

SECTION 5

BLUE WATER AREA TRANSPORTATION COMMISSION GENERAL TERMS AND CONDITIONS

1. Contract Documents

The Contract documents are cumulative and complementary. The requirements for one document shall be as binding as if required by all. Materials or work described in words having a well-known technical or trade meaning shall be held to such recognized meanings. The intent of the documents is to describe and provide for a complete project.

2. Jurisdiction

This Contract and all actions hereunder shall be governed by, subject to, and construed according to the laws of the State of Michigan.

3. Delivery Schedule

Time being of the essence, the Contractor shall strictly adhere to the delivery and performance schedule contained in the proposal. The Contractor's failure to adhere to the delivery and performance schedule shall be deemed a breach of this Contract for which damage may be assessed in accordance with the terms of this Contract.

4. Specifications and Acceptance

Material, equipment, and work provided under this Contract shall be in accordance with Contract specifications. Acceptance of tendered material, equipment and work shall be by written notice to the Contractor.

5. Specification Consistency

All units purchased on one proposal, supplied by one proposer; shall be exactly identical as to all parts and components used, so as to provide for total interchangeability of any part subject to terms and conditions of the proposal.

6. Schedule of Payments

Payment of the total purchase order price will be made upon acceptance of the goods, and in accordance with the Contract documents, or upon progress payments as agreed to during negotiations.

7. Exemption from Taxes

The Commission, as a governmental agency, is exempt from State and Municipal taxes, as provided in Paragraph 22, PA 204, Public Acts of 1967. The bidder certifies that all taxes required to be paid by the bidder shall be so paid and that all such taxes are not included in the prices shown herein. Any applicable taxes must be shown as a separate item for the bid price.

8. Point of Delivery

The point of delivery shall be as shown in the request for proposals. All prices are to be quoted F.O.B. this location.

9. Subcontractors and Vendors

The Contractor shall provide written certification that all subcontractors and vendors have been paid in full before release of final payment by the Commission.

10. Compliance with State and Federal Regulations

The Contractor certifies that all equipment provided meets or exceeds all Federal and State requirements applicable to the equipment. Failure of the Commission to specifically identify such regulations in its specifications does not relieve the Contractor of the responsibility to meet them.

11. Change in Specifications

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

The Commission may at any time, by a written order and without notice to the sureties, make changes within the general scope of this Contract, in any one or more of the following: (i) drawings, designs or specification; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification change: provided, however, that the Commission, if the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Contract. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

12. Remedies

The remedies herein reserved shall be cumulative and additional to any other or further remedies in law or equity.

13. Patents

The Contractor agrees to defend, protect and save harmless the Commission its successors, assigns, customers and users of its products against all suits at law or in equity, and from all damages, claims and demands for actual or alleged infringements of the United States or foreign patent or copyright by reason of the use of the equipment ordered.

14. Technical Information Disclosed to Commission

The Contractor agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which the Contractor shall have disclosed or may hereafter disclose to the Commission in connection with this Contract.

15. Insurance

If the accomplishment of this Contract requires the performance of services or labor on the premises of the Commission, the Contractor agrees to indemnify and protect the Commission against all liabilities, claims or demands for injuries or damages to any person or property growing out of the performance of this Contract by the Contractor, its servants, employees, agents or representatives. The Contractor agrees to carry and to furnish certificates from its insurance carriers showing that it carries insurance in the following minimum limits:

1. Worker's compensation-statutory limits for State of Michigan in which the work is to be performed.
2. Comprehensive, General Liability insurance in the amount not less than \$1,000,000.
3. Automobile Public Liability \$250,000/500,000 and property damage \$250,000.

Said certificates must set forth the amount of coverage, number of policy and date of expiration. If the Contractor is a self-insurer, the certificate of the appropriate state agency of the State must be furnished by such agency directly to the Commission. The purchase of such insurance coverage or the furnishing of the aforesaid certificate shall not be a satisfaction of the Contractor's liability hereunder or in any way modify the Contractor's indemnification of the Commission and/or its operators.

16. Advertising

The Contractor shall not, without first obtaining the written consent of the Commission, in any manner, advertise or publish the fact that the Contractor has contracted to furnish the Commission the material herein ordered, and for failure to observe this provision, the Commission shall have the right to terminate the Contract without any obligation to accept deliveries after the date of termination or to make further payments except for completed articles delivered prior to termination.

17. Insolvency

The Commission may forthwith cancel this Contract resulting in the acceptance of this order in the event of the happening of any of the following, or any other comparable event. Insolvency of the Contractor's; the filing of a voluntary petition in bankruptcy; the filing of an involuntary petition to have the Contractor declared bankrupt provided it is not vacated within thirty (30) days from the date of such appointment; the execution by the Contractor

of an assignment for the benefit of creditors or announcement by the contractor that they will be ceasing operations within the term of the contract.

18. Fair Labor Standards Act

The Contractor agrees in connection with the production of the articles specified herein to comply with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Acts as amended and regulations and order of the United States Department of Labor issued under Section 14 thereof. All invoices must carry the following certification in order to be passed for payment.

"We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Acts as amended, and of regulations and order of the United States Department of Labor issued under Section 14 thereof."

19. Invoicing

The Contractor shall furnish with or prior to each delivery an invoice in duplicate.

20. Indemnify and Save Harmless

During the term of this Contract, the Contractor hereby expressly agrees and covenants that it will defend, hold, save harmless and indemnify the officers, agents, servants, and employees of the Commission, and members of the Commission from liability of any nature or kind, in connection with the work to be performed hereunder, arising out of any act or omission of the Contractor, or of any employee or agents of the Contractor, or any person or firm associated with the Contractor, including any person, firm or corporation having the status of an independent Contractor, or engaged by the Contractor, to perform any work required by or in connection with the work required by this Contract.

The approval by the commission of the methods of doing the work or delivering the equipment or the failure of the Commission to call attention to improper or inadequate methods or to require a change in methods or to direct the Contractor to take any particular action shall not excuse the Contractor in case of any such injury to persons or damage to property.

21. Independent Contractor

The Contractor is employed by the Commission as an independent Contractor and has and retains the right to exercise full control and supervision of the services, employment, direct compensation, and discharge of all persons assisting in the performance of the services hereunder. The Contractor agrees to be solely responsible for all matters relating to payment of employees, compliance with Social Security requirements, withholding requirements, and all other regulations governing such matters.

22. Interest of Members of Congress

No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.

23. Prohibited Interest

No members, officer, or employee of the Commission or of a local public body or any official of the State of Michigan during his tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

24. Termination for Convenience of the Commission

The Commission, by written notice, may terminate this Contract, in whole or in part for the convenience of the Commission, or when in the discretion of the Commission, the Contractor will not be able to successfully complete the Contract, or where continuation of the Contract would not produce results commensurate with the further expenditure of funds. The commission shall provide the Contractor with written notice of such termination at least fifteen (15) days before the effective date of such termination.

If the Commission exercises the right to terminate this Contract because of conditions which are beyond the control of the Commission, such termination shall have immediate effect upon receipt of written notice by the Contractor.

Under the termination provisions of this paragraph, the Contractor shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible. If this Contract contains elements relating to equipment, supplies or service, or combinations thereof, the Contractor shall immediately submit to the Commission a final invoice subject to Commission audit for an amount of the value of work actually performed up to the effective date of termination plus the allowable portion of the Contractor's profit computed from the total Contract price. After payment of such sum by the Commission, the Commission shall be under no further obligation to the Contractor.

Property and equipment for which full payment has been made shall, at the option of the Commission, become the property of the Commission. Any drawings, manufacturer's information, maintenance instructions or other material which are necessary to complete and properly maintain the work paid for shall be furnished to the Commission by the Contractor. In the case of termination for conditions which are beyond the control of the Commission, a cost termination inventory and independent audit of the project accounts that accurately reflect the actual costs incurred by the Contractor shall be submitted to the Commission as a condition precedent to payment by the Commission.

25. Termination for Cause

If the Contractors shall fail to perform in a timely and proper manner any obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the Commission may consider the contractor to be in default

and terminate this contract. Such termination shall be by written notice specifying the effective date thereof.

Termination in accordance with the above shall not relieve the Contractor of any liability to the Commission for damages sustained as a result of any breach of contract or default by the Contractor. Upon the default of the contractor and the termination of this Contract, the Commission may withhold any payments due the Contractor and apply the same as a set off against damages sustained by the Commission as a results of the Contractor's default.

26. Assignment

The Contractor shall not assign or transfer any interest in the Contract or delegate its performance of duties except upon written approval of the Commission, which approval shall not be unreasonable withheld. Consent to assign, transfer or delegate any interest or performance on this Contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract.

27. Disadvantaged Business Enterprise

In connection with the performance of this Contract, the Contractor will cooperate with the project sponsor in meeting its commitments and goals with regard to the maximum utilization of minority business enterprises and will use its best efforts to insure that minority business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this contract.

28. Non-Discrimination

The Contractor agrees and warrants that in the performance of this Agreement, it shall not discriminate or permit discrimination against any person or group of persons because of race, color, sex, age, handicap, religion, ancestry, marital status, national origin, place of birth, or sexual preference in any manner prohibited by the laws of the United States or of the state of Michigan. Further, the Contractor agrees to take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, color, sex, age, handicap, religion, ancestry, marital status, national origin, place of birth, or sexual preference. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to comply with the provisions of the State of Michigan "Non-Discrimination Clause for All State Contracts". The Contractor further covenants that it will comply with the Civil rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Section 1971, 1978A-1975d, and 2000a-2000h-6, and the Michigan Civil Rights Acts of 1967 (Act. 453, Public Acts of 1976), and the regulations of the US-DOT (49 C.F.R. Part 21) issued pursuant to the said Act and will require a similar covenant on the part of any Contractor or subcontractor employed in the performance of this Agreement. The Contractor shall fully comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR 60).

29. Buy America

Pursuant to 49 U.S.C. 5323(j) and 49 CFR, Part 661 and regulations published there under, the Recipient agrees that all steel, cement, and manufactured products used in connection with any project, the funds for said project being appropriated by the Federal Transit Administration, shall be produced in the United States, unless a waiver of said requirements is granted by the Secretary of the U.S. Department of Transportation.

Upon written request to the Secretary, the Recipient may request a waiver of the above provisions. Such waiver may be granted if the Secretary determines:

1. That their application would be inconsistent with the public interest;
 2. That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
 3. In the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Act that (A) the cost of components which are produced in the United States is more than 50 per centum of the cost of all components of the vehicle or equipment described in this paragraph, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States;
 4. That inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum in the case of projects for the acquisition of rolling stock, and 25 per centum in the case of all other projects.
- (c) For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.
- (d) The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act which restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

30. Prices

The prices quoted in the RFP shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the contract.

It is the intention of the Technical Specifications to provide complete equipment ready for operation.

Any items omitted there from which are clearly necessary for the completion of the equipment, and its appurtenances, shall be considered a portion of the equipment, though not directly specified or called for in the technical specifications.

31. Inspection and Test

All materials of whatever kind or character covered by the specifications shall be subject to the inspection, test, and approval of the Commission. This inspection may be made at the point of manufacture, or of delivery, or with the material in place, as determined by the Commission. The Commission shall be satisfied through its authorized representative as to the reliability of the results before the materials are delivered, and it shall be furnished with a copy of the record of all tests.

32. Delays and the Extension of Time

When the Contractor is delayed in progress of performance in one area of the contract but can proceed with performance in another area, they must do so. However, the time for completion may be extended at the sole option of the Commission for such reasonable time as the Commission determines under the following conditions:

- A. Where the Contractor is delayed due to a cause beyond its control, including, but not limited to strikes, riots, Acts of God.

A delay may be considered beyond the Contractor's control only if the delay:

- (1) Was not reasonably expected to occur in connection with or during Contractor's performance, and
- (2) It was not caused directly or substantially by Contractor's (or its agents) act, omission, negligence or mistake; and
- (3) It was substantial and in fact delayed the total progress of the work; and
- (4) It could not adequately have been guarded against by contractual or legal means.

- B. Where the Contractor and the Commission have executed a change order which provides for an extension of time of completion.

No extension of time will be considered unless a written request or extension is served on the Commission within ten (10) business days from the commencement of the delay.

Any request for extension of time shall specify the nature of the cause of the delay, an approximation of the length of the delay, and such other proofs as are reasonably related to the cause of the delay. At the termination of the cause of the delay, the Contractor shall provide the Commission with all information reasonably required by the Commission to make a decision on the request.

33. Acceptance and Final Payment

Payment shall be subject to approval of work by a duly authorized representative of the Commission at such time as work is completed in a satisfactory manner in accordance with the contract documents. Approval will be given in writing; no verbal approvals will be accepted as authorization for payment.

Final acceptance of the equipment furnished under this Contract will take place only after the equipment is fully operational and it has been established that the equipment meets the performance criteria called for. This acceptance will in no way limit any rights afforded to the Commission by any other clause in this Contract.

End General Terms