.F.R. Chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment", September 24, 1965, 42 U.S.C. §2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for the reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et. Seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et. Seq.*, and Federal transit law at 49 U.S.C. §4332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Flow Down

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient. For all DOT-assisted contracts, each FTA recipient must include assurance that third party contractors will comply

with the DTA program requirements of 49 C.F.R Part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts.

Clause

It is the policy of the Duluth Transit Authority and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the Duluth Transit Authority to:

1. ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE’s can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Duluth Transit Authority shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the Duluth Transit Authority may consider during its review of the Bidder/Offeror’s submission package, the Bidder/Offeror/s documented history of non-compliance with DBE requirements on previous contracts with the Duluth Transit Authority.

Contractor Assurance

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Duluth Transit Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

DBE Participation

For purposes of this Contract, the Duluth Transit Authority will only accept DBEs who are:

1. Certified at the time of the bid opening or proposal evaluation by the Unified Certification Program; or
2. An out of state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the Duluth Transit Authority.

DBE Participation Goal

There is no DBE participation goal for this Contract.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the Duluth Transit Authority or in accordance with state statutes, whichever if more restrictive. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days (or in accordance with state law, whichever is more restrictive) after the subcontractor’s work related to this contract is satisfactorily completed.

The contractor must promptly notify Duluth Transit Authority, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Duluth Transit Authority.

A.10 EMPLOYEE PROTECTIONS

49 U.S.C. §5333(a), 40 U.S.C. §§3141-3148
29 C.F.R. Part 5, 18 U.S.C. §874

29 C.F.R. Part 3, 40 U.S.C. §§3701-3708, 29 C.F.R. Part 1926

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Clause

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is 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 or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA 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 Contractor or subcontractor under any such contract or any other Federal contract with the same prime 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL 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 C.F.R. part 5.

The Contractor 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.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

A.11 ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.
49 CFR Part 622, Subpart C**

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier.

Clause

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

A.12 FLY AMERICA

**49 U.S.C. §40118, 41 C.F.R. Part 301-10
48 C.F.R. Part 47.4**

Does not apply to this procurement

A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

**2 C.F.R. Part 180, 2 C.F.R. Part 1200, 2 C.F.R. §200.213
2 C.F.R. Part 200, Appendix II (I)**

Executive Order 12549, Executive Order 12689

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Clause

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;

- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A. 14 LOBBYING RESTRICTIONS
31 U.S.C. 1352, 2 CFR §200.450
2 C.F.R. Part 200 Appendix II (J), 49 C.F.R. Part 20

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Clause

Lobbying Restrictions

The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

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 subrecipients 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 section 1352, title 31, U.S. Code. 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.

A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Flow Down

The No Obligation clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause

No Federal Government Obligation to Third Parties.

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is

further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

A.16 PATENT RIGHTS AND RIGHTS IN DATA

2 C.F.R. part 200, Appendix II (F)

37 C.F.R. part 401

Does not apply to this procurement

A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

49 U.S.C. 5323 (m), 49 C.F.R. Part 663

Does not apply to this procurement

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001, 49 C.F.R. part 31

Flow Down

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) ("13(c)", 29 C.F.R. part 215

Does not apply to this procurement

A.20 RECYCLED PRODUCTS

42 U.S.C. § 6962 , 40 C.F.R. part 247

2 C.F.R. part § 200.322

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Clause

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

A.21 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402, Executive Order No. 13043
Executive Order No. 13513, U.S. DOT Order No. 3902.10

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

Clause

Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the Duluth Transit Authority.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

A.22 SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f), 49 C.F.R. part 605
Does not apply to this procurement

A.23 SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41
Executive Order (E.O.) 12699
Does not apply to this procurement

A.24 SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331, 49 C.F.R. part 655
49 C.F.R. part 40
Does not apply to this contract

A.25 TERMINATION

2 C.F.R. § 200.339, 2 C.F.R. part 200, Appendix II (B)

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause

Termination for Convenience (General Provision)

The Duluth Transit Authority may terminate this contract, in whole or in part, ~~at any time by 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, and profit ~~on work performed up to the time of termination and remaining value of tread on leased tires mounted on buses and in spare stock~~. The Contractor shall ~~conduct an inventory of leased 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 belonging to the Duluth Transit Authority, the Contractor will account for the same, and dispose of it in the manner the Duluth Transit Authority directs.

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Duluth Transit Authority 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 be paid only 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 the Duluth Transit Authority 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, the Duluth Transit Authority, 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.

If the Duluth Transit Authority fails to make any undisputed payment due, 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 accepted by DTA, and may terminate this contract by giving a 30-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 remaining value of tread on leased tires mounted on buses and in spare stock, less any outstanding credits or adjustment that may be due to the DTA.

Opportunity to Cure (General Provision)

The Duluth Transit Authority, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) ten (10) days 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 to cure the defect.

If Contractor fails to remedy to the Duluth Transit Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within thirty (30) ten (10) days after receipt by Contractor of written notice from the Duluth Transit Authority setting forth the nature of said breach or default, the Duluth Transit Authority 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 the Duluth Transit Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

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, the Duluth Transit Authority may terminate this contract for default. The Duluth Transit Authority 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 the Duluth Transit Authority.

A.26 VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A)

Flow Down

The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.

Clauses

Rights and Remedies of the Duluth Transit Authority

The Duluth Transit Authority shall have the following rights in the event that the Duluth Transit Authority deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include, but not be limited to, failure to proceed with Work, failure to perform, failure to supervise, failure to comply with Duluth Transit Authority written directives in accordance with this Contract.

Rights and Remedies of Contractor

In as much as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Duluth Transit Authority, the Contractor expressly agrees that no default, act or omission of the Duluth Transit Authority shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Duluth Transit Authority will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Duluth Transit Authority takes action contemplated herein, the Duluth Transit Authority will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Duluth Transit Authority's Procurement Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Duluth Transit Authority General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.
- **Example 2:** The Duluth Transit Authority and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Duluth Transit Authority and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Duluth Transit Authority acted in an arbitrary, capricious or grossly erroneous manner. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Duluth's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by the Duluth Transit Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Duluth Transit Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Duluth Transit Authority is located.

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Duluth Transit Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

A. 27 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

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

(3) Telecommunications or video surveillance services provided by such entities or using such equipment;
or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the DTA on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

A. 29) Notice of Legal Agreement or Litigation

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

Contractor shall promptly notify the Duluth Transit Authority of any current or prospective legal matter that may affect the Duluth Transit Authority or the Federal Government. Legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Duluth Transit Authority or the Federal Government as a party to litigation or any legal agreement in any forum for any reason.

This notification provision applies to instances of false claims under the False Claims Act, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Contractor is subject to this Agreement between the Contractor and the Duluth Transit Authority or the Federal Transit Administration, or an agreement involving a principal, officer, employee, agent or subcontractor of the Contractor. Knowledge, as it is used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer to information without delay and without change.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

DULUTH TRANSIT AUTHORITY

CONTRACT EXAMPLE FOR

Transit Bus Tire Leasing Services

March 30, 2023

Contract (Example for bid purposes)

This Contract, made as of _____, 2023 by and between _____, a _____ (sole proprietorship, LLC, corporation, etc.) located at _____, hereafter referred to as "Contractor", and the Duluth Transit Authority, 2402 W. Michigan St., Duluth, MN, hereafter referred to as "DTA". The DTA and the Contractor are parties ("Parties") to this contract ("Contract").

WHEREAS, the DTA desires to utilize Contractor's professional services for Transit Bus Tire Leasing Services, and

WHEREAS, Contractor has represented that it is a qualified provider and is willing to perform these services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents, in priority order, consist of the Federal Transit Administration Contract Clauses, this Contract and any amendments thereto; Request for Bids (Procurement # 052-23-0001) dated March 30, 2023, the General, Special and Technical Specifications, all addenda issued prior to and all modifications thereto issued after the execution of the Contract; the Contractor's Bid Form and Required Certificates; all as fully a part of the Contract as if attached to this Contract or repeated herein.

ARTICLE 2 THE WORK

The Contractor shall perform the work required by the Contract Documents for this Request for Bids in accordance with the generally accepted standards of the profession for services of this type.

ARTICLE 3 TERM

This Contract shall be effective on July 1, 2023, and shall remain in effect until June 30, 2028, ~~or until all obligations set forth in this Contract have been satisfactorily fulfilled, whichever occurs first~~, unless terminated earlier as provided herein. The DTA may elect to continue to use all tires furnished by the Contract in effect at the time of termination or expiration for a period of thirty-six (36) months from said termination or expiration date. The DTA will be able to invoke the run-out procedure with five (5) days written notice. In the event of no notification, the run-out period will be entered automatically.

ARTICLE 4 CONTRACT SUM

The DTA shall pay the Contractor in current funds for the performance of work, subject to addition and deductions by Change Orders as provided in the Contract Documents in the amount accepted.

ARTICLE 5 PAYMENTS TO CONTRACTOR

The DTA will reimburse Contractor based on acceptable monthly billings for leased tires. Payment does not imply acceptance of work. The granting of any progress payment or payments by DTA, or receipt thereof by the Contractor shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. 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, where the services or any claimed reimbursable expenses are not documented or warranted, or when the service was not performed in accordance with the terms of the Contract Documents.

Materials, components or workmanship which does not conform to the instruction of these Contract requirements and specifications or are not equal to samples submitted to and approved by the DTA Project Manager will be rejected and shall be replaced by the Contractor without delay.

ARTICLE 6 INVOICES

All invoices shall include supporting documentation of the quantities and details to the DTA's Director of Finance's satisfaction to support the pay request. Invoices should be forwarded to:

Finance Director
Duluth Transit Authority
2402 West Michigan Street
Duluth, MN 55806

ARTICLE 7 CHANGES TO THE CONTRACT

The DTA or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the DTA and the Contractor, shall be incorporated in written amendments to the Contract.

ARTICLE 8 DELAYS

Contractor shall notify the DTA in writing of any delays, including all relevant details, immediately upon encountering any difficulties which threaten to delay the timely performance of this Contract, and may at that time or subsequently request an extension of the delivery date or schedule. However, such notification or request or acceptance of delinquent equipment shall not constitute acceptance of the delay, or request for extension, without written acceptance by the DTA General Manager as a change in the Contract.

ARTICLE 9 REPORTS AND INSPECTION

A. Establishment and Maintenance of Records

Records shall be maintained by the Contractor in accordance with the requirements prescribed by the DTA and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Contract.

B. Documentation of Costs.

Contractor will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

C. Reports and information.

Contractor shall be responsible for furnishing to the DTA records, data and information as the DTA may require, pertaining to matters covered by this Contract.

D. Audits and Inspections

Contractor shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Contract. Contractor will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract. Any access to Contractor's records and reports pursuant to this section shall be upon ten (10) days advanced notice and at the sole cost and expense of the accessing party.

E. Confidentiality of Information

Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release the data referred to in this clause, Contractor must immediately notify the DTA and consult with the DTA as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

F. Ownership of Data

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of DTA when prepared and shall be delivered to the DTA upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA.

ARTICLE 10 INDEMNIFICATION

~~The Contractor shall defend, indemnify and save the DTA and ATE Management of Duluth, Inc., harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this Contract. Said obligation does not include indemnification of the DTA and ATE Management of Duluth, Inc. for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA and ATE Management of Duluth, Inc., but shall include, but not be limited to, the obligation to defend, indemnify and save harmless the DTA and ATE Management of Duluth, Inc. in all cases where claims of liability against the DTA and ATE Management of Duluth, Inc., arise out of acts or omissions of the DTA and ATE Management of Duluth, Inc. which are derivative of the negligence or intentional acts or omissions of Contractor, such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and other of such source of liability. In addition, 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.~~

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.

ARTICLE 11 INSURANCE

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota, which insurance shall indemnify Contractor, DTA and ATE Management of Duluth, Inc. from all liability described in the paragraph above.

- (1) Workers' compensation in accordance with the laws of the state of Minnesota.
- (2) ~~Public-Commercial General~~ Liability and Automobile Liability Insurance, with limits not less than **\$2,000,000** Single Limit or \$1 million Single Limit and \$1 million umbrella with a form following provision. a and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance.
- (3) DTA and ATE Management of Duluth, Inc. shall be included by way of a blanket endorsement as an ~~named as an~~ **Additional Insured** under the Commercial General Liability, ~~Excess/Umbrella Liability*~~ and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the DTA and ATE Management of Duluth, Inc. Contractor shall also provide evidence of Statutory Minnesota Worker's Compensation insurance. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the DTA and ATE Management of Duluth, Inc. as an additional insured.*

- (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.≡~~
- b. The insurance required herein shall be maintained in full force and effect during the life of this Contract and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Contract. Contractor will give DTA 30-day notice prior to cancellation, modification or non-renewal of the above coverages.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.
- 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 which is reasonably available.~~
- e. The Contractor's policy(ies) will be primary to any other valid and collectible insurance available to the DTA with respect to any claim arising out of the performance under this Contract.
- f. The Contractor is responsible for payment of Contract-related insurance premiums and deductibles.
- g. 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.~~
- h. The Contractor's policy(ies) must include legal defense fees in addition to its liability limits, with the exception of Professional or Technical Errors and Omissions insurance.

ARTICLE 12 SUBCONTRACTING AND ASSIGNMENTS

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

ARTICLE 13 RULES AND REGULATIONS

Contractor agrees to observe and comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of Duluth, and the DTA and their respective agencies which are applicable to its activities under this Contract.

ARTICLE 14 INDEPENDENT CONTRACTOR

That at all times and for all purposes hereunder, Contractor shall be an independent contractor and is not an employee of the DTA for any purpose. No statement contained in this Contract shall be construed so as to find Contractor to be an employee of the DTA, and Contractor shall not be entitled to any of the rights, privileges, or benefits of employees of the DTA, including, but not limited to, workers' compensation, health/death benefits, and indemnification for third-party personal injury/property damage claims.

ARTICLE 15 FORCE MAJEURE

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.

ARTICLE 16 NO THIRD PARTY RIGHTS

This Contract is to be construed and understood solely as a Contract between the DTA and the Contractor and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third-party beneficiary of this Contract or of any of the terms and conditions hereof, which, as between the DTA and Contractor, may be waived at any time by mutual agreement.

ARTICLE 17 SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the Parties to this Contract.

ARTICLE 18 RIGHTS AND REMEDIES

The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. Failure of the DTA to act shall in no way constitute a waiver of any right or duty afforded to it under the Contract, nor shall any such action or failure to act constitute an approval of or an acquiescence in any breach of this Contract, except as may be specifically agreed in writing by the DTA General Manager.

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.

ARTICLE 19 COMMUNICATIONS

Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Communications in connection with this Contract shall be in writing and shall be delivered personally; or by e-mail; or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of the DTA and of the Contractor designated to receive such communications.

Designation for DTA

Designation for Contractor

DTA Director of Maintenance _____

ARTICLE 20 EXTENT OF AGREEMENT

The Contract Document represents the entire and integrated agreement between the DTA and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended only by written instrument signed by both DTA and Contractor.

ARTICLE 21 GOVERNING LAW

Unless otherwise specified, this Contract shall be governed by the applicable laws of the City of Duluth and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located in St. Louis County, Minnesota. However, litigation in Federal Courts involving the Parties shall be in the appropriate federal court in the State of Minnesota.

ARTICLE 22 CANCELLATION

The DTA shall have the right to cancel this Contract if the DTA's governing body does not appropriate moneys to the agency for transit operations. 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".

ARTICLE 23 COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Contract transmitted by facsimile, by electronic mail in "portable document format" ("pdf") or by any other electronic means which preserves the original graphic and pictorial appearance of the Contract shall have the same effect as physical delivery of the paper document bearing an original signature.

This Contract entered into as of the day and year first written above.

Duluth Transit Authority

Contractor:

General Manager

Its _____

DULUTH TRANSIT AUTHORITY

FORMAL BID SHEETS FOR

Transit Bus Tire Leasing Services

March 30, 2023

**Duluth Transit Authority City of Duluth
Transit Bus Tire Lease Services**

Procurement # 052-23-0001

Section 4 FORMAL BID SHEET DTA "Transit Bus Tire Lease Services"

All DTA buses have six (6) wheels per bus.

	Tire Size	Estimated Annual Vehicle Mileage	Tire Rate per Mile	Extended Rate (rate per mile x estimated number of miles)
YEAR 1	305/85R 22.5	1,700,000	\$ _____	\$ _____
	305/70R 22.5	80,000	\$ _____	\$ _____
YEAR 2	305/85R 22.5	1,700,000	\$ _____	\$ _____
	305/70R 22.5	80,000	\$ _____	\$ _____
YEAR 3	305/85R 22.5	1,700,000	\$ _____	\$ _____
	305/70R 22.5	80,000	\$ _____	\$ _____
YEAR 4	305/85R 22.5	1,700,000	\$ _____	\$ _____
	305/70R 22.5	80,000	\$ _____	\$ _____
YEAR 5	305/85R 22.5	1,700,000	\$ _____	\$ _____
	305/70R 22.5	80,000	\$ _____	\$ _____
Total Estimated Lease Rate				\$ _____

Run Out Rates for Contract Expiration or Termination:

CONTRACT FIXED COST PER 32 ND				
TIRE SIZE	ORIGINAL COST/32 ND	AVAILABLE 32NDS	RETREAD COST/32 ND	AVAILABLE 32NDS
305/85R22.5				
305/70R22.5				

Example: Original tire is 50% worn or 13/32nds remaining 13/32nds remaining x \$10.00 Cost/32nds = \$130.00

**Duluth Transit Authority City of Duluth
Transit Bus Tire Lease Services**

Procurement # 052-23-0001

Signed:

Firm Name: _____

Mailing Address: _____

CITY STATE ZIP CODE

By: _____
(PRINT NAME) TITLE

Signature _____

Email: _____

Date: _____

System for Award Management Unique ID: _____

Addendum Acknowledgment
Number Date Rec'd

PHONE NO. _____

1. **Proof of Responsibility Statement**

The Duluth Transit Authority requires anyone submitting a bid or proposal to complete a sworn statement consisting of information relating to their capacity to complete the work requested, including financial stability, equipment, experience in the work prescribed, etc. If the Duluth Transit Authority is not satisfied with the sufficiency of the answers to the questionnaire and financial statement, it may reject the bid or disregard the same or require additional information. Attach separate sheets as necessary.

Statement of Bidder Qualifications and Responsibility

1. Name of Bidder or Proposer: _____
2. Address: _____
3. Legal form of company (partnership, corporation, joint venture, etc.) _____ (If a joint venture, identify the members of the joint venture and provide all information required in this section for each member.)
4. When Organized: _____
5. Where Incorporated (as applicable): _____
6. How many years has the firm or organization been engaged in the contracting business under the present firm name? _____

Questions 7-10: If the answer is 'Yes', please provide details in a separate attachment.

7. Have you ever failed to complete any work awarded to you? No ___ Yes ___
8. Have you ever defaulted on a contract? No ___ Yes ___
9. Have you ever been sued for services you provided? No ___ Yes ___
10. Has your firm been charged with or convicted of, a violation of a wage schedule?
No ___ Yes ___
11. Does your organization possess all valid licenses, registrations and certifications required by federal, state, county or city law necessary for the work it seeks to perform? No ___ Yes ___
12. Has your organization had any type of business, contracting or trade license, certification or registration revoked or suspended in the last three years? No ___ Yes ___ If yes, please provide details on separate sheet.
13. Is your firm or organization a part of a multi-entity corporation, a wholly-owned subsidiary, or more than 51% owned by another firm or organization? No ___ Yes ___ If yes, provide documentation on the parent organization, audited statements of financial standing, working capital financing, authorization to enter into contracts, and other proof of responsibility.
14. Does your firm have experience in similar type of projects or work, and have sufficient equipment, personnel, expertise, and financial reserves to perform the work successfully? No ___ Yes ___ (If no, please explain on a separate sheet. If yes, please provide the names and contact information of three (3) references.)
15. Has your firm or organization been a debtor in a bankruptcy proceeding in the last ten years?
No ___ Yes ___ If yes, on a separate sheet of paper titled "Bankruptcy Information", state date, court of jurisdiction, amount of liabilities and amount of assets.
16. List the average range of annual gross receipts of the firm or organization for the past three years:
___ Less than \$500,000
___ between \$1 million and \$5 million
___ between \$10 million and \$15 million
___ \$500,000 to \$1 million
___ between \$5 million and \$10 million
___ above \$15 million

17. Identify any conditions (e.g., pending litigation, planned office closures, impending merger, etc.) that may impede the proposed firm or organization's ability to complete the work.

18. Please provide a Proof of Responsibility Statement for each subcontractor or supplier providing goods or services in excess of fifty thousand dollars (\$50,000.00) listed in the bid or proposal.

Warranty:

The Contractor,

- (i) if it is a corporation, is duly incorporated, organized, validly existing and in good standing as a corporation under of the laws of the jurisdiction of its incorporation;
- (ii) if it is a partnership, non-profit organization, individual or sole proprietorship, is duly organized and validly existing under the laws of the jurisdiction in which it was organized;
- (iii) is duly qualified and in good standing under the laws of each jurisdiction where its existing ownership, lease, or operation of property in the conduct of its business requires, and
- (iv) has the power and legal right to conduct the business in which it is currently engaged and
- (v) attests that the execution, delivery and performance of the Contract does not and will not violate any provision of any applicable existing law, regulation or of any order, judgment, award or decree of any court or government applicable to the Contractor or the charter or by-laws of the Contractor or any mortgage, indenture, or other obligation.

Signed:

Title _____

Section 5 REQUIRED CERTIFICATES

Certificate A Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters:

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Print Name and Title

Signature

Certificate B.

Anti-Lobbying Disclosure

APPENDIX A, 49 CFR PART 20—CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

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 subrecipients 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 section 1352, title 31, U.S. Code. 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.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Certificate C

Buy America Requirements

Note: Only complete ONE section.

Buy America

The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless all steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. §661.11.

The Bidder or Offeror must submit to the Duluth Transit Authority the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate D Notice of Legal Agreement or Litigation

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

Contractor shall promptly notify the Duluth Transit Authority of any current or prospective legal matter that may affect the Duluth Transit Authority or the Federal Government. Legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Duluth Transit Authority or the Federal Government as a party to litigation or any legal agreement in any forum for any reason.

This notification provision applies to instances of false claims under the False Claims Act, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Contractor is subject to this Agreement between the Contractor and the Duluth Transit Authority or the Federal Transit Administration, or an agreement involving a principal, officer, employee, agent or subcontractor of the Contractor. Knowledge, as it is used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer to information without delay and without change.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Print Name and Title

Signature

Certificate E. **COMPLIANCE WITH SPECIFICATIONS**

The proposer hereby states that it will comply with the technical specifications issued by the Duluth Transit Authority in all areas except those where approved equals were granted by the purchaser (s).

SIGNED _____

FIRM NAME _____

Certificate F Code of Ethics and Organizational Conflict of Interest

The respondent hereby states that it has read and will comply the DTA's Vendor Code of Ethics and Organizational Conflict of Interest (both on the DTA website) as well as the applicable Federal Clauses and Requirements contained herein.

SIGNED _____

FIRM NAME _____

GENERAL AND TECHNICAL SPECIFICATIONS

FOR

Transit Bus Tire Leasing Services

March 30, 2023

Section 6. TECHNICAL SPECIFICATIONS FOR Transit Tire Lease Services

- T-1** Background
- T-2** Definitions
- T-3** General Conditions
- T-4** DTA's Tires
- T-5** Price for Lease of Tires
- T-6** Record keeping
- T-7** Material Furnished
- T-8** Service Provided
- T-9** Bonus Accounting
- T-10** Delivery
- T-11** Work Space and Storage of Tires
- T-12** Projected Average Mileage
- T-13** Description of Transit Vehicles
- T-14** Description of Facilities
- T-15** Contract Expiration and Special Conditions
- T-16** Removal of Buses from Service
- T-17** Scrap Tires and Tire Disposal
- T-18** Tire Ownership and Disposal
- T-19** Loss and Damaged Tire Billings
- T-20** Bid Award
- T-21** Contract Adjustments
- T-22** Force Majeure
- T-23** Tire Delivery
- T-24** Runout Provisions
- T-25** Expiration Provisions
- T-26** Liquidated Damages
- T-27** Annual Inventory

T-1. BACKGROUND

1. The Duluth Transit Authority is a public transportation bus system that operates fixed route and paratransit service seven days a week, 365 days a year. The DTA is seeking experienced, qualified firms to provide heavy duty tires under a lease agreement for DTA transit buses.

2. Presently the DTA fleet consists of **65** Gillig low-floor vehicles and seven Proterra Catalyst E2 all electric vehicles. Gillig vehicles use an Accuride Steel #27834C-PK rims. The Proterra buses currently rely on Michelin leased tires due to the size and fit of the tires on the battery electric buses. DTA will consider other brands of tires for all buses but they must fit correctly and meet OEM requirements.

3. The DTA changes tires on all buses twice a year and runs snow tires from about October until April. During the term of this Contract, it is anticipated that the DTA will continue to use all season radial tires on the front and radial snow tires on the rear axle of the buses during the winter season. The ability to provide an adequate inventory of snow tires will be a material consideration for this Contract.

4. The DTA prefers to use the newest tires for steer tires and moves them to drive tires in the summer after they have used about half of the tread on the steer axle. The DTA staff works closely with the tire vendor to ensure that the tires are used in a responsible and timely manner.

5. The DTA accepts retread tires for use as snow tires. Retread tires must have a tread design that is suitable for winter conditions. Tread design must be approved by the DTA Director of Maintenance prior to shipment of retread tires.

6. The DTA does not use Nitrogen to inflate the tires.

3. The current contract with Bridgestone Firestone and the contract with Micheline expires June 30, 2023.

4. In the event the Contract is awarded to a different provider, the new Contractor will receive a minimum 30-days-notice to proceed before the Contract start date.

5. Interested parties may request a tour of the DTA maintenance facility by advance appointment only. Please contact the Procurement Manager at 218-623-4329 or nbrown@duluthtransit.com for more information.

T.2 DEFINITIONS

For purposes of this contract, "tire" shall mean a casing of a tubeless radial tire for use on heavy duty transit buses in both city and highway environments. Regrooved tires are not permitted.

"Fleet" means all specified regular route transit vehicles owned or leased by the DTA, used for the conveyance of the public in mass transit operations.

"Mileage Rate" shall mean the rate paid to the Contractor for the use of Contractor supplied tires and shall include all tires, as well as spares where appropriate and retread tires. The mileage rate is all inclusive.

“Damaged tires” are tires that are removed for causes other than normal wear, except for defects in manufacturing, prior to achieving the average miles.

“Run Out Period”: That period of 36-months from the date of the expiration or termination of the current Transit Bus Tire Lease Services Contracts are with Bridgestone Firestone and a separate contract with Michelin for tires on the Proterra buses and snow tires, or the period of 36-months from the date of the expiration or termination of the new Contract that may be awarded herein.

T-3 GENERAL CONDITIONS

1. All materials used in the manufacture of the tires furnished under this bid shall conform to all applicable U.S. Government and State of Minnesota laws and regulations and likewise the manufacturing of the tires furnished shall conform to all applicable federal, state, and local laws and regulations.
2. No advantage shall be taken by the Contractor or his subcontractor in the omission of any part of detail that goes to make the tires complete and ready for service.
3. The Contractor shall assume responsibility for all material and accessories and warranty used in the furnishing of tires, whether the same is manufactured by the Contractor or purchased, ready-made, from a source outside the Contractor's company and supplied by the Contractor to the DTA.
4. The DTA has run out provisions in its current Contracts for a period of 36 months following termination or expiration. The DTA retains sole discretion to exercise the run-out provisions in its current Contract prior to the commencement of this Contract.

T-4 DTA TIRES

The diesel fleet operated approximately 1.7 million miles in 2022 and the electric bus fleet operated approximately 80,000 miles. The DTA endeavors to use the tires continuously as long as possible with the fewest tire changes. Steer tires are operated until the tread reaches 4/32nds of remaining tread and are then moved to a rear axle for use until they are removed from service for inadequate tread or other performance shortfalls. Snow tread tires are only used for the winter season until the tread is worn to a level that compromises traction in winter driving conditions; they are then used as a spare until removed from service for inadequate tread.

T-5 PRICES FOR LEASE OF TIRES

1. The price quoted shall include all items requested. Any items omitted from the specifications, which are clearly necessary for the furnishing and maintenance of such tires shall be considered a portion of such equipment although not directly specified or called for in these specifications.
2. The price quoted shall be stated on a per tire mile basis for each group of tires based on groups as described herein.
3. The total lease rate shall consist of a mileage rate for lease of tires. The mileage used shall be actual vehicle miles as determined by the DTA.
4. The DTA is exempt from payment of Minnesota State sales and use taxes. The DTA is considered a “Qualifying Intercity Bus” agency under IRS Publication 510. Upon mutual agreement, the Contractor will collect from the DTA and pay any government-imposed fees or taxes on leased tires that is currently applicable to this Lease or may be

imposed in the future by a government or regulatory agency throughout the term of this Lease and extensions thereof. Contractor is required to include any applicable taxes now or in the future, on invoices to the DTA as a separate line item.

5. New radial tubeless tires and radial snow tread tires are currently required by the DTA. Currently the DTA is also accepting capped tires for use in winter. The tread design of all proposed tires must be approved by the DTA Project Manager prior to Bid award. Any changes to tread or tires throughout the term of this Contract shall be approved by the DTA Project Manager prior to implementing the change.

T-6 RECORD KEEPING

1. The DTA will determine the mileage of each bus and shall furnish the Contractor with a list of each vehicle together with the monthly mileage for each vehicle at the end of each and every month during the term of the Contract and such report or record will be used by the Contractor in computing the monthly statement. No individual tire tracking will be done by the DTA. The DTA may, in the future, require tire branding for in-house analysis.
2. The DTA shall provide the Contractor with a report on a periodic basis on tires removed from service due to inadequate tread or damage beyond repair. Upon request by the DTA, Contractor shall remove these tires in accordance with the provisions of Subsection T-18, "Tire Ownership and Disposal" herein.
3. In the event of a change from the current Contractor, the DTA will do the following during the run-out period: The DTA will record, on sheets provided by the current Vendor and the new Vendor, the dates and buses of tires placed in or removed from service. The DTA will then compute tire mileage based on total bus miles of service as currently reported by the DTA and report the applicable mileage for each respective Vendor.

T-7 MATERIAL FURNISHED

1. Tires furnished shall be new radial type tires or retread tires as provided for herein; all tires furnished shall meet all applicable federal, state, and local laws, ordinances and regulations.
2. Contractor will keep on hand an adequate number of spare tires mutually agreed upon by the parties to ensure continuous operation of the DTA heavy duty bus fleet.
3. At no time shall any tire remain in service on DTA buses with less than 4/32 of an inch tread depth for front tires and 2/32 of an inch tread depth for rear tires when measured in a major tread groove. The measurement shall not be made where the tire bars, bumps, or fillets are located.
4. Contractor will furnish valve stems for all tires upon delivery and maintain an adequate supply for the DTA to service the tires. In addition, the Contractor will furnish all valve stem grommets (high temp), valve caps, valve cores, wheel weights, plugs (for leaks), patches and cement (for inside the tire), tire lube, penetrating lube for removal, and rubber cleaner in sufficient quantities to meet the DTA's operational needs.

T-8 SERVICE PROVIDED

Contractor will furnish all supplies necessary to properly maintain the tires within the DTA's fleet. The DTA will maintain the leased tires as follows:

1. mounting and dismounting tires to and from rims
2. balancing all tires
3. Installing wheel weights required for balancing tires
3. maintaining proper air pressure
4. repairing of tire punctures and flat tires
5. distribution and handling of tires and service equipment
6. any other service necessary to maintain the tires of the fleet not specifically mentioned herein.

The DTA will not regroove any tires nor will the DTA accept any regrooved tires.

T-9 BONUS ACCOUNTING

No bonus provision is requested or will be considered in this Request for Bids.

T-10 DELIVERY

1. All tires furnished for use by the DTA shall be delivered directly to the DTA's Operations Center within thirty (30) days of receipt of written order. The Contractor shall pay for all freight or delivery charge.
2. Dispersal of tires and related materials delivered to the DTA shall be the responsibility of the DTA.

T-11 WORK SPACE AND STORAGE OF TIRES

1. The DTA will furnish adequate inside storage space and workspace for the storage and maintenance of tires used on its vehicles.
2. The storage of a nominal number of tires (approximately 300 tires) will be the responsibility of the DTA.

T-12 AVERAGE MILEAGE

The projected annual mileage for the DTA's Gillig bus fleet in 2018 is 1.7 million miles. In addition, the DTA anticipates that seven Proterra Catalyst Battery Electric Buses will average a total of approximately 80,000 miles per year. These amounts are estimates for Bid purposes only and are subject to change.

T-13 DESCRIPTION OF TRANSIT VEHICLES

1. The following is a description of the DTA transit vehicles presently in service and the bidder must furnish written certification that the tires furnished under the contract will comply with all federal, state, and local laws for said vehicles. All tires supplied under this agreement shall be a 55 M.P.H. Transit Bus tire that meets or exceeds ISO and GVW requirements.

Units	Manufacturer	Model	Tires per Bus	Tire Size	Load Road(Minimum)	GVW
65	Gillig	Low Floor	6	305/85R 22.5	H	39,600

7	Proterra	Catalyst E2	6	305/70R 22.5	H	39,050
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2. The DTA expects to purchase additional buses within the next few years to add to and/or replace various buses currently within its fleet. The DTA currently does not own any heavy-duty bus tires. New buses may be purchased with tires, but currently the DTA prefers to place leased tires on all new buses. The DTA, at its sole discretion, may request Contractor to furnish tires if they are available in the product line for the new vehicles as required by the DTA vehicle specifications, and agrees to give the Contractor ample notice of such acquisition. The DTA agrees to have such vehicles equipped with Contractor tires of sufficient carrying capacity to conform to the approved standards of the Tire and Rim Association of America, Inc. in effect at the time. A new rate may be negotiated for other vehicles in the DTA fleet; carrying capacities, sizes and types of tires and such additional billing rate shall be included in an amendment to the Contract.

3. Upon Contractor's delivery of the tires to the North American OE Manufacturer, refurbisher or other outside source designated by the DTA, DTA agrees to assume the responsibilities as provided for under this Contract for such consigned tires, but at no time shall assume ownership of the tires unless expressly agreed upon by the DTA. Any tires lost, stolen or damaged while in possession of the vehicle manufacturer or other seller, or while the vehicle is being delivered to the DTA, shall be paid for by the DTA on the basis set forth in the Contract. If such vehicles equipped with Contractor's tires are driven over land during delivery, Contractor shall receive payment at the applicable rate in effect.

T-14 DESCRIPTION OF FACILITIES

The DTA operates one maintenance and operations facility located within the Duluth city limits. The facility is adequately equipped to complete all service and maintenance to tires.

T-15 CONTRACT EXPIRATION AND SPECIAL CONDITIONS

1. The term of the contract to be awarded will be for a period of five (5) years beginning July 1, 2023 and ending June 30, 2028, unless otherwise terminated as provided herein. DTA may elect to institute Run Out provisions or Expiration provisions after June 30, 2028, at its sole discretion.

2. The DTA prefers to award the tire lease contract to one (1) supplier and tires of that supplier shall be used on its buses in accordance with the terms and conditions herein, during the term of the Contract, provided the Contractor can meet the DTA's needs. However, the DTA reserves the right to award multiple Contracts at its sole discretion. The DTA may also test special mileage commercial tires other than the Contractor's on not more than five percent (5%) of its fleet. Contractor shall not be responsible for any warranties or services related to any such test tires from companies other than the Contractor that were not supplied by the Contractor.

T-16 REMOVAL OF BUSES FROM SERVICE

1. The DTA anticipates that it will be operating all of the present number of buses; however, no assurance will be made at this time.
2. If, during the term of this agreement, DTA shall sell, or in any manner dispose of, any buses including the tires thereon, and if said tires are supplied by Contractor hereunder, or if for any reason DTA shall discontinue its business, or discontinue the use of any such buses, with the exception of out of service buses described herein, DTA or its designee shall purchase the unused mileage of each tire thereon (including spares) as specified in herein.

T-17 SCRAP TIRES

The DTA presently owns zero (0) out-of-service buses. In this capacity, the DTA reserves the right to use scrap tires for the sole and exclusive purpose of transporting and disposing of the DTA's surplus buses when necessary. In this regard, the Contractor agrees to the following terms:

Contractor understands that it is the desire of the DTA to use scrap tires for the sole and exclusive purpose of transporting, storing, and disposing of DTA's out of service vehicles. Therefore, the parties agree to the following terms and conditions:

1. It is understood that in this agreement, a "scrap tire" means any tire furnished under the Contract which has been determined by Contractor to be permanently unfit for further service under the Contract. It is also understood that "out of service or surplus vehicle" means any vehicle furnished with tires under the Contract which has been determined by DTA to be placed out of service or in surplus.
2. Contractor will furnish scrap tires to DTA, with thirty (30) days written prior notice, for the sole and exclusive purpose of transporting and storing DTA's out of service vehicles. It is understood that in this instance, the DTA will mount and inflate said tires.
3. In consideration of the accommodation and benefit given under clause two above, DTA agrees as follows:
 - (a) DTA agrees to use the scrap tire furnished hereunder for the sole and exclusive purpose of transporting, storing, and disposing of DTA's surplus vehicles.
 - (b) DTA will acquire each scrap tires as is, and Contractor makes no warranties as to the condition or fitness for continued use of such tires.
 - (c) DTA agrees not to file or assert against Contractor any claim, action, or cause of action for loss, liability or damage arising out of DTA's use of or possession of scrap tires furnished under this agreement.
 - (d) DTA agrees to indemnify and hold Contractor harmless against all claims of any party for loss, liability, or damage resulting from Contractor's furnishing of scrap tires to DTA hereunder.

(e)The provisions of this paragraph shall survive the termination or expiration of this Contract.

4. It is further agreed that the scrap tires provided to the DTA for out of service or surplus purposes will be done at no cost to the DTA.

T-18 TIRE OWNERSHIP AND DISPOSAL

Unless mutually agreed upon and authorized through a written agreement, including in the event of a default or termination of this Contract, ownership and title of the Contractor's leased tires shall remain with the Contractor and shall not pass to the DTA upon delivery, unless and until DTA has made complete payment for tires.

All of Contractor's tires deemed unsuitable by the DTA for regular route line service, or tires damaged or destroyed, shall be removed from the DTA property and disposed of by the Contractor. It is further understood that all tire casings be disposed of properly in accordance with all applicable Federal, State, and local environmental laws and, under no circumstances shall the DTA be held liable for tire storage, removal or disposal.

T-19 LOSS AND DAMAGED TIRE BILLINGS

Cost for damaged tires shall be included in the rate per tire mile. "Damage" means the abuse by partial or total destruction of a tire by means other than normal wear, including but not limited to, irregular wear, damage for brake heat, curbing, road hazards and misalignment. The DTA agrees to maintain buses' suspension and steering in accordance with bus manufacturers' alignment specifications and keep brakes properly adjusted. Tires that are damaged beyond repair by an accident or fire, or have been lost, sold, or purchased, shall be paid for at the rental rate then in effect based on the remaining tire mileage as set forth herein.

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. If DTA does not provide such access to tires damaged, or, if applicable, sold, or if a tire is lost or stolen or otherwise unavailable to determine remaining tread depth, DTA will be invoiced for an amount not to exceed fifty percent (50%) of applicable new tire residual value (determined as set forth above), except based on the number of 32nds of an inch of tread rubber on an applicable new tire) unless verifiable documentation can be provided as to value in excess of fifty percent (50%).

T-20 BID AWARD

The Bid award will be made in the best interests of the DTA, taking into consideration, among other factors, the firm fixed tire rates quoted by the Bidders, the run-out option rates if applicable to the particular Bidder, past performance on similar Contracts for the DTA, in the sole discretion of the DTA.

T-21 CONTRACT ADJUSTMENTS

In the event laws or government regulations require any changes in materials or methods used in the manufacture, delivery or disposal of tires that result in clearly documented increased or decreased costs, the rates listed on the Bid sheet (page 29)

may be negotiated and adjusted with agreement of both parties. Such increases or decreases must be clearly documented to the satisfaction of the DTA.

~~The Contractor warrants that the prices charged to DTA do not exceed the 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.~~

T-23 TIRE DELIVERY

All leased tires delivered to the DTA must be dry and free of any foreign materials such as mud, grass or other substances. Tires that have water in them will be rejected and returned to the Contractor at no expense to the DTA.

The DTA reserves the right to request a change in subcontracted delivery or service providers for substandard or nonperformance.

T-24 RUN OUT PROVISIONS

This contract and any modifications(s) thereof may be terminated by the DTA in accordance with the termination rights provided by law or under this Contract at its sole discretion. Upon such termination, the DTA may, at its sole election, direct Contractor to remove from DTA property all new tires, and other new products which have never been mounted which were leased hereunder to the DTA. In addition, the DTA may, at its sole election either:

1. Pay for all original tread on tires, in DTA's garage, in transit or in stock, that have been assigned by Supplier to DTA's fleet. Payment shall be on the basis of the unused mileage remaining in such tires prorated by determining the percentage of useable tread rubber remaining multiplied by the fixed cost per 32nd below.

CONTRACT FIXED COST PER 32 ND				
TIRE SIZE	ORIGINAL COST/32 ND	AVAILABLE 32NDS	RETREAD COST/32 ND	AVAILABLE 32NDS
305/85R 22.5				
305/70R 22.5				

Example: Original tire is 50% worn or 13/32nds remaining 13/32nds remaining x \$10.00 Cost/32nds = \$130.00

OR

2. A. Upon termination of this agreement, DTA may elect to continue to use all tires furnished by Contractor in effect at the time of termination, for a period of 36-months from said termination date. The DTA will be able to invoke the run out procedure with five (5) days' written notice; and
- B. All terms, conditions, and provisions of the Contract shall remain in force and effect during said 36-month period, except that the Contractor shall be relieved of any requirement to furnish DTA with tires, supplies or services, during said 36-month period unless requested by DTA and agreed to by Contractor; and

- C. The rate or rates per bus mile in effect during such 36-month period shall be the rate or rates in effect for the period immediately preceding the commencement date of such 36-month period; and
- D. It is understood that DTA shall continuously use such tires insofar as practicable on its highest mileage runs until such tires are rendered permanently unfit for service during said 36-month period; and
- E. Upon the expiration of said 36-month period, DTA shall pay for any then unused mileage remaining in such tires at the rate or rates in effect for the period immediately preceding the commencement date of such 36-month period.
- F. The Contractor shall continuously pick up all depleted Contractor tires and remove them from the premises upon notice from the DTA.

T-25 EXPIRATION PROVISIONS

Upon expiration of this agreement, the DTA may, at its sole election, direct contractor to remove from DTA property all new tires and other new products which have never been mounted which were leased hereunder to the DTA and in addition the DTA may, at its sole election either:

- 1. Pay for all original tread on tires, in DTA's garage, in transit or in stock, that have been assigned by Contractor to DTA's fleet. Payment shall be on the basis of the unused mileage remaining in such tires prorated by determining the percentage of useable tread rubber remaining multiplied by the fixed cost per 32nd below.

CONTRACT FIXED COST PER 32 ND				
TIRE SIZE	ORIGINAL COST/32 ND	AVAILABLE 32 ^{NDS}	RETREAD COST/32 ND	AVAILABLE 32 ^{NDS}
305/85R22.5				
305/70R22.5				

Example: Original tire is 50% worn or 13/32nds remaining 13/32nds remaining x \$10.00 Cost/32nds = \$130.00

OR

- 2. A. On 30 days' written notice prior to the expiration date of this agreement, DTA may elect to continue to use all tires furnished by Contractor in effect at the time of expiration, for a period of 36-months from said expiration date. The contractor will notify DTA 60 days prior to expiration date of this provision or the DTA will be able to invoke the run out procedure with five (5) days' written notice; and
- B. All terms, conditions, and provisions of the Contract shall remain in force and effect during said 36-month period, except that the Contractor shall be relieved of any requirement to furnish DTA with tires, supplies or services, during said 36-month period unless requested by DTA and agreed to by Contractor; and

- C. The rate or rates per bus mile in effect during such 36-month period shall be the rate or rates in effect for the period immediately preceding the commencement date of such 36-month period; and
- D. It is understood that DTA shall continuously use such tires insofar as practicable on its highest mileage runs until such tires are rendered permanently unfit for service during said 36-month period; and
- E. Upon the expiration of said 36-month period, DTA shall pay for any then unused mileage remaining in such tires at the rate or rates in effect for the period immediately preceding the commencement date of such 36-month period.
- F. The Contractor shall continuously pick up all depleted Contractor tires and remove them from the premises upon notice from the DTA during said 36-month period.

T-26 LIQUIDATED DAMAGES

~~Except for conditions noted in Paragraph T-22, "FORCE MAJEURE" herein, throughout the term of this Contract and all Run Out Periods and/or Expiration Period, the Contractor shall perform services as required herein. If Contractor is found to have insufficient tire inventory available to meet the DTA operational needs as defined by the minimum number of tires with sufficient tread to operate safely, the Contractor will be assessed Liquidated Damages at the rate of five hundred dollars (\$500.00) per day for each occurrence of insufficient tire inventory. "Tire Inventory" means adequate steer tires and drive tires, including snow tires, for the DTA's fleet of buses.~~

~~The maximum amount of liquidated damages to which the Contractor is subject to under this Contract is one hundred thousand dollars (\$100,000.00). In the event this Contract has not otherwise been terminated, the DTA will consider the Contract terminated when the Liquidated Damages exceed one hundred thousand dollars (\$100,000.00) at any time during the term of the Contract.~~

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.

T-27 ANNUAL INVENTORY

At least once each year on a date to be agreed upon between Contractor and the DTA Project Manager, Contractor will perform a physical inventory of all leased tire stock and spare stock on DTA property and provide the DTA with an electronic file containing the inventory results upon DTA's request.