

Information For Bid (IFB) – COVER PAGE

Issue Date: May 2, 2023

Title: IFB 2023-03, Hydrogen Fuel Supply

Reference Number: IFB 2023-03

Pre-Bid Meeting: Tuesday, May 23, 2023, 11:00 AM, 1600 Gateway Blvd. SE, Canton, OH 44707

Final Date for Questions or Clarifications: Friday, June 2, 2023, 3:00 pm EST

Final responses posted by: Tuesday, June 6, 2023

Bids for Furnishing the Product(s)/Service(s) Described Herein Must Be Received Prior to Bid Opening: Thursday, June 15, 2023, 10:00AM in SARTA’s Board Room.

The Reference Number, Date and Time of proposal submission deadline, as reflected above, must clearly appear on the face of the returned proposal package.

All inquiries for information should be directed to: John Michaels, Procurement Administrator at [jmichaels@SARTAonline.com](mailto:jmichaels@SARTAonline.com) or by phone at 330-430-2275.

In Compliance with this Request for Proposals and to all conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods/services described herein in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

\_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
(Signature in ink)

Telephone: ( ) \_\_\_\_\_ Title: \_\_\_\_\_

Fax Number: ( ) \_\_\_\_\_ FEI/FIN Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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- Attachment A - Certification Regarding Debarment and Suspension
- Attachment B - Disclosure of Lobbying Activities
- Attachment C - Certificate of Compliance with Buy America Requirements (if applicable)
- Attachment D - Specification Compliance Certificate
- Attachment E - Addendum Acknowledgement
- Attachment F - Certificate of DBE Affidavit (attach OHIO certification)
- Attachment G – Letter of Intent to Perform as a Subcontractor
- Attachment H – Good Faith Effort
- Attachment I - Schedule D DBE Unavailable Certification
- Attachment J - Affidavit Concerning Conflicts of Interest & Noncompetitive Practices
- Attachment K - Certification Regarding Delinquent Taxes
- Attachment L - Non-Discrimination Affidavit
- Attachment M - Bidders List
- Attachment N - Insurance requirements
- Vendor's Check List

## Definition of Words and Terms

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of SARTA's determination that the Contractor's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by SARTA during the Solicitation period and prior to contract award.

Administrative Change: Documentation provided by SARTA to Contractor, which reflects internal SARTA procedures not affecting the Contract terms or Scope of Work.

Buyer: Individual designated by SARTA to conduct the Contract solicitation process, draft and negotiate contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Change Documentation: A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.

Change Order: Written order issued by SARTA, with or without notice to sureties, making changes in the Work within the scope of this Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between SARTA and the Contractor for completion of the Work.

Contract Period: The period of time during which the Contractor shall perform the Services or Work under the Contract.

Contract Price: Amount payable to the Contractor under the terms and conditions of the Contract for the satisfactory performance of the Services or Work under the Contract.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with SARTA for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

DBE: Disadvantage Business Enterprise

Documentation: Technical publications relating to the use of the Work to be provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to SARTA.

DOT: Department of Transportation.

Final Acceptance: The point when SARTA acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

FTA: Federal Transit Administration.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Procurement Administrator: The individual designated by SARTA to administer the Contract and be the Contractor's primary point of contact. The Procurement Administrator has no contracting authority.

Project Manager: The individual designated by SARTA to manage the project on a daily basis and who may represent SARTA for Contract Administration.

Proposer or Offeror or Bidder: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a bid/proposal to perform the Work.

Provide: Furnish without additional charge.

Reference Documents: Reports, specifications, and/or drawings that is available to proposers for information and reference in preparing bids but not as part of this Contract.

RFP or Solicitation: Request for proposals; also known as the solicitation document.

SARTA: Stark Area Regional Transit Authority

Scope of Work or Statement of Work (SOW): A section of the Request for Qualifications consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.

Services: The furnishing of labor, time or effort by a Contractor, but not involving the delivery of any specific manufactured good.

Shall or Will: Whenever used to stipulate anything, Shall or Will means mandatory by either the Contractor or SARTA, as applicable, and means that the Contractor or SARTA, as applicable, has thereby entered into a covenant with the other party to do or perform the same.

Specifications or Technical Specifications: A Section of the Request for Qualifications consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.



Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Submittals: Information that is submitted to the Procurement Administrator in accordance with the Scope of Work/Specifications.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all goods and services specified under this Contract, including Contract Amendments and settlements.

## LEGAL NOTICE

Notice is hereby given that the Stark Area Regional Transit Authority (SARTA) is issuing an Invitation for Bid (IFB) for: IFB 2023-03, Hydrogen Fuel Supply.

The Full Invitation for Bid (IFB) packets are available by going to SARTA's website at [www.sartaonline.com/about/doing-business/](http://www.sartaonline.com/about/doing-business/). All vendors must provide basic contact information to access the full information packet. Information packets will be available online by Monday, May 8, 2023. An optional pre-bid meeting will be held on Tuesday, May 23, 2023, at 11:00 AM at SARTA's Offices. Any questions should be directed to: John Michaels, Procurement Administrator, at 330-430-2275 or by email at [jmichaels@sartaonline.com](mailto:jmichaels@sartaonline.com)

All proposals must be submitted in accordance with requirements set forth in the IFB and must be received at SARTA's office at 1600 Gateway Blvd SE, Canton, Ohio 44707 before the bid opening. Bids will be opened 10:00am EST, Thursday, June 15, 2023 in SARTA's Board Room.

Legal Notice to run in the Canton Repository on May 8, 2023 and May 15, 2023.

## SECTION 1 – INSTRUCTIONS TO PROPOSERS

### 1-1 Introduction

Stark Area Regional Transit Authority (SARTA) is designated as the grantee of all federal and state grants to support public transit within STARK County, OH. SARTA provides economic, social, and environmental benefits to the community through progressive, customer focused transportation.

### 1-2 Purpose

This IFB is for the procurement of Fuel Cell grade hydrogen for use in SARTA's Hydrogen Fuel Cell Fleet.

### 1-3 Proposal Submission

The proposer will submit:

- One (1) original proposal in a sealed envelope, labeled with the Reference number and date along with the name of the submitting firm, including all necessary forms.

Submissions are to be in paper form. Submissions must be delivered to: SARTA, 1600 Gateway Blvd SE, Canton, Ohio 44707, before the public opening.

Public bid opening: Thursday, June 15, 2023, 10:00am

All proposals are to be sealed and clearly marked with the IFB number and description of IFB.

SARTA is not responsible for late proposals.

### 1-4 Proposal Requirements, Format and Required Content

Proposals for the requested services will be acceptable only if a person, firm, or corporation meets the following qualifications:

- Adequate experience and verifiable history providing the work required and sought through this IFB;
- Adequate equipment, personnel and financial resources to fulfill the agreement in a satisfactory manner within the time specified;
- Sub-contracting work tasks to other is allowed once approved ahead of time by the Transit Authority. Any contractor proposing to use sub-contractors must include a statement that these companies shall be properly licensed in like fashion. It will be the responsibility of the prime contractor to verify license(s) of any sub-contractor prior to contract negotiations.

Proposals shall be prepared in a clear and concise manner.

Proposals that do not adhere to the required format, are difficult to read or are deemed illegible may be rejected.

Proposals shall adhere to the following format and contain the following items in the order outlined below:

- a) Invitation for Bid Cover Page and all executed Attachments

- b) Cover letter with the following information
- Identification of the proposer, including name, address, and telephone number of the appropriate contact person(s).
  - Signature of a person authorized to bind the proposer to the terms of the proposal.
- c) Qualification and Capabilities of the Company
- Name(s) and title(s) of all key personnel proposed for the duration of the contract. In the event that oral presentations are conducted, the designated key personnel will be required to attend along with other representatives of the proposer.
  - Provide a brief profile of the proposer, including its principal line of business, year founded, form of organization and a general description of the proposer's financial condition. Identify any conditions (bankruptcy, pending merger, pending litigation, planned office closures) that may impede the proposer's ability to complete the project.
  - Identify all qualification and organizational capabilities that will establish the proposer as a satisfactory provider of the required product or service by reason of its strength and stability.
  - Identify any and all subcontractors. For each subcontractor, provide the name of the company, address, contact person, telephone number and function. Produce OH certified DBE documentation if claiming to be DBE.
  - Provide current information on professional errors and omissions coverage carried by the proposer's firm, including name of insure and amount of coverage.
- d) Related Experiences and References
- Proposers should identify or provide any record(s) of satisfactory performance on similar contracts and supportive client references. Provide examples of similar contracts that the proposer has undertaken in within the last two years. For each reference cited, furnish the name, title, address and telephone number of the person(s) who is most knowledgeable about the work performed.
- e) Technical Proposal
- Proposers must demonstrate their understanding of the project, describe their project approach, and explain how they will meet SARTA's goals and objectives.
  - Provide, in narrative form, a plan of how your organization would approach this project if awarded the contract.
- f) Accessibility
- Provide the accessibility of those assigned to the project that will meet with SARTA staff and complete projects in a timely manner.

## 1-5 Inquiries

All inquiries shall be in an email form directed to John Michaels, Procurement Administrator [jmichaels@sartaonline.com](mailto:jmichaels@sartaonline.com). Those inquiries and answers will be distributed to vendors via addendums.

Vendors must be registered on the SARTA Website ([www.sartaonline.com/about/doing-business](http://www.sartaonline.com/about/doing-business)) to have access to the IFB.

## 1-6 Procurement Schedule

The projected schedule for this procurement is:

IFB available: May 2, 2023

Pre-Bid Meeting: May 23, 2023, 11:00 AM EST, 1600 Gateway Blvd SE, Canton, OH 44707

Deadline for questions and clarifications: June 2, 2023, 3:00 PM EST

Deadline for responses to questions and clarifications: June 6, 2023

Proposals due date and time: June 15, 2023, prior to 10:00AM

Anticipated Award Date: August 2023

Anticipated Starting date: October 2023

SARTA has not set a DBE goal for this procurement but has a yearly goal as listed below.

## 1-7 Disadvantaged Business Enterprise (DBE)

The Federal Fiscal Year goal has been set by SARTA at 2% in an attempt to match projected procurements with available qualified disadvantaged businesses. SARTA's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by SARTA as set forth by the Department of Transportation Regulations 49 CFR Part 26, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Specifications. If the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, SARTA may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract, but DBE participation is still a requirement.

- a) Policy - It is the policy of the Department of Transportation and SARTA that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 applies to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of SARTA to promote the development and increase the participation of businesses owned and controlled by the disadvantaged. DBE involvement in all phases of SARTA procurement activities is encouraged.

- b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, SARTA may declare the Contractor noncompliant and in breach of contract.
- d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with SARTA's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of SARTA and will be submitted to SARTA upon request.
- e) SARTA will provide affirmative assistance as may be reasonable and necessary to assist the prime Contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
  - Identification of qualified DBEs
  - Available listing of Minority Assistance Agencies
  - Holding bid conferences to emphasize requirements

#### DBE Program Definitions, as used in the contract

- a) Disadvantaged business "means a small business concern":
  - Which is at least fifty-one (51%) percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least fifty-one (51%) percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  - Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own itOr
  - Which is at least fifty-one (51%) percent owned by one or more women

individuals, or in the case of any publicly owned business, at least fifty-one (51%) of the stock of which is owned by one or more women individuals; and

- Whose management and daily business operations are controlled by one or more women individuals who own it.

b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

- "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

2) DBE Participation Requirements

SARTA has not set a DBE goal of for this contract.

All prime or general Contractors are hereby notified that they must show that all reasonable good faith efforts were made to have DBE participation or meet the minimum DBE participation goals on this contract, if applicable. This affidavit must be on the form provided by SARTA, which is included in the bid packet.

For a list of qualified DBEs please visit the State of Ohio's web site at [www.ohioucp.org](http://www.ohioucp.org).

Please contact Eric Boylan DBELO Administrator, (330) 477-2782 ext. 521, if you need assistance.

## 1-8 Examination of IFB and Contract Documents

Proposers are expected to examine the Scope of Work, scope of services required, specifications,

schedules, compliance requirements and all instructions. Failure to do so will be at the Proposer's risk. No advantage will be taken by the Proposer in the omission of any part or detail specified. All submission shall be of the industry standard and shall conform to the best practices known in the industry.

Contractor will assume responsibility for all equipment used in the proposal item, whether the same is manufactured by the Contractor or purchased ready made from a source outside the Contractor's company. It is the sole responsibility of the Contractor to read the Scope of Work/Specifications and understand them.

The submission of a proposal shall constitute an acknowledgment upon which SARTA may rely on that the Proposer has thoroughly examined and is familiar with the solicitation, instructions and Scope of Work, including any work site identified in the IFB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods to be provided hereunder. The failure or neglect of a Proposer to receive or examine such documents, work sites, statutes, regulations, ordinances, or resolutions shall in no way relieve the Proposer from any obligations with respect to its Proposal or to any Contract awarded pursuant to this IFB. No claim for additional compensation will be allowed which is based on lack of knowledge or misunderstanding of this IFBRFP, work sites, statutes, regulations, ordinances, or resolutions.

#### 1-9 Interpretation of IFB and Contract Documents

No oral interpretations as to the meaning of the IFB will be made to any Proposer. Any explanation desired by a Proposer regarding the meaning or interpretation of the IFB, Scope of Work, Specifications, etc., must be requested in writing and with sufficient time allowed (as defined in 1-6, Procurement Schedule for a reply to reach all Proposers before the submission of their proposals. Any interpretation or change made will be in the form of an addendum to the IFB, specifications, etc., as appropriate. All addendums will be furnished as promptly as is practicable to all contractors who have registered online for this IFB and to whom the IFB has been issued to at least seven (7) calendar days prior to the proposal due date. All addenda will become part of the IFB and any subsequently awarded Contract. Oral explanations, statements, or instructions given by SARTA before the award of the Contract will not be binding upon SARTA.



## SECTION 2 – TECHNICAL SPECIFICATIONS

The Stark Area Regional Transit Authority (SARTA) of Canton Ohio is seeking proposals for fuel cell grade Hydrogen to be supplied to an existing hydrogen fueling station at SARTA's bus facility. The fueling station currently has a 9,000-gallon liquid Hydrogen storage tank. This tank is scheduled to be upgraded to 15,000-gallons by fall of 2023.

The Hydrogen supplied will be to provide SARTA fuel for a fleet of up to 20 fuel cell buses. The Hydrogen provided under this procurement will be supplied to a compression, storage, and dispensing facility from which the buses will be fueled for their daily routes. Procurement award will be based on the lowest unit cost of the hydrogen (\$/kg) provided to the SARTA site.

Specifically, the Hydrogen supply should be designed to reliably provide 400 kg of hydrogen per day, 6 days of the week. An additional bus at 40 kg is on order with the delivery scheduled for mid-2024 raising the demand to 440 kg of Hydrogen per day. Cost quotes shall be provided for the Hydrogen supplied at this level and cost projections shall be provided to meet the potential demands of the fleet of 20 buses, 400 kg per day for 6 consecutive days. The methods by which the costs were constructed shall be clearly delineated in the proposal. The primary objective of the program is to determine a reliable source of fuel cell grade Hydrogen for an existing and expanding fuel cell bus fleet that is used in full revenue service, whereas reliability of the fueling delivery is paramount.

Please provide pricing as Cost per kilogram (\$/kg) delivered to SARTA's Hydrogen Facility located at 1600 Gateway Blvd SE, Canton, OH 44707. Price should include all applicable fees and taxes. SARTA will provide proof of tax exemption to the successful bidder.

The delivery area will be available for viewing at the Pre-Bid Meeting. Any additional questions or clarifications should be sent to John Michaels, Procurement Administrator by email: [jmichaels@sartaonline.com](mailto:jmichaels@sartaonline.com).

## SECTION 3 – PROPOSAL SUBMISSION PROVISIONS

### 3-1 Postponement, Amendment and/or Cancellation of the IFB

SARTA reserves the right to revise or amend any portion of this IFB prior to the date and time for the proposal delivery. Such revisions and amendments, if any, shall be issued through an addendum to this IFB. Addendums shall be furnished to the Proposer's email address submitted with vendor registration.

SARTA reserves the right to cancel this IFB at any time or change the date and time for submitting proposals by announcing same prior to the date and time established for proposal submittal.

### 3-2 Rejection of Proposals

SARTA reserves the right to reject any or all proposals and waive any minor informalities or irregularities.

### 3-3 Clarification of Proposals

SARTA reserves the right to obtain clarification of any point in a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in the proposals' rejection.

### 3-4 Modification or Withdrawal of Proposals and Late Proposals

At any time before the time and date set for submittal of proposals, a Proposer may request to withdraw or modify its Proposal. Such a request must be made in writing by a person with authority as identified on the IFB Cover Page, provided their identity is made known and a receipt is signed for the proposal. All proposal modifications shall be made in writing executed and submitted in the same form and manner as the original proposal. Any proposal or modification of proposal received at SARTA's office designated in the solicitation after the exact time specified for proposal receipt will not be considered.

### 3-5 Errors and Administrative Corrections

SARTA will not be responsible for any errors in proposals. Proposers will only be allowed to alter proposals after the submittal deadline in response to requests for clarifications by SARTA. SARTA reserves the right to request an extension of the proposal period from a Proposer or Proposers.

SARTA reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition or

similar administrative errors. Erasures or other changes or entries made by the proposer must be initialed by the person signing the proposal.

### 3-6 Compliance with IFB Terms and Attachments

SARTA intends to award a Contract based on the terms, conditions, and attachments contained in this IFB. Proposers are strongly advised to not take any exceptions. Proposers shall submit proposals which respond to the requirements of the IFB. An exception is not a response to an IFB requirement.

Proposers are cautioned that exceptions to the terms, conditions, and attachments may result in a rejection of the proposal.

### 3-7 Collusion

The proposer guarantees that the proposal submitted is not a product of collusion with any other proposer, and no effort has been made to fix the proposal price of any proposer or to fix any over-head, profit, or cost element of any proposal price (Affidavit of Non-Collusion). Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualification of the proposer's offer.

If SARTA determines that collusion has occurred among Proposers, none of the proposals from the participants in such collusion shall be considered. SARTA's determination shall be final.

### 3-8 Taxes and Interest

SARTA is exempt from payment of Federal, Excise and Transportation Tax, and the Ohio Sales, Excise and Use Tax. Proposers will not include these taxes in their proposed price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

SARTA will not pay interest on unpaid or disputed invoices, whether due or overdue.

### 3-9 Single Proposal Response

If only one proposal is received a detailed price/cost analysis may be requested of that Bidder. SARTA reserves the right to reject the single proposal and, if necessary, put the IFB out for bid again.

### 3-10 Exclusionary of Discriminatory Specifications

SARTA agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h) (2) by refraining from using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications. SARTA further agrees to refrain from

using state or local geographic preferences, except those expressly mandated or encouraged by Federal Statute.

### 3-11 Protest Procedures

- a) It is the policy of SARTA to prepare specifications for invitation to bid or for requests for proposals that are not discriminatory in nature. All solicitations are to be open and free to all competing vendors whereby all have a reasonable chance to be successful and be awarded a contract.
- b) If a Bidder that has submitted a proposal feels that a particular solicitation is unfair, the following procedure must be followed to register a proper protest and said procedure shall be part of all solicitations:
  - c) Pre-Bid Protest
    - STEP 1. Protest must be made in writing and addressed to the Secretary-Treasurer of SARTA's Board of Trustees no later than five (5) business days before the scheduled bid or IFB due date. Such protest must cite what the solicitation was for, and for what reason the protest is lodged.
    - STEP 2. The Secretary-Treasurer shall make all reasonable attempts to resolve the protest prior to the award of a contract and may reschedule the bid opening date solely at their discretion if deemed necessary. The Secretary-Treasurer must make their decision no later than three (3) working days from date the protest is lodged.  
Continue to Step 3 under Post-Bid procedures below
  - d) Post-Bid Protest
    - STEP 1. Protest must be made in writing and addressed to the Secretary-Treasurer no later than five (5) business days after the scheduled bid due date. Such protest must cite what the solicitation was for, and for what reason the protest is lodged.
    - STEP 2. The Secretary-Treasurer shall make all reasonable attempts to resolve the protest prior to the award of a contract. The Secretary-Treasurer must make their decision no later than five (5) business days from date the protest is lodged.
    - STEP 3. If the protest is not satisfactorily resolved at Step 2, the person or firm making the protest may request a hearing with his legal counsel and SARTA. With SARTA's legal counsel serving as arbitrator on the matter. Request for such a hearing must be made within ten (10) business days of the original date the protest was filed.

STEP 4. If the protest is not satisfactorily resolved at Step 3, the person or firm making the protest may appeal, within thirty (30) working days of the original protest date, the matter to the SARTA Board of Trustees, who shall assign the matter to the appropriate standing committee of the Board who shall hold a hearing within fifteen (15) business days on the matter and make recommendation to the full Board to be considered at its next regularly scheduled meeting.

The decision of the Board shall be final and binding on all parties. Appeal from the decision of the Board or any request by an adversely affected party may be submitted in writing to the Federal Transit Administration (FTA). FTA's recourse shall only consider protest appeals where the local protest procedure does not exist or where the local procedure was not followed.

### 3-12 Insurance Requirements

Contractor shall not commence work until all insurance required under this section has been obtained and the proper insurance verification has been provided to SARTA. The Contractor will maintain the minimum Insurance coverage standard for the type of services being provided throughout the tasks/contract. (See Attachment N)

## SECTION 4 – PROCUREMENT PROCESS

### 4-1 Method of Procurement: Competitive Negotiation

- a. Procurement will be made on a “competitive negotiated” basis. The competitive negotiation method of procurement is an acknowledgment that, in addition to price and responsiveness to technical specifications, there are other factors which should be considered in the procurement process in order to determine which offer is in the best interest of SARTA and allows the most efficient and economical use of public funds. It should also be understood that the competitive negotiation: process is designed to ensure, to the maximum extent possible, that award will be made on a competitive basis.
- b. The contract will be awarded to the Bidder whose proposal will be the most advantageous to SARTA in terms of all evaluation criteria stated elsewhere in the IFB.

## SECTION 5 – SELECTION PROCESS

### 5-1 Basis of Award, Selection Process and Evaluation Criteria

The specifications represent features best suited to the requirement needed by SARTA and are not for the benefit of the Proposers. SARTA will select the proposal most advantageous to SARTA and responsive to the specifications.

SARTA RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS OR ANY POST THEREOF TO WAIVE ANY INFORMALITIES IN THE PROPOSAL, MINOR IRREGULARITIES AND TO MAKE AN AWARD ON THE BASIS OF SUITABILITY, QUALITY OF PRODUCT(S) TO BE SUPPLIED, THEIR CONFORMITY WITH THE SPECIFICATIONS AND FOR THE PURPOSES FOR WHICH THEY ARE REQUIRED, DATES OF DELIVERY AND NOT CONFINED TO PRICE ALONE. False, incomplete or unresponsive statements in connection with the proposal may be deemed sufficient cause for rejection. SARTA shall be the sole judge in making such determination.

SARTA reserves the right to cancel or discontinue with the proposal process and reject all proposals in the event it determines that there is no longer a requirement for the item(s), the funding is no longer available or it is otherwise in SARTA's best interest to cancel the proposal.

An "Evaluation Committee" consisting of selected personnel will be established to evaluate the proposals and to recommend the apparent successful Bidder.

### 5-2 Selection of the IFB

It is the intent of the Procurement Administrator to select an apparent successful low bidder with a recommendation to be forwarded to the Board of Trustees based upon the evaluation criteria set for herein.

## SECTION 6 – STANDARD CONTRACTUAL TERMS & CONDITIONS

### 6-1 Administration

This Contract is between SARTA and the Contractor who will be responsible for providing the goods described herein. SARTA is not party to defining the division of work between the Contractor and its Subcontractors, if any, and the Specifications and/or Scope of Services has not been written with this intent.

Contractor represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Contractor's performance under this Contract may be monitored and reviewed by a Procurement Administrator appointed by SARTA. Reports and data required to be provided by Contractor shall be delivered to the Procurement Administrator. Questions by Contractor regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Procurement Administrator for response.

### 6-2 Notification of Delay

Contractor will notify SARTA's Procurement Administrator as soon as Contractor has, or should have, knowledge that an event has occurred which delay delivery or start-up of services. Within five days, Contractor will confirm such notice in writing furnishing as many details as is available.

### 6-3 Request for Extension

Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by SARTA's Procurement Administrator to make a decision of any request for extension. SARTA's Procurement Administrator will examine the request and any documents supplied by Contractor and will determine if Contractor is entitled to an extension and the duration of such extension. SARTA's Procurement Administrator will notify Contractor of the decision in writing. It is expressly understood and agreed that Contractor will not be entitled to damages or compensation and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

### 6-4 Contract Changes

Any proposed change in the contract will be submitted to SARTA for its prior written approval and SARTA will make the change by a Change Order if agreed upon by both parties in writing. Each written Change Order will expressly include any change in the Contract price or delivery schedule. No oral order or conduct by SARTA will constitute a Change Order unless confirmed in writing by SARTA.



#### 6-5 Cost or Price Analysis

SARTA reserves the right to conduct a cost or price analysis for any purchase. SARTA may be required to perform a cost analysis when competition is lacking any purchase. Sole source procurements which result in a single Bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect on Bid prices. SARTA may require a Pre-Award Audit and potential Contractors shall be prepared to submit data relevant to the proposed work which will allow SARTA to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State and local regulations. Procurements resulting in a single Bid will be treated as a negotiated procurement and SARTA reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, SARTA reserves the right to reject the single Bid. Contract change orders or modifications will be subject to a cost analysis.

#### 6-6 Lack of Funds

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, SARTA may, upon written notice to Contractor, terminate this Contract in whole or in part. Such termination shall be in accordance with SARTA's rights to terminate for convenience or default.

#### 6-7 Force Majeure

The timely receipt of SARTA's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, SARTA may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Contractor any increased costs, thereby incurred together with all resulting incidental and consequential damages. SARTA may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor obligations.

The Contractor shall be entitled to a reasonable extension of time from SARTA for the delays caused by damage to Contractor's and/or SARTA's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil or public disturbances beyond the control of the Contractor and its subcontractors causing the inability to perform the requirements of this Contract. Any delay other than ones mentioned above shall constitute a breach of Contractor's contractual obligations.

## 6-8 Taxes, Licenses, Laws and Certificate Requirements

Contractor shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by Contractor and any subcontractors and shall secure and at all times maintain any and all such valid licenses and permits as may be required to provide the services or supplies under this Contract. If for any reason, Contractor's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, Contractor shall immediately notify SARTA in writing of such condition.

Contractor will give all notices and comply with all federal, state, local and SARTA laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these General Provisions of the Contract and the other Contract Documents. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by SARTA in the Contract Documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, Contractor shall furnish to SARTA certificates of compliance with all such laws, orders and regulations. Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

Applicable provisions of all federal, state, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a Bid response hereto and SARTA, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Contractor shall not constitute a cognizable defense against the legal effect thereof.

## 6-9 Defective Work, Materials or Services

When and as often as SARTA determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply SARTA with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. SARTA may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Contractor at contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies

available to SARTA by law, including those available under the Uniform Commercial Code.

#### 6-10 Assignment

Contractor shall not assign any interest, obligation, or benefit under or in this Contract or transfer any interest in the same, whether by assignment or notation, without the prior written consent of SARTA. If an assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of Contractor. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee and the assignee must assume the written Contract and be responsible for the obligations and liabilities of Contractor, known and unknown, under this Contract and applicable law.

SARTA may assign its rights and obligations under the Contract to any successor to the rights and functions of SARTA or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent SARTA deems necessary or advisable under the circumstances.

#### 6-11 Indemnification and Hold Harmless

SARTA has the right to stop or resume work, to make inspections, to receive reports and to provide recommendations or suggestions, consistent with the employment of an independent contractor, and that no provision of this Agreement shall be construed as SARTA retaining control of or having liability for the actions of the Contractor. SARTA shall have no liability for Contractor's selection of personnel, employees or subcontractors, nor for the presence of dangerous conditions on any real property where Contractor is employed.

Contractor shall have sole control over the manner and means of providing the work and services performed under this agreement. SARTA's relationship to the Contractor under this agreement shall be that of an independent contractor. Contractor will not be considered an employee of SARTA for any purpose. The parties agree that the Contractor is exclusively responsible for the determination of what work is required to complete the tasks outlined herein, and for the means and methods of completing such work. SARTA's compensation to Contractor shall be limited to that described in any approved contract, and SARTA shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Contractor other than payment of the stated compensation. The Contractor shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.

Contractor shall be responsible for determining its sequence of performance for required work. Contractor's work shall be evaluated by SARTA based upon the end result of such work. Contractor shall be responsible for any expenses incurred by Contractor in the performance of its work, and shall not be authorized, expressly or impliedly, to obligate SARTA on any debt, contract or other agreement whatsoever. In the event that Contractor is compensated on an hourly basis under the terms of this Agreement, SARTA and Contractor agree that Contractor's compensation is usual and customary, based on the terms that Contractor offers its services to the market in general. The Contractor shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless SARTA, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

The Contractor agrees to indemnify and save harmless SARTA, including its elected or appointed officials, employees, attorneys and agents against any and all claims, loss damage, injury, liability, and court costs and attorney's fees incident thereto, including any claims made by employees of the Contractor or any of their subcontractors, as well as all other persons, resulting directly or indirectly from the work covered by this contract or the equipment used in connection therewith. It is understood that this agreement shall apply to any and all such claims whether resulting from the negligence or the intentional acts of the Contractor, the Contractor's employees, contractors or subcontractors, SARTA or SARTA Indemnitees or otherwise, with the single exception of any claim, damage, loss, or expense arising solely out of the intentional misconduct of SARTA or SARTA Indemnitees. The Contractor is solely responsible for determining the accuracy and validity of any information provided to the Contractor by SARTA or its representatives. This indemnification shall apply to the fullest extent of the law, and in the event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect. This indemnification shall include any claims arising out of the erection, construction, placement or operation of any scaffold, hoist, crane, stay, ladders, support or other mechanical contrivance in connection with such work including but not limited to losses, claims, damages and expenses arising pursuant to claims asserted against SARTA. This indemnification shall not be limited in any way by limitations on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts. However, the Parties shall not indemnify the other for any liabilities, damages, costs or expense resulting from the other party's own willful misconduct or negligence.

## 6-12 Applicable Law and Forum

All work done pursuant to any contract resulting from this IFB will be governed by and construed according to the regulations of the Federal Transit Administration and the laws of the State of Ohio. Further, the successful Proposer shall abide by all federal, state, and local laws, SARTAs, and ordinances governing any areas(s) in which a service is rendered and shall have all required permits, licenses, agreements, tariffs, bonding, and insurance required by same. No claims for additional payment shall be approved for changes required to comply with any such requirements.

## 6-13 Attorney Fees

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including attorney's fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

## 6-14 Conflicts of Interest and Non-Competitive Practices

- a) Conflict of Interest – Contractor by entering into this Contract with SARTA to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SARTA and take action immediately to eliminate the conflict or to withdraw from this Contract, as SARTA may require.
- b) Contingent Fees and Gratuities – Contractor, by entering into this Contract with SARTA to perform or provide work, services, or materials, has thereby covenanted:
  - No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
  - No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of SARTA or other governmental agency with a view toward securing this Contract

or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

#### 6-15 Conflicts of Interest – Current and Former Employees

SARTA seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former SARTA employees in transactions with SARTA. Consistent with this policy, no current or former SARTA employee may contract with, influence, advocate, advise, or consult with a third party about a SARTA transaction, or assist with the preparation of Bids submitted to SARTA while employed by SARTA or within one (1) year after leaving SARTA's employment, if he/she participated in determining the work to be done or process to be followed while a SARTA employee.

Furthermore, no member, officer, or employee of SARTA during their tenure or for two (2) years thereafter will have any financial interests, direct or indirect, in this Contract or the proceeds thereof.

#### 6-16 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

#### 6-17 Non-waiver of Breach

No action or failure to act by SARTA shall constitute a waiver of any right or duty afforded to SARTA under the Contract; nor shall any such action or failure to act by SARTA constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by SARTA in writing.

## SECTION 7 – SPECIFIC CONTRACTUAL TERMS & CONDITIONS

### 7-1 Contract

A Contract shall be issued referencing this solicitation. Contract shall define and authorize the work by Contractor based on the negotiated fees agreed to by SARTA. The Contract(s) issued by SARTA may reflect agreed to modification of Contract terms, funding, or other matters subject to subsection 6, Contract Changes.

### 7-2 Contract Documents and Precedence

The documents constituting the Contract between SARTA and Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the following order of precedence shall be applied:

1. Any required federal, state or local regulations that may not be altered by SARTA
2. Contract
3. Contract amendments
4. Results of negotiations documented in a mutually acknowledged writing signed by party representatives having authority to bind the respective party
5. Solicitation and all issued addenda and approved equals
6. Any optional federal regulations elected by SARTA as expressly set forth herein
7. Clarifications of and amendments to Contractor's proposal as accepted by SARTA
8. Contractor's proposal and Attachments, and all clarifications and amendments issued prior to contract award (except where in conflict with any of the preceding points)

### 7-3 Payment Procedures

- a) Payment Schedule/Prompt Payment to Subcontractors
  - SARTA will make payments for the duration of this contract. Payment schedule to be set upon acceptance of proposal. The contract will include the payment schedule. It is required by 49 CFR 26.29 that prompt payments are required by the prime contractor to the subcontractors for

satisfactory performance of the contracts no later than 30 days from receipts of each payment that SARTA makes to the prime contractor, this also includes any retainage.

b) Maximum Payment

- The prices submitted in the proposal shall include all items of labor, materials, tools, equipment, installation, and other costs necessary to fully complete the manufacture and delivery of the equipment pursuant to these specifications. Pricing must be submitted on the pricing proposal sheet included herein.

c) Invoicing

- Vendor must invoice within thirty (30) days of completion of work, or as long as the project or service is ongoing.
- Invoice are to be emailed to [payments@sartaonline.com](mailto:payments@sartaonline.com)
- If you are unable to email please use;
- Accounts Payable  
SARTA  
1600 Gateway Blvd SE, Canton, OH 44707
- All vendors will be required to send bank information so an ACH payment can be made.

d) Worker's Compensation Act

The Bidder shall comply with the State Law known as the Workers' Compensation Act and shall pay into the State insurance fund the necessary premiums required by the Act or elect and maintain status as a Qualified Self Insured as allowed by the Act to cover all employees and under the control of the Bidder, and shall relieve SARTA from any costs due to accidents and other liabilities mentioned in said Act.

e) Social Securities Act

The Bidder shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, and old age retirement benefits or annuities now or hereafter imposed under any State and Federal law which are measured by the wages, salaries, or other remunerations paid to persons by the Bidder on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or may be issued or promulgated under said respective laws by any duly authorized State or



Federal officials; and said Bidder also agrees to indemnify and save harmless the Board of Trustees from any contributions or liability therefor.

#### 7-4 Advance Payments Prohibited

No advance payment shall be made for the work furnished by the Contractor pursuant to this contract.

#### 7-5 Shipping Costs

All prices shall include freight FOB to the designated delivery point. SARTA shall reject requests for additional compensation for freight charges.

#### 7-6 Warranty Provisions

- a) No Waiver of Warranties and Contract Rights: Conducting of tests and inspections, review of Scope of Work or plans, payment for a work, or acceptance or final acceptance of the work by SARTA shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve Contractor from its warranty/guarantee responsibility.
- b) Warranty: Contractor will exercise diligence, competence, skill, and good judgment throughout the design process, supervision process if applicable and contract preparation including representing the work in sufficient detail on the plans and to describe it in sufficient detail in the specifications. The contractor is responsible for ensuring that the design as it is assembled and integrated in the contract documents complies with fire, safety, and all other applicable building codes. The contractor is ultimately responsible for the facility and its systems' ability to function and perform in the manner and to the extent intended. Any work or materials which may have been unintentionally omitted in the design or description of the work, but which is clearly necessary for the proper completion of the contract, shall be furnished at its cost by the Contractor as if it had been specified in the plans and specifications.
- c) Warranty Applicable to Third Party Suppliers, Vendors, Distributors, and Subcontractors: Contractor/Proposer shall review the warranty requirements of products, equipment, materials and services provided under this contract and under the plans and specifications which are prepared for SARTA's construction work as are required of suppliers, vendors, general contractors and subcontractors to observe general compliance with the plans and specifications and avoid inconsistency. Contractor/Proposer shall cooperate

with SARTA in facilitating warranty related work by such suppliers, vendors, distributors, general contractors and subcontractors.

#### 7-7 Warranties

Contractor warrants that qualified professional personnel with in-depth knowledge shall perform the services in a timely and professional manner; and that the services shall conform to the standards generally observed in the industry for similar services.

Contractor warrants that the services shall be in compliance with all applicable laws, rules, and regulations.

#### 7-8 Warranty Remedies

If at any time before Final Acceptance of any work covered by this Contract, Contractor or SARTA discovers one or more material defects or errors in the work of any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein, Contractor shall, at its own expense and within thirty (30) days of notification of the defect by SARTA, correct the defect, error, or nonconformity.

Notice Required – SARTA shall give written notice of any defect to Contractor. If the Contractor has not corrected the defect within thirty (30) days after receiving the written notice, SARTA, in its sole discretion, may correct the defect itself. In the case of an emergency where SARTA believes delay could cause serious injury, loss, or damage, SARTA may waive the written notice and correct the defect. In either case, SARTA shall charge-back the cost for such warranty repair to Contractor.

Contractor is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements or scope of work, including shipping charges, for work found defective before Final Acceptance, regardless of who actually corrects the defect.

#### 7-9 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim or right, privilege or benefit, which would accrue to an employee.

#### 7-10 Non-Disclosure of Data

Data provided by SARTA either before or after Contract award shall only be used for its intended purpose. Proposers, vendors, Contractors, and subcontractors shall not utilize or distribute the SARTA data in any form without the prior express written approval of SARTA.

#### 7-11 Non-Disclosure of Obligation

While providing the work required under this Contract, Contractor might encounter licensed technology, software, documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." Contractor shall, with regard to such information and material received or used in performance of this Contract, employ practices no less than those used for the protection of Contractor's own confidential information.

The Contract imposes no obligation upon Contractor with respect to confidential information which Contractor can establish that: a) was in the possession of, or was rightfully known by Contractor without an obligation to maintain its confidentiality prior to receipt from SARTA or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by Contractor without the participation of individuals who have had access to SARTA's or the third party's confidential information. Contractor may disclose confidential information if so required by law, provided that Contractor notifies SARTA that the third party of such requirement prior to disclosure.

#### 7-12 Public Disclosure Request

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

If a Contractor considers any portion of any documents which may be delivered to SARTA pursuant to this Contract to be protected under the law, Contractor shall clearly identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." If a request is made for disclosure of any such document, SARTA will determine whether the document should be made available under the law. If the document or parts thereof are determined by SARTA to be exempt from public disclosure, SARTA will not release the exempted document.

### 7-13 Ownership of Data

Subject to the rights granted to Contractor pursuant to this Agreement, all rights, titles and interest in and to the data, plans, schematics, or other documents collected and developed during the performance of this contract shall at all times remain the sole and exclusive property of SARTA. Contractor shall surrender all such data to SARTA prior to submitting an invoice for final payment. Contractor shall not claim any copyright or other restriction on or infringement of this transfer of intellectual property rights and shall deliver all such documents in hard copy and in electronic format specified by SARTA.

### 7-14 Patents and Royalties

Contractor is responsible for paying all license fees, royalties, or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, Contractor shall, if requested by SARTA, furnish acceptable proof of a proper release from all such fees or claims.

### 7-15 Publicity

All publicity releases or releases of reports, papers, articles, maps or other documents in any way concerning this contract or the work hereunder which the Bidder or any of its subcontractors' desires to make for purposes of publication in whole or in part shall be subject to approval of the Executive Director/CEO of SARTA before release.

Bidder's failure to observe this provision SARTA shall have the right to terminate the contract without obligation to accept deliveries after the date of termination or to make further payment except for completed articles delivered prior to termination.

### 7-15 Changed Requirements

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, Contractor agrees to accept all changed requirements that apply to this Contract and require subcontractors to comply with revised requirements as well. Changed requirements will be implemented through subsection 5-4, Contract Changes/ Change Order Procedure.

### 7-16 Delivery Points

This contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to SARTA's main facility using the Receiving Department for deliveries of goods.

## Section 8 -Federal Transit Administration (FTA) Requirements

### 8-1 No Government Obligation to Third Parties

- a) The Purchaser and Bidder 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Bidder 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 clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### 8-2 Program Fraud and False or Fraudulent Statements and Related Acts

- a) The Bidder 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 CFR 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.
- b) The Bidder 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Bidder 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.

### 8-3 Audit and Inspection of Records

- a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 CFR 18.36(i), the Bidder agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- b) Where the Purchaser is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 CFR 633.17, Bidder agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
- c) Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Bidder shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- d) The Bidder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- e) The Bidder agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Bidder agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11). FTA does not require the inclusion of these requirements in subcontracts.

#### 8-4 Notice of Federal Requirements/Changes

- a) Bidder shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (20) dated October 2013), as they may be amended or promulgated from time to time during the term of this contract. Bidder's failure to so comply shall constitute a material breach of this contract.

#### 8-5 Civil Rights, EEO, Title VI and ADA

- a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 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 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
  - d) Americans with Disabilities Act - The Bidder agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) 42 USC § 11401 et seq: Section 504 of the Rehabilitation Act of 1973, as amended, 19 USC § 792, 49 USC § 5301(d); and the Federal Regulations including any amendments thereto: 49 CFR Part 27, 49 CFR Part 38; 28 CFR Part 35; 28 CFR Part 36; 41 CFR Subpart 101-19; 29 CFR Part 1630; 47 CFR Part 64, Subpart F; and 49 CFR Part 609.

#### 8-6 Veterans' Preference

- a) Veterans Employment. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

#### 8-7 Incorporation of Federal Transit Administration (FTA) Terms

- a) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular



4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SARTA requests which would cause SARTA to be in violation of the FTA terms and conditions.

#### 8-8 Environmental Conservation

- a) The Bidder and all of its subcontractors shall recognize mandatory standards and policies relating to the following requirements:
  1. Energy Requirements
    - 1a. The Bidder agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the State of Ohio Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act.
  2. Recovered Materials and Recycled Products. The Bidder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### 8-9 Termination/Breach of Contract

- a) Termination for Convenience (General Provision) SARTA may terminate this contract, in whole or in part, at any time with 30 days prior written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SARTA to be paid the Contractor. If the Contractor has any property in its possession belonging to SARTA, the Contractor will account for the same, and dispose of it in the manner in which SARTA directs.
- b) Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule. If the Contractor fails to comply with any other provisions of the contract, SARTA 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 only be paid 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 SARTA 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. SARTA, 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.

- c) Opportunity to Cure (General Provision) SARTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] 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.

If Contractor fails to remedy to SARTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within ten (10) days after receipt by Contractor or written notice from SARTA setting forth the nature of said breach or default, 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 SARTA 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 SARTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SARTA shall not limit SARTA's remedies for any succeeding breach of that or of any other term, covenant, 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, SARTA may terminate this contract for default. SARTA 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 SARTA.

#### 8-10 Debarment and Suspension

- a) The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Non-procurement 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 Government wide Debarment and Suspension (Non-procurement)," 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:
1. Debarred from participation in any federally assisted Award
  2. Suspended from participation in any federally assisted Award
  3. Proposed for debarment from participation in any federally assisted Award
  4. Declared ineligible to participate in any federally assisted Award
  5. Voluntarily excluded from participation in any federally assisted Award
  6. Disqualified from participation in ay federally assisted Award

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

- b) The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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.

(Form is attached)

#### 8-11 Disclosure of Lobbying Activities

- a) Bidders who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf with Non- Federal funds with respect to that federal contract, grant or award covered by 31 U.S.C § 1352(B)(5).

(Form is attached)

#### 8-12 Disputes/Litigation

- a) SARTA 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 SARTA 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 Authority acted in an arbitrary, capricious, or grossly erroneous manner.
- b) Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with SARTA's direction or decisions made thereof.

## SECTION 9 – PROPOSAL

### REQUIRED FORMS

ALL forms are to be signed and returned. Failure to do so may result in a non-compliant bid.

## Attachment A- Certification Regarding Debarment, Suspension, And Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE SIDE)

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civically charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

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Company Name (Print)

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Name and Title of Authorized Representative (type or print)

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Signature of Authorized Representative (Date)

## INSTRUCTIONS FOR CERTIFICATION

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## Attachment B- Disclosure of Lobbying Activities

The undersigned [Contractor] 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 making lobbying contacts to 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 subawards at all tiers (including subcontracts, subgrants, 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

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Company Name (Type or print)

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Name and Title of Authorized Representative (Type or print)

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Signature of Authorized Representative (Date)



Attachment C- Certificate of Compliance with Buy America Requirements

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 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.

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.

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Company Name

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Authorized Representative (Title)

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Authorized Representative Signature (Date)

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.

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Company Name

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Authorized Representative (Title)

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Authorized Representative Signature (Date)

## Attachment D- Specification Compliance Certificate

The Proposer hereby certifies that the equipment, or goods supplied by will comply with all specifications, the special requirements, attachment forms, amendments, or items approved by SARTA on specification request and approval form. Equipment and goods delivered to SARTA which does not comply with the aforementioned specifications will be considered unacceptable and grounds for liquidated damages assessment or performance bond evocation, and/or contract termination for default.

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Company Name

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Authorized Representative (type or print) ( Title)

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Authorized Representative Signature (Date)

## Attachment E- Addendum Acknowledgement

This acknowledgment form serves to confirm that the Respondent has reviewed, complied and/or accepted all Addendum(s) / Amendment(s).

Please list all Addendum(s) / Amendment(s) below.

Addendum#

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Company Name

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Authorized Representative (type or print) (Title)

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Authorized Representative Signature (Date)

Addendums are posted on SARTA's website "[www.sartaonline.com/bids](http://www.sartaonline.com/bids)". Respondents will receive an email stating that there is an addendum but, respondents are responsible for check the website for any addendums.

Attachment F- DBE Affidavit

This page to be completed only by disadvantaged business enterprise contractors.

DBE AFFIDAVIT

State of \_\_\_\_\_

County of \_\_\_\_\_

I hereby declare and affirm, that I am the \_\_\_\_\_

(Title)

and authorized representative of \_\_\_\_\_

(Name of Firm)

whose address is \_\_\_\_\_.

I hereby declare and affirm that I am a Disadvantaged Business Enterprise as defined by the Ohio DBE Unified Certification Program specifications and that I will provide information requested by SARTA to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and that I am authorized, on behalf of the above firm, to execute this affidavit.

\_\_\_\_\_

(Signature of Affiant)

\_\_\_\_\_

(Printed name of above)

On this     day of \_\_\_\_\_, 20   \_, before me the above named officer appeared, known to be \_\_\_\_\_ and the person described in the foregoing Affidavit and that he/she did execute the same in the capacity therein stated and for the purpose stated.

IN WITNESS THEREOF, I hereunto set my hand and official seal,

\_\_\_\_\_

(Notary Public)

\_\_\_\_\_

My Commission Expires

(seal)

The following must be executed by the DBE who is being used as a subcontractor:

# Attachment G- Letter of Intent to Perform As a Subcontractor

To: \_\_\_\_\_

(Name of Proposer)

The undersigned intends to perform work in connection with the Ohio DBE Unified Certification Program specifications as:

\_\_\_ Individual \_\_\_ corporation \_\_\_ partnership \_\_\_ joint venture

The disadvantaged status of the undersigned is confirmed on the attached Affidavit of Disadvantaged Business Enterprise. The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ at the following cost(s) \_\_\_\_\_

The following commencement and completion date is projected.

PROJECTED WORK ITEM(S) \_\_\_\_\_

PROJECTED COMMENCEMENT DATE \_\_\_\_\_

PROJECTED COMPLETION DATE \_\_\_\_\_

\_\_\_% of the dollar value of the subcontract will be sublet and/or awarded to the non-disadvantaged Contractors and/or non-disadvantaged suppliers. The undersigned will enter into a formal agreement for the work with you conditioned upon the execution of a contract with SARTA. No agreement has been entered into between the above-named bidder and the DBE subcontractor wherein the below-named bidder DBE subcontractor has promised not to provide subcontracting quotations to other bidders and proposers.

DBE Business: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Fax: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ Email: \_\_\_\_\_

Name of Officer for DBE Firm \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Officer for DBE firm \_\_\_\_\_

1. SARTA has established a five percent (5%) goal for Disadvantaged Business Enterprise (DBE) participation for this contract. Therefore, a proposer must, in order to be responsible and responsive, make a good-faith effort to meet the goal. The proposer can meet this requirement in either of two (2) ways. First, the proposer can meet or exceed the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if the proposer doesn't meet the goal, the proposer can document its good-faith efforts to meet the goal. This means that the proposer must show that it took all necessary and reasonable steps to achieve the DBE goal, or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

2. SARTA will use the good-faith efforts mechanism as required by 49 CRF part 26. It is up to SARTA to make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good-faith efforts. SARTA will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take, if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good-faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, SARTA's determination concerning the sufficiency of the firm's good-faith efforts is a judgment call; meeting quantitative formulas is not required.

3. SARTA will not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the proposer shows that an adequate good-faith was made. The rule specifically prohibits SARTA from ignoring bona fide good-faith efforts.

4. The following is a list of types of actions that SARTA will consider as part of the proposer's good-faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty whether or not a DBE is certified.

b. The DBEs are interested by taking appropriate steps to follow up initial solicitations.

c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

d. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

## ATTACHMENT H – Good-Faith Effort (Continued)

e. Negotiating in good-faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good-faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs, if the price difference is excessive or unreasonable.

f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals from DBEs in the Contractor's efforts to meet the project goal.

g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance, as required by the recipient or contractor.

h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and Local minority/women business assistance offices; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of DBEs.

SCHEDULE D

Attachment I- Certification of Contractor Regarding Unavailability of a Disadvantaged Business Enterprise

PROJECT NAME \_\_\_\_\_

PROJECT NUMBER \_\_\_\_\_

NOTE: The bidder must prepare one of these forms for each DBE contract made where the DBE was found not to be ready, willing, or able to perform the work solicited. If the bidder was unable to obtain the DBE signature, the form must be completed to the best of the bidder's ability, indicating the reason for the absence of the DBE signature.

I, \_\_\_\_\_, \_\_\_\_\_  
(Prime of General Contractor) (Print) (Title)

of \_\_\_\_\_, certify that on \_\_\_\_\_  
(Name of Firm) (Print) (Date)

I contacted the following DBE Contractor to obtain a bid for work items to be performed on the above-captioned contract.

FORM OF BID SOUGHT, I.E., DBE CONTRACTOR WORK ITEMS SOUGHT, UNIT PRICE, MATERIALS AND LABOR, LABOR ONLY, ETC.

\_\_\_\_\_

To the best of my knowledge and belief, said DBE Contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_ was offered an opportunity to bid  
on the above-identified work on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (Source)

The statement asserted above by the company, which contacted me, is a true and accurate account of why I did not submit a bid on the project.

SIGNATURE OF DBE: \_\_\_\_\_ DATE: \_\_\_\_\_



## SCHEDULE D-1 Grant Relief for Bidders

### (Instructions)

If a bidder finds it impossible to fully meet the DBE goal of this contract, the bidder must include Schedule D Certification of Contractor Regarding Unavailability of DBE, accompanied by documentation showing that all reasonable good faith efforts were made toward fulfilling the goal. The request and description of good faith efforts are required in affidavit format. Suggested reasonable efforts should include, but not limited to:

- (1) Attendance at the pre-bid conference if scheduled.
- (2) The Contractor's general affirmative action policies regarding the utilization of DBE's.
- (3) The advertisement in trade association newsletters and DBE-oriented and general circulation media, for specific sub-bids that would be at least equal to the percentage contract goal for DBE Utilization.
- (4) Notification of DBE Contractor Assistance agencies in writing before bid is due.  
(Lists of qualified DBE's can be found at the Ohio DBE UCP website)
- (5) Direct negotiation with DBE for specific sub-bids; the action taken must be reported in such a fashion as to include all the following items:
  - (a) A detailed statement of the efforts to negotiate with DBEs who were contacted; a description of the information provided to DBEs regarding the plans and specifications for the portions of the work to be performed; a detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not reached.
  - (b) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal.
  - (c) As to each DBE contacted but which the bidder considers to be not qualified, a detailed statement of the reason(s) for the bidder's conclusion.
  - (d) As to each DBE contacted which the bidder considers to be unavailable, an Unavailability Certificate (Schedule D) signed by the DBE; or a statement from the bidder that the DBE refused to give such written certification after reasonable request and a statement from the bidder of the reasons for the bidder's conclusion.
- (6) Efforts made by the Contractor to expand its search for DBEs beyond usual geographical boundaries to a reasonable area.
- (7) If the Contractor is a distributor or manufacturer where it can be shown that the opportunity for DBE participation does not exist in work under this contract efforts must include an exhaustive research into the DBEs potential in the roles of sub-supplier, transport, engineering, distribution, or any other roles contributing to the production and delivery as specified in the contract.

# Attachment J- Affidavit Concerning Conflicts Of Interest And Noncompetitive Practices

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned, being first duly sworn, on oath states on behalf of the Contractor:

A. Conflict of Interest

That the Contractor, by entering into this Contract with SARTA to perform or provide work, services, or materials to SARTA, has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any such interest which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees, or representatives hereafter acquire such a conflict of interest, it shall immediately disclose such interest to SARTA and take action immediately to eliminate the conflict or to withdraw from this Contract, as SARTA may require.

B. Contingent Fees and Gratuities

That the Contractor, by entering into this Contract with SARTA to perform or to provide services or materials for SARTA, has thereby covenanted and by this affidavit does again covenant and assure:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor have been employee or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. That no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any of its agents, employees, or representatives to any official member, Board Member, or employee of SARTA or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performance of this Contract.

\_\_\_\_\_  
Company Name (Print)

\_\_\_\_\_  
Authorized Representative (type or print)

(Title)

\_\_\_\_\_  
Authorized Representative Signature

(Date)

Subscribed and sworn to before me \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(seal)

Attachment K- Certification Regarding Delinquent Taxes (5719.042 ORC)

\_\_\_\_\_, hereby affirms under oath, pursuant to Ohio Revised Code Section 5719.042, that at the time the proposal/bid was submitted, my company (was) (was not) charged with delinquent Personal proerty taxes on the General List of Personal Property for Stark County, Ohio.

If such charged for deliquent personal property tax exists on the General Tax List of Personal Property for Stark County, Ohio, the amount due and penalties and interest shall be set forth below.

A copy of this statement shall be transmitted to the Stark County Treasurer within thirty (30) days of the date it is submitted. A copy of this statement shall also be incorporated into the contract between the Stark Area Regional Transit Authority and

\_\_\_\_\_ and no payment shall be made with respect to any contract unless such statement has been so incorporated as a part thereof.

Delinquent Personal Property Tax	\$ _____
	(If none insert "0")
Penalties	\$ _____
Interest	\$ _____

By: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me \_\_\_\_\_  
(Notary Public)

This \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in and for the State of \_\_\_\_\_,

residing in the County of \_\_\_\_\_.

(seal)

\_\_\_\_\_

Notary Signature

\_\_\_\_\_

My Commission Expires

Attachment L- Non-Discrimination Affidavit

STATE OF \_\_\_\_\_}

COUNTY OF \_\_\_\_\_}

\_\_\_\_\_, being first duly sworn and deposes and says:

1. That he/she is the \_\_\_\_\_ (President or other official title) of \_\_\_\_\_ (Company, Partnership, or Corporation) organized, and existing under any by virtue of the laws of the State of \_\_\_\_\_, and in whose behalf he/she makes this affidavit:
2. That \_\_\_\_\_ does not and will not discriminate in its employment practices because of race, ancestry, color religion, sex, age, national origin, physical or mental disability, or veteran status, as defined and required by law.
3. That \_\_\_\_\_ further understands this contract, purchase order or agreement is subject to the Urban Mass Transportation Act of 1964, as amended (49 USC 1601, ETSEQ.); and shall be subject to all rules and/or regulations issued pursuant thereto regarding nondiscrimination in federally assisted programs of the United States Department of Transportation (ODOT).
4. That any listed persons, firms or corporations have interest in this proposal/bid as subcontractors; that this proposal/bid is offered without any connection or without collusion or fraud, and also that no member of the trustees, head of any department or bureau, or employee therein, or any employee of the authority, is directly or indirectly interested therein.
5. That they acknowledge receipt herein of the Stark Area Regional Transit Authority Procurement Policy and agree to abide by its rules, whether or not herein specifically itemized.
- 6.

\_\_\_\_\_

Company Name

\_\_\_\_\_

Authorized Representative (type or print)

(Title)

\_\_\_\_\_

Authorized Representative Signature

(Date)

Subscribed and sworn to before me, this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

(Notary Public)

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(seal)

## Attachment M-Bidders List

In order to comply with 49 CFR Part 26, the DOT DBE rule. Bidders are required to complete the following information for ALL Contractors and Sub-contractors (including Sub-contractors contacted but not part of the Primes final proposal).

Name	DBE status	Age	Annual gross
Address	(Y/N)	of firm	receipts of firm(s)
			(Circle letter)
Bidder:			<u>(A) (B) (C) (D) (E)</u>
_____	_____	_____	
_____			
_____			

Subs:			<u>(A) (B) (C) (D) (E)</u>
_____	_____	_____	
_____			
_____			
_____			<u>(A) (B) (C) (D) (E)</u>
_____			
_____			

Annual gross receipts legend:

- (A) less than \$500,000
- (B) \$500,000 to \$1,000,000
- (C) \$1,000,000 to \$5,000,000
- (D) \$5,000,000 to \$100,000,000
- (E) Over \$100,000,000

## Attachment N- Insurance Requirements

	Required Limits (\$)
1. Commercial General Liability Coverage Requirements	
General Aggregate (Other than Products-Completed Operations)	2,000,000
Products/Completed Operations Aggregate Limit	2,000,000
Each Occurrence	1,000,000
Personal Injury & Advertising Injury	1,000,000
Fire Damage (any one fire)	300,000
Medical Expense (per person)	10,000
General Coverage Requirements	
1. Coverage provided for Premises/Operations, Products/Completed Operations, Independent Contractors, Contractual Liability, XCU	
2. Additional Insured Endorsement naming SARTA as an additional insured	
3. Blanket Waiver of subrogation in favor of SARTA	
4. Primary and Non-Contributory Wording	
2. Automobile Liability Coverage Requirements	
Bodily Injury and Property damage Liability-Combined Single Limit of Liability, Including Non-Owned and hired Autos	1,000,000
General Coverage Requirements	
1. Additional Insured Endorsement naming SARTA as an Additional Insured	
2. Blanket Waiver of subrogation in favor of SARTA	
3. Primary and Non-Contributory Wording	
3. Workers' Compensations Coverage Requirements	
Workers' Compensation State Benefits	
Statutory	
Employer's Liability (Coverage B)	
1. Bodily Injury-Each Accident	1,000,000
2. Bodily Injury by Disease-Policy Limit	1,000,000
3. Bodily Injury by Disease-Each Employee	1,000,000
4. Professional Errors & Omissions Insurance	
For all professional and/or design services performed by vendor	1,000,000

## Vendor Check List

1. IFB Signature Page
2. Certification Regarding Debarment, Suspension, and Other Responsibility Matter Primary Covered Transactions
3. Disclosure of Lobbying Activities
4. Certificate of Compliance with Buy America Requirements
5. Specification Compliance Certificate
6. Addendum Acknowledgement
7. DBE Affidavit (Only certified DBE vendors fill this out. Must provide OHIO certificate)
8. Letter of Intent to Perform as Subcontractor
9. Certificate of DBE Assurance (Must be complete by ALL vendors)
10. Schedule D (Must be complete by ALL vendors who do not have a DBE contractor)
11. Affidavit Concerning Conflicts of Interest & Noncompetitive Practices
12. Specification Compliance Certificate
13. Certification Regarding Delinquent Taxes
14. Non-Discrimination Affidavit
15. Bidders List
16. Proposal