



**ADDENDUM No. 1
to
BID DOCUMENTS
for
WRTA
Invitation to Bid # 2021-14
Transit Bus Tire Lease
Youngstown, Ohio
January 10, 2022**

The original bidding documents for the above referenced project are hereby amended as noted in Addendum No. 1.

Bidders shall verify and acknowledge receipt of this Addendum on the Form provided in the Invitation to Bid (ITB). Failure to acknowledge the Addendum may subject the bidder to disqualification.

Clarifications/Questions:

1. Specifications – Section 2. Subsection 12(d), Page 9: This section states Contractor is required to supply Cleaning Solvent. Please confirm if we can supply our own solvent or are we required to supply the solvent that WRTA is currently utilizing?

Response: Contractor's recommended solvent shall be accepted.

2. Specifications – Section 2. Subsection 18, Page 10: Please replace the language with the following:
"The Indemnification clause shall become part of Contract that is awarded. It reads as follows:

The Contractor shall indemnify, keep and save harmless the Western Reserve Transit Authority, its directors, members, agents, officers, and employees for losses, liability, damages, costs, and expenses (including reasonable costs of litigation and reasonable attorneys' fees) (collectively, the "Losses") arising from third-party claims for bodily injury, death, or tangible property damage, to the extent that such Losses are caused by the negligence or willful misconduct of the Contractor in the performance of this agreement by the Contractor; provided that the Western Reserve Transit Authority shall give the Contractor prompt written notice of any such third-party claim or lawsuit for which indemnification is sought hereunder, cooperate in the defense thereof, and grant the Contractor the right to defend, settle, or alternatively dispose of such claim or lawsuit, including, without limitation, the right to select legal counsel.

The Western Reserve Transit Authority shall indemnify, keep and save harmless the Contractor, its directors, members, agents, officers, and employees, for all Losses arising from or in connection with third-party claims of injury, death, or tangible property damage, to the extent that such losses are caused by the negligence or willful misconduct of the Western Reserve Transit Authority, its agents or employees.

Notwithstanding any other provision of this agreement to the contrary, in no event shall either party be liable for any loss of actual or anticipated profits, loss of anticipated business, downtime costs or delay claims (whether direct or indirect), nor for any other special, indirect, incidental, or consequential damages arising out of, relating to, or in any way connected with this agreement or the provision of tires and/or services, whether based in warranty, contract, tort, negligence, strict liability, or otherwise."



Response: Approved providing all other applicable terms and conditions of this ITB including all Addendums are satisfied.

3. Disputes - Section 2.3. Page 11: Please replace the language under this Section with the following: *“WRTA and the Vendor intend to resolve all disputes under this Contract to the best of their abilities in an informal manner. 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. The Vendor shall not be bound by any decision of WRTA nor shall the Vendor be required to exhaust all administrative remedies before commencing litigation in a court of competent jurisdiction within the state in which WRTA is located. 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 this Contract shall be heard by a court de novo and the court shall not be limited in such proceeding to the issue of whether WRTA acted in an arbitrary, capricious or grossly erroneous manner.”*

Response: Approved providing all other applicable terms and conditions of this ITB including all Addendums are satisfied.

4. Access to Third Party Contract Records and Reports - Section 5.3. Page 18: Please add the following as the new Sub-Section 5: *“Any access to the Contractor’s records and reports pursuant to this Section shall be upon thirty (30) days’ prior written notice, during normal business hours and at the sole cost and expense of the accessing party.”*

Response: Approved providing all other applicable terms and conditions of this ITB including all Addendums are satisfied.

5. Termination of Contract - Section 5.5. Page 19: Five changes - (i) Sub-Section (a) (Termination for Convenience (General Provision)) - please replace the first sentence with the following: *“Either party may terminate this contract, in whole or in part, at any time by thirty (30) days prior written notice to the other party.”* (ii) Sub-Section (a) (Termination for Convenience (General Provision)) – Please add the following to the end of the second sentence: *“along with the remaining value of tread on leased tires mounted on buses and in spare stock.”* (iii) Sub-Section (b) (Termination for Default (Supplies and Services)) - please add the following as the third paragraph: *“If WRTA fails to make any payment due or to perform any obligation under this contract, 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 WRTA’s indebtedness and obligations to the contractor to be immediately due and payable and may immediately terminate this contract by giving written notice to WRTA 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.”* (iv) Sub-Section (c) (Opportunity to Cure) – please replace the first sentence with the following: *“WRTA shall, in the case of a termination for breach or default, allow the contractor thirty (30) days in which to cure the defect.”* (v) Sub-Section (c) (Opportunity to Cure) – please replace “10 calendar days” with *“thirty (30) calendar days”* on line 2 of the second paragraph.

Response: Not Approved: (i) Sub-Section (a) (Termination for Convenience (General Provision)) - please replace the first sentence with the following: “Either party may terminate this contract, in whole or in part, at any time by thirty (30) days prior written notice to the other party.”



Response: Approved: (ii) Sub-Section (a) (Termination for Convenience (General Provision)) – Please add the following to the end of the second sentence: “along with the remaining value of tread on leased tires mounted on buses and in spare stock.”

Response: Approved as modified: (iii) Sub-Section (b) (Termination for Default (Supplies and Services)) - please add the following as the third paragraph: “If WRTA fails to make any payment due, **as described within ITB Section 5.35, page 30 Terms of Payment and all other applicable terms and conditions of this ITB including all Addendums are satisfied**, or to perform any obligation under this contract, 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 WRTA’s indebtedness and obligations to the contractor to be immediately due and payable and. **Contractor may provide WRTA written notice of intent to immediately terminate this contract in sixty (60) calendar days from the date WRTA receives such notice, provided all other applicable terms and conditions of this ITB including all Addendums are satisfied. WRTA shall have thirty (30) from the date WRTA receives written sixty (60) day notice to cure the defect.** ~~by giving written notice to WRTA 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.”

Response: Approved: (iv) Sub-Section (c) (Opportunity to Cure) – please replace the first sentence with the following: “WRTA shall, in the case of a termination for breach or default, allow the contractor thirty (30) days in which to cure the defect.”

Response: Approved: (v) Sub-Section (c) (Opportunity to Cure) – please replace “10 calendar days” with “thirty (30) calendar days” on line 2 of the second paragraph.

6. Breaches and Dispute Resolution – Section 5.17. Page 25: Please replace the first paragraph with the following: “WRTA and the Contractor intend to resolve all disputes under this Contract to the best of their abilities in an informal manner. 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. The Contractor shall not be bound by any decision of WRTA 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 WRTA is located. 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 this Contract shall be heard by a court de novo and the court shall not be limited in such proceeding to the issue of whether WRTA acted in an arbitrary, capricious or grossly erroneous manner.”

Response: Approved providing all other applicable terms and conditions of this ITB including all Addendums are satisfied.

7. Assignment – Section 5.29. Page 29: Please replace the language under this Section with the following: “Neither party shall delegate any duties or obligations under this Contract, nor assign, transfer, convey, sublet, subcontract or otherwise dispose of the Contract or its right, duty, title or interest in or to the same, or any part thereof, without previous written consent of the other party.”

Response: Approved providing all other applicable terms and conditions of this ITB including all Addendums are satisfied.



8. Please accept the B305/85R22.5 Metro Miler G652 LR-J as an approved equal to the 315/80R22.5. Product information attached. 9" rim is T&RA design rim width for this size and 8.25" is also an approved rim width.

Response: Approved

9. Please confirm if Contractor's standard form lease agreement may be included as a contract document.

Response: Contractor's standard form lease agreement may be included as part of a contract providing all the following conditions are satisfied: A) Contractor's standard agreement does not contradict any language of this Invitation to Bid (ITB) or Addendums associated with this Invitation to Bid. Terms and conditions as described within this ITB and all Addendums shall govern. B) Contractor's standard agreement shall not include additional terms and conditions not included in this ITB or approved by an addendum to this ITB. C) Contractor's standard agreement may be subject to review and approval from WRTA's legal counsel.

For reference WRTA's standard contract agreement reads as follows:

AGREEMENT

This AGREEMENT ("Agreement") is made and entered into, as of the effective date of _____, 20____, by and between the Western Reserve Transit Authority ("WRTA") and _____ ("Contractor") with respect to WRTA's Request for Proposals, dated _____.

WHEREAS, on _____, WRTA issued an Invitation to Bid ("ITB") based upon the terms and conditions set forth in the ITB attached hereto as Exhibit A.

WHEREAS, pursuant to the procedures set forth in the ITB, the Contractor was awarded a contract to perform the services set forth in the ITB based upon the compensation that was set forth in the Contractor's offer and written response to the ITB, dated _____, which is attached hereto as Exhibit B.

WHEREAS, WRTA has approved the awarding of the contract to the Contractor based upon the terms and conditions of the ITB attached as Exhibit A, and the Contractor's Response to the ITB attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the mutually agreed upon promises and investments set forth above, the Parties hereby enter into the following Agreement:

- 1. Scope of Services. The scope of services provided by _____ to WRTA under this Agreement are set forth in the ITB attached hereto as Exhibit A.*
- 2. Compensation. All compensation for the services rendered shall be limited to the amount of compensation set forth in the Contractor's response to the ITB, which is attached as Exhibit B and incorporated herein by reference.*
- 3. Miscellaneous. In addition to the terms and conditions set forth herein, the Contractor agrees to comply with the additional terms and conditions set forth within the ITB, which is attached to this Agreement as Exhibit A and incorporated herein by reference. To the extent that the terms of the ITB conflict with the Contractor's Response to the ITB attached as Exhibit B, the terms of the ITB shall be controlling.*



WESTERN RESERVE TRANSIT AUTHORITY
604 Mahoning Avenue, Youngstown, OH

4. Execution. This Agreement may be executed in counterparts (and by e-mail signatures), each of which shall be deemed an original and all of which shall constitute one and the same original agreement. By signing below, the executing party represents and warrants that he has been authorized to sign this Agreement on behalf of the respective party designated below.

WESTERN RESERVE TRANSIT AUTHORITY

By: Dean Harris, Executive Director

Date: _____

CONTRACTOR

By:

Date: _____

10. Please confirm the effective date of the contract.

Response: Desired contract start date March 1, 2022. Alternate contract start date may be established providing both parties mutually agree.

11. Section 2 - Specifications. 18. Indemnification. Please confirm that Contractor is not indemnifying WRTA or its employees, agents or any third parties for their own negligent acts or omissions.

Response: Confirmed