

REQUEST FOR PROPOSAL

**29-227**

**BUS WASH SOAP**

October 30, 2009

Utah Transit Authority  
3600 South 700 West  
P.O. Box 30810  
Salt Lake City, Utah 84130-0810

# Request for Proposal

29-227

BUS WASHSOAP

## TABLE OF CONTENTS

Section	Page
Intro Letter	3
Notices	4
Instructions to Offerors/Special Provisions Bid Data and Bid Schedule	5-13
Status of Contractor Certifications	14-15
Contractor's Offer/Signature	16
Certifications	17-19
Part I – Terms and Conditions	20-23
Part II – General Provisions	23-31

**REQUEST FOR PROPOSAL  
29-227**

The Utah Transit Authority (UTA), Salt Lake City, Utah, is requesting sealed proposals for bus wash soap.

This project may be financed, in part, with financial assistance from the Federal Transit Administration (FTA) of the United States Department of Transportation. The contract awarded will be subject to the financial assistance contract between the UTA and the U.S. Department of Transportation.

To the extent applicable, all offerors will be required to sign the following certifications as attached: Affirmative Action and Disadvantaged Business Enterprise Statement; the Buy American Certification; the Certification Regarding Lobbying and the DBE Certifications in Appendix A.

Any correspondence, questions, or requests for proposal packages should be directed to the Purchasing Department, Attention: Lee Childress, Utah Transit Authority, P.O. Box 30810, 3600 South 700 West, Salt Lake City, Utah 84130-0810, telephone: (801) 262-5626, Extension 3052 or at "lchildress@rideuta.com".

**Sealed proposals marked "Bus Wash Soap" should be sent to the Utah Transit Authority, Attention: Lee Childress/Purchasing Department, P.O. Box 30810, 3600 South 700 West, Salt Lake City, Utah 84130-0810 no later than 5:00 P.M., Mountain Time, December 14, 2009.** Any proposals received thereafter may be considered non-responsive and may not be evaluated. This procurement is a Request for Proposal (RFP). Proposals will be opened in private after the date and time stated above. A public opening will not be held.

Complete instructions to offerors are included in the bid documents. No oral, telephone, telegraphic, or facsimile proposals or modifications will be considered. Award will be based on the following criteria in descending order of importance: Compliance with specifications; product performance during testing (if required); and availability of product. Award will be to the offer or offers deemed most advantageous and of the best value to UTA. Discussions or negotiations may be conducted under this proposal; however; the UTA reserves the right to award a contract based on the initial proposal without discussions or negotiations.

Issuance of this RFP does not commit the UTA to award any contract, to pay any costs incurred in preparation of a proposal, or to procure or contract for services or supplies. The UTA reserves the right to waive any irregularities and informalities or to reject any and all proposals, to re-advertise and to make contract awards in the best interest of the UTA.

The contractor shall be required to comply with all applicable equal employment laws and regulations. The UTA in accordance with Title VI of the Civil Rights Act of 1964, as amended, and 49CFR Part 26, will afford Disadvantaged Business Enterprises (DBE's) full opportunity to respond and will not discriminate against any interested firm or person on the basis of race, color, sex, or national origin in the review of qualifications or contract award. Firms will submit documentation on the utilization of DBE's with their bids. The UTA's DBE goal for this bid is race neutral.

John M. English  
General Manager  
Utah Transit Authority

**NOTICES**

**UTA WEB SITE SOLICITATION DOCUMENTS:** This solicitation is available for download on UTA's web site [www.rideuta.com](http://www.rideuta.com) under **Doing Business/Open Bid Documents**. The solicitation is available in PDF format only. Contractors are responsible to revisit the web site from time-to-time for any amendments to the solicitation; failure to acknowledge the receipt of amendments may render offers non-responsive. These documents are available on the web site for your convenience only; UTA can not accept offers through the internet.

**QUESTIONS OR CONCERNS:** Questions or concerns regarding this solicitation should be addressed to the following individuals:

Lee Childress  
Contract Buyer  
801-287-3052  
[lchildress@rideuta.com](mailto:lchildress@rideuta.com)

Mary Kay Bonica, C.P.M.  
Manager of Purchasing and Material  
801-287-3015  
[mbonica@rideuta.com](mailto:mbonica@rideuta.com)

**NOTE:** For the purpose of this Solicitation, "Bid", "Proposal" and "Offer" and "Bidder", "Proposer" "Offeror" and "Contractor" are synonymous.

## INSTRUCTIONS TO OFFERORS/SPECIAL PROVISIONS

### **Proposal 29-227**

### **BUS WASH SOAP**

**INSTRUCTIONS FOR BIDDING:** Proposals must be on the form furnished by the UTA and must be enclosed in a sealed envelope and endorsed, "**BUS WASH SOAP**". The UTA will not accept proposals through the fax machine.

Requirements for this proposal are:

1. The Bid Schedule (Attachment 1) filled out completely including: **MANUFACTURER NAME, PRODUCT NUMBER, AND UNIT PRICE DELIVERED TO THE UTA** for product offered.
2. The data and acknowledgments required on pages 11-12.
3. The Certifications (located on the pages indicated) signed and returned with the Bid Schedule.
  - Contractor Status/Signature Page (pages 14-16)
  - DBE/Affirmative Action Statement (page 19)
  - Certification of restrictions in Lobbying (page 19)
  - DBE Certification (Appendix A)
4. Material Safety Data Sheet (MSDS) shall be included for each that an MSDS is available.

**CONTRACT PERFORMANCE PERIOD:** Contract performance will commence on or about January 1, 2010 for four (4) years.

**REQUIREMENTS:** This is a requirements contract for the supplies or services identified herein and effective for the time stated. The quantities that may be indicated in the Bid Schedule are estimates only and shall not be read or interpreted so as to oblige UTA to purchase such amounts. Except as otherwise provided, if the UTA's requirements do not result in orders in the quantities described as "estimated" quantities that fact shall not constitute the basis for a price adjustment or claim against UTA.

Delivery or performance shall be made only as authorized by orders issued in accordance with the ordering provisions of the contract. Subject to any limitations stated herein, the contractor shall furnish to UTA any supplies or services specified in the schedule as ordered in accordance with the ordering procedures. The UTA may issue orders requiring delivery to multiple locations or performance at multiple locations.

Any order issued during the effective period of this contract and not completed within that period shall be completed by the contractor within the time specified in the order.

**COST AND PRICING:** The cost submitted by the offeror on the Bid Schedule shall be the full and total cost for the materials listed on the Bid Schedule as identified in the RFP. All applicable costs, charges or fees shall be included.

Shipping and handling will be FOB destination.

UTA will not be responsible for or pay for any costs, charges or fees not included or identified in the offer.

**PRICE ESCALATION:** UTA will consider price adjustments (increases and reductions) one time during the term of this contract, after March 1, 2012. The Contractor must submit their request for price adjustments in writing and provide written documentation from their suppliers to support any adjustments. The contractor should address all of the items affected by a specific price at the same time. Price adjustments will not be retroactive; ordering prices will not be changed until the adjustments are approved by UTA by written change order. UTA warrants it will consider requests for price adjustments within a reasonable time from date of receipt; contractor warrants it will not delay delivery of items pending price changes. If price increases are not mutually acceptable, the contract will be cancelled. Requests should be delivered to the UTA Purchasing Department, Attention Lee Childress.

**A copy of the UTA DBE Plan may be obtained by contacting the UTA Purchasing Department or the UTA Civil Rights Department at 801-262-5626, ext. 3538.**

**CHANGE ORDERS/ADDITIONS TO THE CONTRACT:** The UTA reserves the right to add items to the contract after award, as new items are identified and required.

**QUANTITY:** Any quantities shown on the Bid Schedule are estimated quantities only. It shall be understood that these quantities are variable and UTA reserves the right to purchase an amount more or less should UTA's requirements increase or decrease during the time of the contract. (See also "Requirements")

**PURCHASING AND ORDER PLACEMENT PROCEDURES:** Products will be ordered on an "as needed" basis throughout the term of the contract. Products will be directly by the Parts Department at the service locations. (See "Delivery")

**PAYMENTS/INSPECTIONS AND ACCEPTANCE:** UTA shall pay the contractor, upon submission of proper invoices, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in the contract, payment will be made on individual placed against the contract as accepted by UTA. Unless specified herein, final acceptance of supplies shall be with the UTA Shipping and Receiving Department or the UTA parts Department responsible for placing orders against the contract. Final acceptance of services will be with the specified UTA Program Manager, ("See also "Prompt Payment Discounts")

**CONTRACTOR EXPERIENCE:** Offerors must provide evidence of at least **five (5) years** experience in the manufacturer/distribution of cleaning soaps. Offerors shall furnish the name, address and duration of service of previous customers as part of their proposal. Failure to provide this information may render the offeror non-responsive.

**STATE CONTRACT PRICING:** UTA is authorized Utah State Contract pricing as a Political Subdivision. Dealers offering pricing under a Utah State Contract must indicate such on the Bid Schedule and indicate the applicable State Contract with their pricing. The Dealer must complete Certification A, B and C and the applicable certifications in Appendix A to be considered for award.

**SPECIFICATIONS:**

1. Products will be a liquid concentrate and provided in either 55 gal drums or in bulk containers. If provided in bulk, the contractor will provide, install and maintain the storage containers. Storage containers and installation locations will be approved by the UTA. Installed storage tanks shall be removed by the contractor at the end of the contract period and the areas involved returned to their original condition.
2. Drums shall be the "poly" type drums; metallic drums will not be accepted. Contractor shall pick up and legally recycle or dispose of empty poly drums as identified by UTA.
3. All products (either drum, bulk shipment or onsite storage containers) will be factory **labeled clearly** to identify contents, mix ratios, safety warnings etc., in accordance with all State and Federal Regulations; MSDS shall be provided with every delivery.
4. PH range: 9 – 9.5. (Note: pH shall be measured on the concentrate, not diluted).
5. Soap shall not contain an acid base.
6. Soap emulsification process must end with a 30 minute time period. Soap shall contain appropriate emulsifiers to properly cut grease on the vehicles and thereafter separate from water sufficiently for grease to be removed by oil skimmers. Soap shall be biodegradable. Soap must be low sudsing and must not leave a residue. Contractors must specifically identify and quantify in writing as part of their offer, all detergents, additives, regulated and non regulated chemicals contained in each detergent offered.
7. After contract award and throughout the contract period, the contractor will set up and maintain the automatic soap dispensing units at each division; ensure proper water and soap mix ratios and that proper nozzles are used. UTA will be responsible for any replacement nozzles.
8. All products must be manufactured in the United States. Manufacturer must have a distributor or representative in the local area.
9. With each delivery, the contractor will be responsible to remove all used, empty or damaged drums from the UTA property and to dispose of them in accordance with EPA regulations.
10. UTA reserves the right to perform tests on each product over the term of the contract to ensure continued compliance with the specifications.

**BULK PRODUCTS:** Bulk product tanks and mixing units will be provided, installed and maintained by the supplier. Sizes of tanks and locations of installations will be coordinated with the Division manager of each service location. Bulk tanks will be labeled in accordance with DOT, OSHA and UTA requirements. (See Specifications also.)

**TESTING OF PRODUCTS:** UTA reserves the right to conduct tests on any or all soap products offered for consideration under this RFP. Testing, if required, will be for, general cleaning performance, the effect on the surfaces to be cleaned, the effect on service personnel and/or pH verification. Testing will be accomplished after the bid closing date.

If testing of a product is required, the Contractor offering the product needing testing shall submit, for testing, one (1) gallon sample of each product to be tested with the product's material Safety Data Sheet (MSDS). The submittal will be in a properly labeled container. No submittals will be accepted without an associated MSDS. Submittals shall include what mix ratio the bidder feels is required for the best cleaning results. This information must be in addition to the standard information provided on product labels. Containers will be properly labeled and a MSDS will accompany every submittal. Failure to provide the requested information or documentation may render the offer non-responsive.

A sample of each submittal will be sent to an independent laboratory to determine pH prior to testing; pH shall be measured on the concentrate, not diluted. Products not meeting the pH requirements will be rejected as not meeting the specifications. UTA reserves the right to perform any tests it deems necessary, on any product submitted prior to contract award.

**PRODUCT TESTING DURING CONTRACT PERIOD:** UTA reserves the right to perform any tests it deems necessary, on any product submitted prior to contract award and over the term of the contract as deemed necessary.

**FAILURE TO COMPLY WITH SPECIFICATIONS/CONTAMINATED PRODUCTS:** Any product that is contaminated or otherwise not in compliance with UTA specifications shall be removed from the UTA property by the contractor within 24 hours of notification at no cost to UTA. The contractor shall be responsible for all charges for any required clean-up caused by the contaminated product to include hoses, pumps, tanks etc. The contractor will reimburse UTA for any and all costs incurred by UTA to remove said products from UTA property. The contractor shall be required to replace the delivery with acceptable product within 24 hours of the time the storage facilities are cleared. The contractor shall be responsible for any and all equipment or equipment parts damages caused by a contaminated product.

The contractor shall meet or exceed all OSHA, DOT, EPA and any other applicable regulations and specifications set for this type of service, including obtaining all appropriate licenses and permits for handling the product. The contractor shall provide copies of all permits and licenses required for this type of service to the Contracting Office prior to starting work.

**SAFETY AND CONTRACTOR SAFETY ORIENTATION TRAINING:** The contractor shall comply with all OSHA, EPA, DOT and all other local, State and Federal regulations, rules and guidelines pertaining to safety and will be solely responsible for any fines, citations or penalties it may receive while working on this project.

**HANDLING/TRANSPORTING MATERIALS:**

- o Contractor must be licensed to handle and haul the products identified in this Contract.

- o Contractors vehicles must meet all state and federal regulations pertaining to products being hauled. Vehicle must be licensed to transport products identified herein;
- o Vendors/transporters shall use only qualified and trained personnel to transport products;
- o Vendors/transporters shall check in with the appropriate UTA point of contact upon arrival at the site and prior to unloading of products;
- o Vendors/transporters shall be held accountable to operate under current State and Federal regulations pertaining to the products under this contract.
- o Contractor will be responsible for the clean-up and clean-up costs of all spillage while hauling UTA products.

**DELIVERY:** All deliveries shall be FOB UTA delivered and unloaded at the Utah Transit Authority Division placing the order (see locations below). Service locations may include the following UTA Divisions. Each Division has the final say on the product(s) used in their facilities.

Meadow brook Division  
3600 S 700 W, Bldgs 3 & 8  
Salt Lake City, UT 84119

Mt. Timpanogos Division  
1110 S. Geneva Rd.  
Orem, UT 84058

Mt Ogden Division  
135 W 17th St  
Ogden, UT 84404

Central Division  
616 W 200 S  
Salt Lake City, UT 84104

Riverside Division  
3610 S. 900 W.  
Salt Lake City, UT 84119

Warm Springs Division  
900 N 500 W  
Salt Lake City, UT 84116

TRAX/Lovendahl Center  
613 W 6960 S  
Midvale, UT 84047

**Time of Delivery:** Deliveries will be accepted not earlier than 7:00 a.m. and not later than 5:00 p.m. on weekdays only. Deliveries will not be accepted on Saturdays, Sundays or legal holidays observed by UTA employees.

**Lead time:** All deliveries shall be made within two (2) workdays of date of order. However, if the contractor's delivery affects the maintenance of buses, UTA reserves the right to buy from another source.

**Shipping Documents/Drum Labels:** All shipping documents and drum labels shall be completely filled out and comply with all DOT regulations. Only authorized UTA employees may sign for the delivery of products. Failure to properly complete shipping documents or label drums may result in the delay or refusal of shipments. (See Specifications).

**Verification of Orders:** The Contractor will include a packing slip with each order that details: full description of product including product number, quantity ordered, quantity delivered, contract price and contract number (See "Shipping Documents" above).

Each shipment will be verified by the UTA representative. Should a discrepancy occur, the Contractor will be notified immediately (see "Failure to Comply With Specifications" above).

**Bulk Deliveries:** The quantity of material delivered shall be determined by measuring the quantity of product in the storage tank at the UTA facility, before the delivery and then again after, using a stick measurement and conversion chart.

Deliveries will be measured with the driver present. Any discrepancies between the measured amount in the tank and the amount shown on the bill of lading will be noted on the bill of lading by the UTA representative and acknowledged by the driver.

In cases where discrepancies occur, UTA will be required to pay for only the amount verified through the stick measurement and not the amount shown on the bill of lading.

Trucks must be capable of pumping products into the storage tanks.

**Spills:** The Contractor shall be solely responsible for the cost and timely clean-up of any product spills resulting from their negligence. The Contractor shall also be responsible for any and all subsequent damages or loss to UTA property or equipment, or any other property or equipment, due to spill and/or negligence.

**Samples And Testing:** UTA reserves the right to take samples of every load/drum of product delivered and test it for impurities, contaminants, formulation and other contract requirements. If a sample is judged unacceptable, the delivery will not be accepted and the contractor will be responsible to provide another delivery within twenty-four (24) hours. Products identified as unacceptable after delivery shall be removed and replaced by the contractor within twenty-four (24) hours.

**CONTRACTOR VISITS/TECHNICAL ADVISE:** The contractor shall visit each ordering location on a monthly basis to answer questions and resolve problems. The Contractor shall also provide technical advise when required at all locations to include information and or training where needed.

**MATERIAL SAFETY DATA SHEETS (MSDS):** Any and all Material Safety Data Sheets (MSDS) applicable to any item or product called for under this proposal, or required for use on UTA property as a result of this proposal, must be submitted either with the contractor's proposal, or prior to the bid opening date under a separate cover letter, for approval. No product will be delivered to UTA or used on UTA property without prior approval by UTA; no contract will be awarded without this approval. A contractor's failure to submit and MSDS with their proposal may render their proposal non-responsive for that item.

MSDS's must be complete; products or materials will be approved or disapproved by UTA or on UTA property as a result of their review .

**HOLD HARMLESS:** The contractor shall hold harmless and indemnify the Authority, its employees, and/or agents against any and all liability and expenses as a result of any accident, personal injury, or property damage caused by or incurred by the staff, employees, officers, participants, or representatives of the Contractor. Contractor also agrees to indemnify and hold harmless the Authority from any and all claims, actions, losses, suits, and demands arising in

any way from the actions or negligence of Contractor's staff, employees, officers, or representatives.

The Authority shall hold harmless and indemnify the Contractor, its employees, and/or agents against any liability in respect to any accident, personal injury, or property damage caused or incurred by the staff, employees, or representatives of the Authority. The Authority also agrees to indemnify and hold harmless the Contractor from any claims or actions in any way from the actions or negligence of the Authority staff, employees, officers or representatives.

**BID ACCEPTANCE PERIOD:** In compliance with this proposal, the offeror agrees, if his offer is accepted within 90 calendar days (unless a different period is indicated below by the offeror) from the date specified in the solicitation for receipt of bids, to furnish any or all items bid at the price indicated, within the time specified. ("Acceptance period" as used herein means the number of calendar days available to UTA for awarding a contract from the date specified in this proposal for receipt of offers).

\_\_\_\_\_ calendar days (offeror insert number of days if other than 90 calendar days).

**NOTICES OR DEMANDS:** Any notice or demand to be given by one party to the other shall be given in writing per personal service, telegram, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States Mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

If to UTA:

Utah Transit Authority  
 Attn: Lee Childress  
 3600 South 700 West  
 P.O. Box 30810  
 Salt Lake City, Utah 84119

If to the Contractor:

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

Either party may change the address at which such party desires to receive notice on written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

**ACKNOWLEDGMENT OF AMENDMENTS:** Amendments may have been issued during the bidding period that changed the RFP in some manner. If any were issued, the bidder must acknowledge their receipt by either returning a copy of the amendment with their proposal or by initialing the appropriate block below. Failure to acknowledge amendments may render the proposal non-responsive.

<b>AMENDMENTS ACKNOWLEDGED</b>	#1	#2	#3	#4	#5
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**CONTRACTOR EXPERIENCE:** Enter the names, telephone numbers and number of years of service of your customers in accordance with the paragraph entitled "Contractor Experience".

NAME & ADDRESS OF CLIENT	TELEPHONE	YEARS SERVED

**PROMPT PAYMENT DISCOUNT:** Enter the prompt payment discount that will apply to all billings under this contract. Do not leave blank. (If not stated, invoices will be processed Net 15th Prox).

Discounts will be calculated from the date of final receipt of the materials or services invoiced for, or date of receipt of the invoice, whichever is later.

<b>CASH BILLING DISCOUNT</b>	_____ % _____ DAYS
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## BID SCHEDULE

Bidders may bid on any or all items listed and must include manufacturer, unit price and lead time if longer than the 2 days specified. Lead times longer than the 2 calendar days may render the proposal non-responsive. Failure to provide this information may render the proposal non-responsive. (Note: Manufacturers part numbers must be provided, not company stock numbers). UTA reserves the right to award contracts to more than one supplier.

Bidders may bid either bulk or drum or both (see specifications for requirements)

Bidders must include, as part of their offer, MSDS and product data sheets for each product offered.

Information must include instructions for product use, product mix ratios and documented pH rating.

DESCRIPTION	MANUFACTURER & PRODUCT NUMBER	UNIT AMOUNT
<b>Bus Wash Soap</b>		Bulk per gallon:  Per drum:
<b>Bus wash soap with glass "antispot" additive</b>		Bulk per gallon:  Per drum
<b>Glass "antispot" additive</b>		Bulk per gallon  Per drum:
<b>Drum deposit/return</b>		Deposit:  Return credit:

**STATUS OF CONTRACTOR:** The undersigned bidder/offeror certifies that it and each of its subcontractors possess an adequate supply of workers qualified to perform the work specified herein; that there is no existing or impending dispute between it and any labor organization; and that it is prepared to comply fully with prevailing wage requirements, minimum wages, maximum hours of work, and equal opportunity provisions contained in the general conditions of the contract.

This bid/proposal is submitted upon the declaration that neither I (we) nor, to the best of my (our) knowledge, none of the members of my (our) firm or company have either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid/proposal.

If an **Individual:** \_\_\_\_\_ doing  
business as \_\_\_\_\_.

If a **Partnership:**

\_\_\_\_\_, (General Partner)

\_\_\_\_\_, (General Partner).

If a **Corporation:**

a corporation incorporated in the state of

If a **Joint Venture:** A joint venture comprised of

Name:

And

Name:

Business Address

Bidder/Offeror:

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

FAX Number: (\_\_\_\_\_) \_\_\_\_\_

The undersigned understands that any conditions added to this bid/proposal, clarifications, or information submitted with this form, other than that requested, may render the bid/proposal non-responsive.

**JOINT VENTURE:** The undersigned bidder/offeror is a joint venture comprised of the following persons, firms, or corporations. Enclose a copy of the Joint Venture Agreement entered into between the parties. Disadvantaged owned companies must be indicated in the column marked by a "D". Indicate N/A if this does not apply.

<u>Percent of Contract</u>	<u>"D"</u>	<u>Firm Name</u>	<u>Address</u>
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**SUBCONTRACTORS:** The undersigned bidder/offeror proposes to have the following work performed by subcontractors. Disadvantaged owned companies must be indicated in the column marked by a "D". Indicate 'none' if sub-contractors will not be used. (See Appendix A)

**LIST OF SUBCONTRACTORS**

<u>Work Address</u>	<u>Percent of Contract</u>	<u>"D"</u>	<u>Proposed Subcontractor &amp;</u>
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The participation of disadvantaged-owned companies as shown above will be incorporated into any contract awarded as a result of this invitation.

The undersigned bidder/offeror does hereby certify that the above listed subcontractors have full knowledge that their names have been offered as subcontractors for the work, and the bidder/offeror further certifies that these subcontractors have consented to listing their names.

**CONTRACTOR'S OFFER/SIGNATURE:** In the event of Contract award, and if the offer is accepted within the Bid Acceptance period specified in the RFP, by signing this offer the Contractor agrees to deliver all supplies and/or perform all services or construction as set forth in the Terms and Conditions, the Specifications and/or Bid Schedule, and any Amendments to this Request For Proposal (RFP). It is understood that UTA may award more than one contract as a result of the RFP as set forth in the RFP. Signature must be by an officer of your company authorized to bind your company in contractual matters.

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

\_\_\_\_\_  
(Contractors Name and Address)

(If Joint Venture or Partnership)

(Signature and Title & Date)

(Signature and Title If Joint Venture or Partnership)

**ACCEPTANCE OF OFFER/AWARD OF CONTRACT:** This confirms the acceptance of your offer on Request For Proposal 29-227 as accepted in our Notice of Contract Award. Contract award is for the items listed below or on the attached Price Schedule. This award consummates the Contract which consists of the Terms and Conditions of the RFP, any Amendments to the RFP and your Offer. No other contractual document is necessary.

No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

The Contract Administrator for this contract is Lee Childress. The Program Manager for this contract is Mary Kay Bonica. All correspondence regarding this contract should be addressed to Lee Childress at 801-287-3052.

**UTAH TRANSIT AUTHORITY:**

By: \_\_\_\_\_  
Kenneth D. Montague, Jr.  
Treasurer

By: \_\_\_\_\_  
John M. English  
General Manager

\_\_\_\_\_  
Approved as to Form  
UTA Legal Counsel

**CERTIFICATION A**

**AFFIRMATIVE ACTION AND DISADVANTAGED BUSINESS ENTERPRISE STATEMENT**

**ALL PROSPECTIVE CONTRACTORS MUST COMPLETE AND SIGN THIS CERTIFICATION. FAILURE TO SUBMIT THIS CERTIFICATION MAY RENDER YOUR BID/OFFER NON-RESPONSIVE**

The Utah Transit Authority UTA will not discriminate on the basis of race, color, national origin, age, religion, or sex in the award or performance of any contract. By submitting an offer, the Contractor certifies that they shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. UTA and the Contractor shall both adhere to all relevant federal and state regulations in fulfilling this contract, including those promulgated by the U.S. Department of Justice and the U.S. Department of Transportation. Absence of any specific regulatory reference, however, does not eliminate or reduce the Contractor's responsibility to adhere to all pertinent laws and regulations.

The Bidder/Offeror has given, or will give, prior to the commencement of an approved UTA project, notice to all pertinent personnel, i.e., managers, supervisors, employees, unions, subcontractors, etc. of the contractor's EEO and DBE policies and procedures and its intent and effort to realize such procedures in connection with the EEO and DBE requirements that UTA is required to follow as a Federal Transit Administration Grantee.

Bidder/Offeror designates -- Name \_\_\_\_\_  
Title \_\_\_\_\_

as the person assigned the responsibility for securing compliance with and reporting progress to the Bidders/Offerors and UTA's office of EEO on all affirmative action efforts initiated and taken.

Bidder/Offeror will cooperate fully with UTA and ensure equal employment opportunity to the maximum extent possible during the term of this contract. UTA will further be kept fully informed of any refusals by unions or others to cooperate with UTA's and the contractor's EEO and DBE requirements.

Bidder/Offeror agrees to make every reasonable good faith effort to utilize disadvantaged and/or women owned business enterprises in the performance of this contract. Bidder/Offeror will take affirmative steps to meet the DBE contract goals for disadvantaged businesses.

Company Name: \_\_\_\_\_

Printed Name \_\_\_\_\_

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

Signature \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail address: \_\_\_\_\_

**CERTIFICATION B**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS  
FINANCED IN PART BY THE U.S. GOVERNMENT**

This certification is made in accordance with Executive Order 12549, 49 CFR Part 29, 31 USC §6101 and similar federal requirements regarding debarment, suspension and ineligibility with respect to federally-funded contracts.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by the Federal Transit Administration. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Federal Transit Administration, 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 49 CFR 29, Subpart C 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.

If the bidder or proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so, by placing an "X" in the following space \_\_\_\_\_.

\_\_\_\_\_  
Signature of the Bidder or Proposer Authorized Official

\_\_\_\_\_  
Name and Title of the Bidder or Proposer Authorized Official

\_\_\_\_\_  
Date

## CERTIFICATION C

### CERTIFICATION REGARDING LOBBYING

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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)] (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.

Signature of Contractor's Authorized Official \_\_\_\_\_

Name and Title of Contractor's Authorized Official \_\_\_\_\_

Date \_\_\_\_\_

## PART 1 - TERMS AND CONDITIONS

These General Conditions and Instructions apply to all bidding and/or proposing, except insofar as they may be modified by the specifications or bidding/proposing documents.

**DEFINITION OF TERMS:** Whenever in the bid/proposal or contract documents the following terms or pronouns in place of them or abbreviations are used, the intent and meaning shall be interpreted as follows (See also the General Provisions for specific definitions):

"Utah Transit Authority", "Transit Authority", "Authority", or "UTA" means Utah Transit Authority, body corporate and politic created pursuant to Section 17-A-2-1001, Utah Code Annotated 1953, as amended, relating to public transit districts.

"Board", "Directors", "Board of Directors" or "Board of Trustees" means Utah Transit Authority's Board of Trustees or members thereof.

"General Manager" means general manager of the Utah Transit Authority.

"Contractor" means the successful bidder or offeror to whom a contract is awarded.

"Contract" means a written agreement, resulting from this proposal, signed by the Contracting Parties or their properly authorized representative or agent, mailed to the contractor at the address designated in their bid/proposal or to such other address as may be designated in writing as their official place of business.

"Division" refers to specific UTA operating locations.

"Bid/Proposal Documents" means the Notice to Contractors, Notice to Bidders/Offerors, General Conditions and Instructions for Bidders/Offerors, Specifications, Invitation for Bid, Request For Proposals, Bid/Proposal, Contract and Addenda/Amendments, if any.

"Notice" means notice requesting bids/proposals published pursuant to Section 17-A-2-1016, Utah Code annotated 1953, as amended.

"Disadvantaged business" or "DBE" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals (see definition below) or, in the case of any publicly owned business, at least 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 it.

"Best Value" is the selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality and experience of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of greatest value to the UTA.

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are: Women; Black Americans (persons having origins in any of the Black racial groups of Africa); Hispanic Americans (persons of Mexican, Puerto Rican,

Cuban, Central or South American or of the Iberian Peninsula, including Portugal); Native Americans (persons who are American Indians, Eskimos, Aleuts or Native Hawaiians); Asia-Pacific Americans (persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and Northern Marianas); and, Asian-Indian Americans (persons whose origins are from India, Pakistan and Bangladesh). Section 106 (C) (2) B provides that women, like Black Americans, Hispanic Americans, and other groups currently designated in the regulations, are presumed to be "socially and economically disadvantaged individuals" for purposes of the DBE program.

**INTERPRETATION OF BIDDING/PROPOSAL DOCUMENTS:** If any person submitting a bid/proposal is in doubt as to the true meaning of any part of the bid/proposal specifications or finds discrepancies or omissions from the specifications, they may submit a request for interpretation or correction to UTA. Requests may be by telephone or in written format. Written request must be clearly marked as such on the outside of the envelope and be in the office of the Contracts Buyer in the Purchasing Department, prior to the scheduled bid/proposal opening.

**LATE BIDS/PROPOSALS:** Bids/proposals received in the office designated by UTA after the exact time set for opening are considered "late". Late bids/proposals are normally considered when received before contract award, and:

- o when sent by registered or certified mail to the location specified by UTA not later than five (5) calendar days before the bid/proposal receipt date specified;
- o when sent by mail not later than five (5) calendar days before the bid/proposal receipt date specified and to the location specified by UTA **and** it is determined by UTA that the late receipt was due **solely** to mishandling by UTA after receipt at UTA facility; or
- o when sent by U.S. Postal Service Express Mail Next Day Service to Addressee or by UPS Overnight Next Day Delivery Services, or Federal Express Over Night Next Day Delivery Service not later than 5:00 PM at the place of mailing two (2) working days prior to the date specified for receipt of bids/proposals. The term "working days" excludes weekends and holidays observed by UTA.

**WITHDRAWAL OF BIDS/PROPOSALS:** A bidder/offeror may withdraw their bid/proposal before the expiration of the time during which bids/proposals may be submitted, without prejudice to themselves, by contacting the Manager of Purchasing and/or submitting a written request for its withdrawal to the Purchasing Department.

**ALTERNATIVE BID/PROPOSAL:** Submission of alternative bids/proposals, except as specifically called for or allowed under the specifications or bid/proposal forms, will render it informal and may cause its rejection.

**NON-COLLUSIVE AFFIDAVIT:** The bidder/offeror shall represent and warrant that such bid/proposal is genuine and not fraudulent or collusive or made in the interest of or in behalf of any person not named and that the bidder/offeror has not, directly or indirectly, induced or solicited any other bidder/offeror to put in a counterfeit bid/proposal or sought by collusion, to secure to the bidder/offeror, an advantage over any other bidder/offeror.

If at any time it shall be found that a person, firm, or corporation to whom a contract has been awarded has in presenting any bid/proposal or bids/proposals colluded with any other party or parties, then the contract so awarded shall be null and void and the contractor shall be liable to UTA for all loss or damage which UTA may suffer and UTA may advertise for a new contract for said labor, supplies, materials, or equipment.

\_\_\_\_ Nothing in this section shall limit or restrict the provisions of the warranty of fitness as set forth in these general conditions and instruction for bidders/offerors.

**BRAND NAME OR EQUAL:** Whenever a brand, manufacturer or product name is indicated in these specifications, they are included only for the purpose of establishing identification and a general description of the item. Wherever such names appear, the term "or approved equal" is considered to follow.

When bidding "an equal or substitute brand", bidder shall clearly indicate so on the bid document and shall

supply technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

It should be understood that specifying a brand name, components and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product or supply merchandise in accordance with the performance warranty and contractual requirements.

**AGREEMENT:** Agreement to be executed between UTA and successful bidder/offeror will be in the form of a formal contract for the services as authorized by UTA.

**ASSIGNMENT OF CONTRACT:** Unless approved in writing, UTA does not authorize the contractor to assign this contract or any portion of the contract or to make payments to another party on the behalf of UTA.

**APPROVAL BY UTA'S DESIGNEE (PROGRAM MANAGER):** Contract performance shall be monitored by an agent or agents designated by the Manager of Purchasing and Materials. This designee shall be responsible for inspection and acceptance of all products or performance under the contract.

**FAILURE TO COMPLETE CONTRACT:** In case of failure on the part of the contractor to complete their contract within the specified time or within authorized extensions, the contract may be terminated and UTA shall not pay or allow to the contractor any further compensation for any labor, supplies, or materials furnished. UTA may proceed to complete such contract by completing the contract with UTA personnel or by contracting with another contractor to complete the unfinished work as deemed necessary. The contractor shall be liable to UTA for all loss, damage or additional costs which UTA may suffer on account of the contractor's failure to complete the contract.

**DEFECTIVE OR DAMAGED WORK:** All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, that may be encountered in the execution of the work or the furnishing of the work or supplies, materials or equipment, or from any act or omission not authorized by these specifications on the part of the contractor or any agent or person employed by him, shall be sustained by the contractor.

Any material or equipment found to be damaged or defective at the time of delivery shall be repaired, replaced, or corrected by the contractor hereunder without additional cost to UTA.

**PROPOSED CHANGES BY THE CONTRACTOR:** Any proposed change in the contract must be submitted to UTA in writing for its prior written approval and UTA will make the change, if approved, by a contract change order.

It is understood, however, that the amount of work, materials, or equipment required by the contract shall not be so increased or diminished as to substantially alter the general character or extent of the contract.

**TERMINATION:** See FTA Required Clauses

**PAYMENT OF TAXES:** The supplies, materials, or equipment called for under the specifications will be used by UTA in the performance of a government function and are exempt from taxation by the United States Government. UTA will, if requested, furnish a Tax Exemption Certificate and any and all affidavits and documents that may be necessary to establish such exemption. UTA is exempt from payment of Federal, State and local sales and use taxes, and such taxes must not be included in the priced bid/proposal. UTA will furnish necessary exemption certificates, if requested.

**PART II**  
**GENERAL PROVISIONS**

This Part will be incorporated by reference in the contract to be awarded.

**1. Definitions. As used in this Agreement:**

- a. Agreement means any Agreement, Cooperative Agreement, Contract, or Subcontract.
- b. Approval, Authorization, Concurrence, Waiver means a conscious written act by an authorized official of UTA granting permission to the Contractor to perform or omit an action required pursuant to this Agreement, which action may not be performed or omitted without such permission. An approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions unless such permission is clearly stated. Oral permission or interpretations have no legal force or effect.
- c. Federal Transit Act, as amended, is the current designation of the former Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. app. § 1601 note. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Act of 1964, as amended, shall be deemed a reference to the Federal Transit Act, as amended.
- d. Federal Transit Administration is the current designation of the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.
- e. Federal Transit Administrator is the current designation for the Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.
- f. FTA is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. Department of Transportation (U.S. DOT). FTA replaces the acronym "UMTA".
- g. FTA Directive includes FTA circulars, notices, orders or guidance providing information about the FTA's programs, application processing procedures, and project management guidance. In addition to FTA directives, certain U.S. DOT directives may also apply to the Project.

- h. Government means the United States of America and any executive department or agency thereof.
- i. Local Government includes a public transit authority as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under state law), regional or interstate government entity, or any agency or instrumentality thereof.
- j. Mass Transportation means transportation by bus, rail, or other conveyance, either publicly or privately owned, that provides general or special transportation service (but not school bus, charter or sightseeing service) to the public on a regular and continuing basis. The term "mass transportation" also includes "transit" and "public transportation".
- k. Project means the tasks or set of tasks set forth in the Bid or Proposal which the Contractor carries out pursuant to this Agreement with UTA.
- l. Contractor or Subcontractor means any entity that receives assistance from UTA for the accomplishment of the Project.
- m. Secretary means the U.S. DOT Secretary or his or her duly authorized designee.
- n. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

**2. Accomplishment of the Project.**

- a. General Requirements. The Contractor agrees to carry out the Project in a sound, economical, and efficient manner, and in accordance with the provisions hereof, the Bid or Proposal, and all applicable laws and regulations. In general, the terms of the U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (common grant management rule), 49 C.F.R. Part 18, and "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations", 49 C.F.R. Part 19, apply to the Project.
- b. Application of Federal, State, and Local Laws and Regulations.
  - (1) Federal Laws and Regulations. The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Contractor agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in the Agreement of a contrary intent. New Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and will apply to this Agreement, unless determined otherwise by the Governing Authority. To achieve compliance with changing Federal requirements, the Contractor agrees to include in all subcontracts financed with Government (FTA) assistance specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.
  - (2) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Agreement shall require the

Contractor to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Contractor to violate any applicable State or territorial law, the Contractor agrees to notify UTA immediately in writing in order that UTA and the Contractor may make appropriate arrangements to proceed with the Project as quickly as possible.

- c. Funds of the Contractor. Unless approved otherwise by UTA, the Contractor agrees to complete all proceedings necessary to provide the Project costs at or before the time that such funds are needed to meet Project expenses.
- d. Changed Conditions of Performance (Including Litigation). The Contractor agrees to notify UTA immediately of any change in local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Agreement. In addition, the Contractor agrees to notify UTA immediately of any decision pertaining to the Contractor's conduct of litigation that may affect UTA's interests in the Project or UTA's administration or enforcement of applicable Federal laws or regulations. Before the Contractor may name UTA as a party to litigation for any reason, the Contractor agrees first to inform UTA; this proviso applies to any type of litigation whatsoever, in any forum.

### 3. Ethics.

- a. Code of Ethics. The Contractor agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts assisted by Federal funds. The code or standards shall provide that the Contractor's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or subcontractors. The Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Contractor's officers, employees, board members, or agents, or by contractors or subcontractors or their agents.

It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure an Authority contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

- (1) Personal Conflict of Interest. The Contractor's code or standards must provide that no employee, officer, board member, or agent of the Contractor may participate in the selection, award, or administration of a contract assisted by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- (a) The employee, officer, board member, or agent;
- (b) Any member of his or her immediate family;
- (c) His or her partner; or
- (d) An organization that employs, or is about to employ, any of the above.

- 2) Organizational Conflicts of Interest. The Contractor's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts

of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

- b. Interest of Members of or Delegates to Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Project or to any benefit therefrom.
- c. Bonus or Commission. The Contractor warrants that it has not paid, and agrees not to pay, any bonus or commission for the purpose of obtaining approval of its bid or proposal submitted for this Project.
- d. Prohibition Against the Use of Federal Funds for Lobbying. The Contractor agrees to comply with the provisions of 31 U.S.C. § 1352, as amended, which prohibit the use of Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with the Project. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions on Lobbying", 49 C.F.R. Part 20, as modified.
- e. Employee Political Activity. The terms of the "Hatch Act", 5 U.S.C. §§ 1501 through 1508, and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees", 5 C.F.R. Part 151, apply to State and local agencies and their officers and employees to the extent covered by the statute and regulations. The "Hatch Act" restricts the political activity of an individual principally employed by a State or local executive agency in connection with a program financed in whole or in part by a Federal loan, grant, or cooperative agreement. However, the "Hatch Act" does not apply to a non-supervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the "Hatch Act" is otherwise inapplicable.

#### 4. Procurement.

- a. Federal Standards. To the extent applicable, the Contractor agrees to comply with the applicable Procurement Standards of 49 C.F.R. § 18.36 or 49 C.F.R. 19.40 through 19.48 and Appendix A; and with applicable supplementary directives or regulations including FTA Circular 4220.1D and any changes or revisions thereto; and other applicable guidance that the FTA, the U.S. DOT, or UTA may issue. If determined necessary for proper Project administration, UTA reserves the right to review the Contractor's technical specifications and requirements of any contracts or subcontracts pertaining to this Project.
- b. Exclusionary or Discriminatory Specifications. The Contractor further agrees that, notwithstanding the Buy America requirements of this Agreement, no Authority funds shall be used to support procurements utilizing exclusionary or discriminatory specifications for this Project.
- c. Award to Other Than the Lowest Bidder. In accordance with 49 U.S.C. 5326 (c), a Contractor may award a subcontract to other than the lowest bidder in connection with a procurement, when such award furthers objectives that are consistent with the applicable regulations guidance that the FTA or UTA may issue.

- d. Buy America. Each contract executed by UTA utilizing FTA assistance must conform with Section 165 of the Surface Transportation Assistance Act of 1982, as amended by Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and Section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991, and FTA regulations, "Buy America Requirements - Surface Transportation Assistance Act of 1982", 49 C.F.R. Part 661 and applicable revisions thereto.
- e. Preference for Recycled Products. Where applicable and permissible, the Contractor agrees to give preference to the purchase of recycled products for use in this Project pursuant to the various Environmental Protection Agency (EPA) guidelines contained in 40 C.F.R. Parts 247-253.
- f. Project Management Oversight. To the extent applicable, the Contractor agrees to assist UTA in complying with FTA regulations, "Project Management Oversight", 49 C.F.R. Part 633, and any revision thereto, with respect to a major capital project.
- g. Geographic Restrictions. The Contractor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA and the State of Utah.

**5. Changes.**

- a. The Manager of Purchasing and Material (Manager) may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

For supplies-

- (1) Drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for UTA in accordance with the drawings, designs, or specifications;
- (2) Method of shipment or packing;
- (3) Place of delivery;

or, if for services-

- (1) Description of services to be performed;
- (2) Time of performance (i.e., hours of the day, days of the week etc);
- (3) Place of performance of the services.

- b. If any change under this clause causes an increase or decrease in the Contractors cost or, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Manager shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.
- c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written notice. However, if the Manager decides that the facts justify it, the Manager may receive and act upon a proposal submitted before final payment of the contract.
- d. If the Contractors proposal includes the cost of property made obsolete or excess by the change, the Manager shall have the right to prescribe the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**6. Protest Procedures.**

Protests will be accepted only from bidders/proposers whose direct economic interest has been adversely affected by those alleged actions/omissions of the Authority that form the basis of the protest. Protests will be determined in accordance with the laws of the State of Utah including, without limitation, the Utah Procurement Code and the Utah Government Records Access and Management Act, all as amended from time to time. All protests shall be in writing and shall be submitted to the Authority as directed in these protest procedures. Protests that are not delivered to the appropriate persons or not delivered within the appropriate time limits (all as set forth in these procedures) shall be null and void and will not be considered by the Authority. A protest shall be deemed to be delivered pursuant to these procedures when actually received by the designated recipient by hand delivery, by recognized overnight courier service or by certified or registered mail.

All protests shall include:

- The name and address of the bidder/proposer;
- The appropriate contact person for the bidder/proposer to whom all protest correspondence shall be addressed;
- The solicitation or project number; and
- A detailed statement as to the nature of the protest including, without limitation, the factual and legal basis for the protest.

PROTESTS PRIOR TO OPENING OF BIDS/PROPOSALS: ALL PROTESTS MADE PRIOR TO THE OPENING OF BIDS/PROPOSALS, INCLUDING PROTESTS BASED UPON ALLEGED RESTRICTIVE SPECIFICATIONS OR ALLEGED IMPROPRIETIES IN ANY TYPE OR MANNER OF THE SOLICITATION, SHALL BE DELIVERED TO THE AUTHORITY'S PROCUREMENT OFFICER NOT LESS THAN SEVEN (7) CALENDAR DAYS PRIOR TO THE SCHEDULED DEADLINE FOR RECEIPT OF BIDS/PROPOSALS AS FOLLOWS:

Utah Transit Authority  
3600 South 700 West  
Salt Lake City, Utah 84119  
Attn: Procurement Officer  
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

The Procurement Officer, or an agent designated by the Procurement Officer, will promptly make a determination in writing regarding the validity of the protest and whether or not the bid/proposal process should be delayed beyond the scheduled date for bid/proposal receipt. If the Procurement Officer determines that the scheduled date for bid/proposal receipt should be delayed, all respondents to the solicitation who have furnished their name and address to the Authority shall be notified (through an addendum to the IFB/RFP) of the delay and the reason for the delay. If the protest, or any portion thereof, is determined by the Procurement Officer to have merit, the Procurement Officer will take all necessary action to address each allegedly restrictive specification, alleged impropriety or other meritorious objection in a manner consistent with applicable law and will provide notice of any resulting changes to the IFB/RFP or the bid/proposal process to all respondents to the solicitation who have furnished their name and address to the Authority. In such cases, the Authority shall not proceed with the bid/proposal process until it has remedied such issues to the satisfaction of the Procurement Officer.

PROTESTS TO AWARD OF CONTRACT: ALL PROTESTS MADE TO THE AWARD OF A CONTRACT SHALL BE DELIVERED TO THE PROCUREMENT OFFICER NOT LESS THAN FIVE (5) CALENDAR DAYS AFTER THE PROTESTOR RECEIVED NOTICE OF THE AWARD (UNLESS THE PROTESTOR CAN DEMONSTRATE THAT ITS PROTEST IS BASED ON FACTS AND CIRCUMSTANCES THAT THE PROTESTOR COULD NOT HAVE REASONABLY BEEN AWARE OF ON THE DATE THE NOTICE OF AWARD WAS DELIVERED, IN WHICH CASE THE COMMENCEMENT OF THE FIVE-DAY PERIOD SHALL BE TOLLED UNTIL THE DATE WHEN THE

PROTESTOR WAS OR SHOULD HAVE BEEN AWARE OF THE FACTS AND CIRCUMSTANCES UPON WHICH THE PROTEST IS BASED). ALL PROTESTS MADE TO THE AWARD OF CONTRACT SHALL BE DELIVERED AS FOLLOWS:

Utah Transit Authority  
3600 South 700 West  
Salt Lake City, Utah 84119  
Attn: Procurement Officer  
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

If the protest has been timely filed, the Procurement Officer, or an agent designated by the Procurement Officer, will promptly make a determination in writing regarding the validity of the protest and whether the Authority's decision regarding the Award should be reconsidered. The Authority shall provide notice of the protest to all bidders/proposers who submitted a bid/proposal (except, in the case of a two-step procurement, the Authority shall only provide notice of those who were deemed qualified or were "short-listed" to submit a bid/proposal for step two of the project). The Procurement Officer, or his or her designee, will respond to the protestor in writing and address each material issue raised in the protest in a timely manner. If the protest, or any portion thereof, is determined by the Procurement Officer to have merit, the Procurement Officer will take all necessary action to address the protested issues in a manner consistent with applicable law including, without limitation: (1) canceling the procurement; (2) canceling the procurement and reissuing a new IFB/RFP; (3) rescinding the Award and requesting "best and final offers" from qualified proposers; (4) determining that the objections, although meritorious, were immaterial to the decision to Award; or (5) taking such other actions as may be appropriate under the circumstances. Once the Procurement Officer becomes aware of a protest to the Award, the Authority will not take any further action to execute a Contract pursuant to the IFB/RFP until seven (7) Calendar Days after the Award is upheld by the Procurement Officer (or the Protest Committee, if the Procurement Officer's determination is appealed as set forth in the following section), unless the Procurement Officer shall make a written determination that immediately executing the Contract is necessary to protect a substantial interest of the Authority.

ADMINISTRATIVE APPEALS: IN THE EVENT THAT A PROTESTOR RECEIVES AN UNFAVORABLE DECISION FROM THE PROCUREMENT OFFICER TO ITS PROTEST OF CONTRACT AWARD, THE PROTESTOR SHALL HAVE THE RIGHT TO APPEAL THE PROCUREMENT OFFICER'S DECISION BY SUBMITTING A WRITTEN APPEAL TO THE PRESIDENT OF THE BOARD OF TRUSTEES OF THE AUTHORITY, ADDRESSED AS FOLLOWS:

President, UTA Board of Trustees  
C/o Utah Transit Authority  
3600 South 700 West  
Salt Lake City, Utah 84119  
Attn: Board Coordinator  
CONTAINS TIME-SENSITIVE PROTEST MATERIALS

Any appeal must be delivered within five (5) Calendar Days of the date of the Procurement Officer's decision. The President will appoint a Protest Committee to review the appeal and the decision of the Procurement Officer. The President will determine the specific procedures that will be followed by the Protest Committee, including the date of any hearing deemed necessary by the President. After considering the appeal, the Protest Committee will notify the appellant and the Procurement Officer in writing in a prompt manner of its decision regarding the appeal. If the Protest Committee reverses the decision of the Procurement Officer, it shall have broad discretion to take any action it deems necessary to correct the determined defects in the Contract Award, consistent with applicable law and Authority policies. If the Protest Committee upholds the decision of the Procurement Officer, the Authority may proceed with the execution of the Contract seven (7) Calendar Days after the Authority provides notice of the Protest Committee's decision. The Authority may proceed without regard to the seven-day waiting period if the Procurement Officer shall make a written determination that immediately executing the

Contract is necessary to protect a substantial interest of the Authority. The decision of the Protest Committee constitutes a final administrative decision of the Authority.

APPEALS TO FTA: IF THE PROTEST COMMITTEE UPHOLDS THE DECISION OF THE PROCUREMENT OFFICER, THE PROTESTOR MAY CONTINUE ITS PROTEST BY SEEKING JUDICIAL RELIEF WITHIN THE STATE OF UTAH. IN ACCORDANCE WITH FTA POLICY, A PROTESTOR MAY NOT APPEAL TO FTA UNLESS THE PROTESTOR CLAIMS THAT THE AUTHORITY HAS FAILED TO FOLLOW THESE PROTEST PROCEDURES. ANY APPEAL TO FTA ALLEGING THAT THE AUTHORITY HAS FAILED TO FOLLOW THESE PROCEDURES MUST BE FILED WITH FTA NO LATER THAN FIVE (5) FEDERAL GOVERNMENT WORKING DAYS AFTER THE DECISION IS RENDERED BY THE PROTEST COMMITTEE.

**7. Substance Abuse.**

To the extent applicable, the Contractor agrees to comply with U.S. DOT regulations, "Drug-Free Work Place Requirements (Grants)", 49 C.F.R. Part 29, Sub-part F; "Prevention of Prohibited Drug Use in Transit Operations", 49 C.F.R. 653 and other U.S. DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) provisions of 49 U.S.C. 5331 that FTA or U.S. DOT may issue.

**8. Severability.**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

**9. TERMINATIONS**

**a. Termination for Convenience:** The UTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to UTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the UTA, the Contractor will account for the same, and dispose of it in the manner the UTA directs.

**b. Opportunity to Cure:** The UTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor seven calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to UTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within the seven calendar days after receipt by Contractor or written notice from UTA setting forth the nature of said breach or default, UTA 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 UTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**c. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the UTA may terminate this contract for default. The UTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**d. Waiver of Remedies for any Breach** In the event that UTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by UTA shall

not limit UTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**10. DISPUTES:** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of UTA. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

a. **Performance During Dispute** - Unless otherwise directed by UTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

d. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the UTA, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing

**11. CLEAN AIR** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**12. CLEAN WATER** (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

**14. RECOVERED MATERIALS:** The contractor 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.