

INVITATION FOR BIDS

IFB P20023

COMPRESSED GAS AND CYLINDER RENTALS



*Procurement, Contracts and Materials Management Department
3331 North First Street, Building A
San Jose, CA 95134-1906
www.vta.org*

| | |
|-------------------------------|--|
| Contract Administrator | Elena Lazo |
| <u>Key IFB Dates</u> | |
| Date Issued | FEBRUARY 3, 2020 |
| Pre-Bid Conference | FEBRUARY 12, 2020; 10:00 AM P.T. |
| Submit Questions | FEBRUARY 14, 2020 by 5:00 PM P.T. |
| Submit Bids: | FEBRUARY 28, 2020 by 2:00 PM P.T. |

**INVITATION FOR BIDS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

TABLE OF CONTENTS

CONTENTS:

| | |
|---|----|
| INVITATION FOR BIDS | 3 |
| INSTRUCTIONS TO BIDDERS | 9 |
| STANDARD TERMS AND CONDITIONS | 13 |
| SPECIAL CONDITIONS | 20 |
| SCOPE OF WORK..... | 21 |
| BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA | 22 |
| BIDDER’S SIGNATURE PAGE | 23 |
| SMALL BUSINESS ENTERPRISE (SBE) POLICY AND REQUIREMENTS..... | 24 |
| BID FORM 2-A | 28 |
| BID FORM 2-B..... | 30 |
| INSURANCE REQUIREMENTS - EXHIBIT M-1..... | 31 |
| QUALITY ASSURANCE PROVISION..... | 35 |
| WARRANTY PROVISION | 36 |
| BIDDER’S QUESTIONNAIRE – EXHIBIT O | 37 |
| “NO BID” RESPONSE FORM - EXHIBIT I | 41 |
| VTA’S USE OF PERSONAL ELECTRONIC DEVICES POLICY#OPS-PL-0001..... | 43 |
| SAMPLE CONTRACT | 49 |
| BID FORM -1B SCHEDULE OF PRICES AND ESTIMATED QUANTITIES – ATTACHMENT A | |



*Procurement, Contracts and Materials Management Department
3331 North First Street. Building "A"
San Jose, CA 95134-1906*

**INVITATION FOR BIDS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

Invitation for Bid. Request for quotation. Request for proposal.

INSTRUCTIONS:

The enclosed Santa Clara Valley Transportation Authority (herein referred to as "VTA") "conditions" form an integral part of each bid ("Bid"). Prices must be F.O.B destination, freight prepaid and allowed, unloaded to the dock unless otherwise specified.

| CONTRACT ADMINISTRATOR | DATE ISSUED | CLOSING TIME/DATE | BID NUMBER |
|---|---|--------------------------|-------------------|
| Elena Lazo | FEBRUARY 3, 2020 | FEBRUARY 28, 2020 | IFB P20023 |
| Phone (408) 952-4240 FAX (408) 955-9729 e-mail: elena.lazo@vta.org | <ul style="list-style-type: none"> • Pre-Bid Conference: FEBRUARY 12, 2020 at 10:00 AM P.T. • Last Day to ask Questions: FEBRUARY 14, 2020 by 5:00 PM P.T. • Bids will be received until 2:00 PM P.T. on the above closing date. | | |

1. CONTRACT TITLE: COMPRESSED GAS AND CYLINDER RENTALS

2. PRE-BID CONFERENCE: A Pre-Bid conference is scheduled for FEBRUARY 12, 2020 at 10:00 AM P.T. at the following address:

**Santa Clara Valley Transportation Authority
3331 North First St., Building A
San Jose, California 95134-1906**

Attendance at the Pre-Bid Conference is not mandatory, but is strongly encouraged. Attendance may be in person or via teleconference. Email the buyer ("Buyer") listed above to register as a teleconference attendee. Teleconference registration deadline is **FEBRUARY 6, 2020 by 2:00 PM P.T.**

3. BID OPENING TIME & LOCATION: Each bidder ("Bidder") must submit its sealed Bid no later than 2:00 PM P.T. on FEBRUARY 28, 2020 at the Santa Clara Valley Transportation Authority's Procurement, Contracts and Materials Management Department at 3331 North First Street,

Building A, San Jose, CA 95134, and, at that time, publicly opened and read. No Bids will be received or accepted after 2:00PM P.T. on FEBRUARY 28, 2020.

4. BID DOCUMENTS: The following, in addition to this Invitation for Bid, constitute the Bid documents (“Bid Documents”) in order of precedence, and are the instructions and conditions to this Bid:

- Solicitation Amendments, if any
- Invitation for Bid
- Technical Specifications and/or Scope of Work
- Contractor Acknowledgement of Addenda (Bid Form 1-A)
- Schedule of Prices and Estimated Quantities (Bid Form 1-B)
- Listing of SBE Contractor or subcontractors (Bid Form 2-A)
- Supplemental Contractor and subcontractor Information (Bid Form 2-B)
- Instructions to Bidders
- Special Conditions
- VTA Standard Terms and Conditions
- Exhibit M-1 – Insurance Requirements
- Exhibit O – Bidder’s Questionnaire
- Exhibit I – “No Bid” Response Form
- Exhibit P – VTA’s Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff (ATU) Policy #OPS-PL-0001

5. TERM OF CONTRACT: The term of the contract (“Contract”) awarded to the successful Bidder (herein also referred to as the “Contractor”) shall be five (5) years from date of award by VTA.

6. CONTRACT TYPE: VTA anticipates the award of an indefinite delivery/indefinite quantity (“IDIQ”) contract as a result of this solicitation.

This is not an exclusive contract or a requirements contract, and it does not obligate VTA to fill through the Contractor all of its needs for the goods or services covered by the Contract. VTA is free to obtain these goods or services from other sources to the extent it sees fit. The minimum and maximum (if designated) quantities or dollar amounts required under the Contract are stated in the Scope of Work and/or Schedule of Prices and Estimated Quantities.

7. OBLIGATION: This Invitation for Bids does not obligate VTA to award a Contract or to pay costs incurred in the preparation or submittal of any Bid.

8. **INSURANCE:** Each prospective Bidder (herein referred to as the “Bidder” or “Contractor”) is cautioned to review the Insurance requirements of this solicitation. See Exhibit M-1.
9. **PRICE:** It is the desire of VTA to enter into a firm fixed price Contract with the successful Bidder who agrees that the prices quoted are firm and fixed for the duration of the Contract. The unit price as bid will apply regardless of the actual quantity purchased.

- A. No additional charges will be allowed unless agreed to in writing by VTA prior to delivery of goods and/or services. Bidder agrees that the prices quoted on the attached Bid Form 1-B are maximum for the period of the proposed Contract, and in the event of a price decline, the benefit of such lower price shall be extended to VTA.

10. **PRICE INCREASE:** [OMITTED].

11. **FREIGHT TERMS:** All materials shall be FOB Destination, prepaid and allowed, at no additional cost to VTA unless specified otherwise in the Scope of Work, attached hereto. Destination is defined for purposes of this Contract as the VTA Yard locations as specified under Delivery or on the individual purchase orders associated with this Contract. Any exception to this policy may deem the Bid non-responsive.

12. **INVOICE BILLING/PAYMENT TERMS:** Invoices shall be prepared per descriptions and pricing in this Bid.

Note: Invoices for goods or services not specifically covered in this Bid will not be approved for payment.

13. **SPECIFICATIONS:** See Scope of Work.

14. **QUANTITIES:** See CONTRACT TYPE section (above), Scope of Work, and the Schedule of Prices and Estimated Quantities.

15. **BIDS:** All Bids must be received in sealed envelopes with the Bidder’s company name, bid number, closing date and time noted on the outside of the envelope. **At this time, electronically submitted Bids cannot be accepted.**

16. **AWARD CRITERIA:** Contracts shall be awarded to the lowest responsive and responsible Bidder found to have the fitness, quality, and capacity to satisfactorily deliver the goods and services as detailed in the Bid Documents. Any potential Contract award will be subject to a VTA technical and business evaluation of the Bidder prior to any Contract award. VTA reserves the right to reject any and all Bids or to waive any informalities or technicalities in any Bid in the best interest of VTA. Single conforming Bids are subject to price or cost analysis by VTA. Bids will be valid for review and award up to ninety (90) days after Bid opening.

The specific basis of award is the Total Bid designated on Bid Form 1-B Schedule of Prices sheet that is a part of these Bid Documents.

17. SOLICITATION SUBMITTALS: Your Bid submittal should include the following forms which are included in this IFB:

| | |
|---|----|
| Q/A AND WARRANTY PROGRAMS SUBMITTALS..... | 6 |
| BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA | 22 |
| BIDDER’S SIGNATURE PAGE | 23 |
| BID FORM 2-A | 28 |
| BID FORM 2-B..... | 30 |
| INSURANCE REQUIREMENTS - EXHIBIT M-1..... | 31 |
| BIDDER’S QUESTIONNAIRE – EXHIBIT O | 37 |
| “NO BID” RESPONSE FORM - EXHIBIT I | 41 |
| BID FORM -1B SCHEDULE OF PRICES AND ESTIMATED QUANTITIES – ATTACHMENT A | |

18. BRAND NAME OR EQUAL: [OMITTED].

19. Q/A AND WARRANTY PROGRAMS SUBMITTALS:

All QA and warranty submittals should be provided no later than Notice to Proceed (NTP) plus 15 working days.

A. SUPPLIER QUALITY PROGRAM REQUIREMENTS:

- (1) Quality Manager contact information.
- (2) Quality program manual.
- (3) ISO quality program certificate (If available).

B. SUPPLIER WARRANTY PROGRAM REQUIREMENTS:

- (1) Written legal limited warranty (Claims) policy.
- (2) Return Materials Authorization (RMA) procedure.

20. DELIVERY ADDRESS: The delivery addresses (within Santa Clara County) are as follows:

Chaboya Division

2240 South 7th Street
San Jose, CA 95112
Receiving Hours: 6:30AM-2:30PM

Cerone Division

3990 Zanker Road
San Jose, CA 95134
Receiving Hours: 6:00AM-2:30PM

Guadalupe Division

101 West Younger Avenue
San Jose, CA 95110
Receiving Hours: 7:30AM-4:00PM

North Division

1235 L'Avenida
Mountain View, CA 94040
Receiving Hours: 7:30AM-4:00PM

21. SMALL BUSINESS ENTERPRISE POLICY:

- A. POLICY:** It is VTA policy to ensure that Small Business Enterprises (SBEs), as defined in Federal Regulations at 13 CFR Part 121, have the maximum opportunity to participate in the performance of contracts and subcontracts.
- B. SBE GOAL:** VTA has not established a specific Small Business Enterprise (SBE) goal for this project. However, Bidder agrees to cooperate with VTA in meeting VTA's overall goal of 19% annual utilization of Small Business Enterprises. In this regard, Contractor will use its best efforts to ensure that SBEs shall have an equitable opportunity to compete for subcontract work under this Contract.
- (1) All SBE firms listed on Bid Form 2-A must be certified by VTA's Office of Business Diversity Program (OBDP) or the California Unified Certification Program (CUCP) at the time of Bid to be counted toward the Contract SBE goal.
 - (2) Bid Form 2-A and Bid Form 2-B are required to be submitted at the Bid opening.
 - (3) It is the Bidder's sole responsibility for verifying subcontractor certification as a SBE to VTA. The list of VTA SBEs is available at http://vtaproduction2.securesites.net/procurement/general/sbe_search.html.
 - (4) The VTA SBE application is available at <http://www.vta.org/sfc/servlet.shepherd/document/download/069A0000001EJF6>.

22. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) POLICY AND REQUIREMENTS:

- A. POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Minority and Women-Owned Business Enterprises (MWBEs) as defined in the VTA MWBE Program have an equal opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal.

VTA's Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible MWBE firms. Listings of eligible firms are also available on the World Wide Web at the following:

- www.vta.org/obdp

B. POST AWARD ACTIVITIES:

- (1) **NONDISCRIMINATION:** The Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as MWBE, as well as to non-MWBE businesses, and shall provide a practical opportunity for all firms to participate in the contract.
- (2) **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.

23. WEBSITE REGISTRATION: Bidders must register on VTA’s website as a condition of bidding to ensure receiving notification of any potential addenda or other pertinent information, as well as notification of closing and award even if this was a manually processed IFB. Go to <http://www.vta.org>, hover over “About Us,” and then select “Doing Business with VTA.” From this page, click “need to register for an account”. The system will take you to the registration page where you will enter your registration information. In the NAICS email subscription settings check the box “New Solicitation and Updates, including Plan Holder Updates”. Then check all the NAICS code boxes for the categories of business that interest your company.

Once you are confirmed as a registered vendor, click the “Solicitations” link on the left side of the “Vendor Settings” page. This will take you to the “Procurements” page where you will select this solicitation. Once you are on the page for this solicitation, enter your email address in the box indicated and click “check.” This will register you as a plan holder for this solicitation.

It is vital to register as a plan holder, because if any addenda or notifications are posted for this solicitation, you will get an email directing you to go to the site for viewing and possible download.

Note: To review Bids after award of Contract, contact the Buyer listed in the Instructions section.

24. EXERCISE OPTIONS: [OMITTED].

INSTRUCTIONS TO BIDDERS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

1. EXAMINATION OF DOCUMENTS:

- A. A complete set of Bid Documents shall be used in preparing a Bid; VTA assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
- B. Each Bidder should carefully examine these Bid Documents and take such other steps as may be reasonably necessary to ascertain the Contract performance requirements. Failure to do so will not relieve Bidders from responsibility for estimating properly the difficulty or cost of successfully performing the Contract. Extra compensation will not be allowed for conditions that are determinable by examining these documents.

- 2. INTERPRETATION:** Should any discrepancies or omissions be found in the Bid specifications, or doubt as to their meaning, the Bidder shall notify the Buyer in writing at once. The Buyer will send written instruction or addenda to all Bidders. Receipt of addenda by the Bidder must be acknowledged in the space provided on Bid Form 1-A. VTA shall not be held responsible for oral interpretations. Questions must be received at least ten (10) days before date set to receive Bids. All addenda issued shall be incorporated into the Contract. VTA will assume no responsibility for any understanding or representations concerning conditions made by any of its officers, agents or employees prior to the execution of the Contract, unless included in these documents.

3. BIDDER QUALIFICATIONS AND ELIGIBILITY FOR AWARD:

- A. Each Bidder shall complete, and submit with the Bid, the Bidder's Questionnaire contained in these documents. If the Bidder is a joint venture, each joint venturer shall prepare and submit a separate form. Failure to complete and return the Bidder's Questionnaire may be grounds for rejection of the Bid.
- B. When Federal, State or Local law or ordinance requires a special license or permit, a Bidder must be properly licensed prior to submitting a Bid and furnish evidence of such with the Bid.
- C. In order for a Bidder to be eligible to be awarded the Contract, the Bid must be responsive to the solicitation and VTA must be able to determine that the Bidder is responsible to perform the Contract satisfactorily.
- D. Bids deviating or taking exception to the solicitation requirements will not be considered.
- E. Bidder shall have the equipment, organization, facilities and financial capability to perform the services required by this solicitation.

- 4. PROTESTS:** The following procedures shall be used by Bidders seeking review of the Bid Documents or the Contract process:

- A. **SOLICITATION PHASE:** Prior to the closing date for submittal of Bids, Bidder may submit to VTA protests regarding the procurement process, or alleged improprieties in

specifications or alleged restrictive specifications. Any such protests shall be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of the solicitation may be extended pending a resolution of the protest.

- B. PRE-AWARD:** Protests dealing with alleged improprieties in the procurement or the procurement process, that can only be apparent after the closing date for receipt of Bids, shall be filed within five (5) working days of issuance of the Notice of Recommended Award. Protests shall contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA's final decision prior to issuance of Award.

Protestors shall have an opportunity to appear and be heard before the agency prior to the opening of proposals in the case of protests based on the content of the request for proposals or prior to final award in the case of protests based on other grounds. Proposer's requests and protests shall be in writing only and be addressed to:

**Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management Department
Attention: Chief Procurement Officer
3331 North First Street, Building A
San Jose, California 95134**

The full text of VTA's Policy No. 36 may be obtained at <http://www.vta.org/about-us/doing-business-with-vta-policies>. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

For federally funded projects, a Bidder may appeal VTA's determination of the protest to the Federal Transit Administration. All appeals submitted to the FTA shall be filed and will be handled in accordance with FTA Circular 4220.1F.

5. PREPARATION OF BIDS:

- A.** All prices and notations must be printed in ink or typewritten. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing the Bid.
- B.** Bidder shall bid on each item separately. Prices should be stated in the units specified. Sales tax, if any, should be stated separately.
- C.** Delivery date or time of performance is a part of the Bid and must be adhered to.
- D.** All Bids must be signed by an authorized representative with the name, title, and firm name clearly printed.

6. SUBMISSION OF BIDS:

- A.** Each Bid must be submitted on enclosed VTA forms, in sealed envelope, with company name, Bid number, closing date and time noted on the outside of the envelope.

- B.** Bid modifications or corrections thereof received after the closing time specified will be rejected.
 - C.** Notwithstanding the time for Opening Bids established in the Request for Bid, the Bid opening might be postponed solely at VTA's discretion.
- 7. ACCEPTANCE OF BIDS:** Bids are subject to acceptance at any time **within ninety (90) days** after Bid opening, unless otherwise stipulated in the Bid.
- 8. TIE BIDS:** In the event that two or more low Bids equal in all respects are received by VTA, the Contract shall be awarded to the Bidder by the flip of a coin in the presence of witnesses, or the entire Bid may be rejected and re-bid.
- 9. AWARD:**
 - A.** Award of a firm fixed-price Contract, if awarded, will be made to the lowest responsive and responsible Bidder.
 - B.** The basis of award shall be the **Total Bid as submitted on Bid Form 1-B.**
 - C.** Unless the Bidder specifies otherwise in the Bid, or the Bid gives notice of an all or none award, VTA may accept any item or group of items of any Bid.
 - D.** VTA reserves the right to reject any or all Bids and to waive informalities and minor irregularities in Bids received.
 - E.** In the event of a discrepancy between the unit price bid and the price extension, the unit price bid will be deemed intended by the Bidder and the extension will be adjusted accordingly. Failure to list a unit price will result in the Bid being rejected as non-responsive.
 - F.** The Bidder whose Bid is accepted shall, within the time established in section 7 above, enter into a written Contract with VTA and furnish the required Certificate of Insurance within five (5) working days of Notice of Award.
- 10. TAXES:** Contractor will be responsible for assessing any and all applicable taxes related to the purchase of, or installation of, materials used as part of this Contract. For material used on a VTA project, the Contractor will assess any and all applicable taxes and will, for purposes of determining transaction or use tax liability, use the VTA job site as the place where "engaged in business".
- 11. SBE DOCUMENTATION:** All Bidders are required to submit the following documents to the Buyer at the Bid Opening:
 - A.** Bid Form 2-A.
 - B.** Bid Form 2-B.
- 12. DISCLOSURE OF BID INFORMATION:** After award, all Bids shall be open to public inspection. VTA assumes no responsibility for the confidentiality of information offered in a Bid.

13. DESIGNATED POINT OF CONTACT: All communications with VTA regarding this IFB shall be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “IFB P20023 for COMPRESSED GAS AND CYLINDER RENTALS.” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this IFB.

Any unauthorized contact related to this IFB is not permitted. Any breach of this provision may result in the Bidder’s submittal being deemed non-responsive and may be cause for rejection.

VTA Designated Point of Contact:

Elena Lazo, Buyer II
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
Elena.Lazo@vta.org

STANDARD TERMS AND CONDITIONS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

1. **ACCEPTANCE:** VTA shall not be bound by the terms and conditions stated in these Bid Documents until the Contractor executes and returns to VTA an appropriately signed Contract or accepts deliveries against the purchase order. These Bid Documents shall be deemed incorporated into the Contract, and the Contractor shall be bound by the terms and conditions set forth in these Bid Documents, when it executes and returns said Contract. By entering into the Contract, Contractor shall be deemed to have accepted the terms and conditions set forth herein; any additional or different terms proposed by Contractor shall not be deemed a part the Contract unless expressly assented to in writing by VTA.

2. **TERMINATION AND SUSPENSION:**

A. **FOR NON-APPROPRIATION OF FUNDS:** VTA may terminate this Contract, in whole or in part, at any time, by giving Contractor at least thirty (30) days advanced written notice. Upon receipt of such notice, Contractor shall stop work immediately and promptly terminate all orders and subcontracts insofar as they relate to this Contract. Within thirty (30) days after termination, Contractor may submit to VTA its written claim for any charges due to Contractor. Failure to submit the claim within this time period will constitute a waiver of all Contractor's claims arising out of the termination.

B. **FOR CAUSE:** VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within five (5) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) working days after receipt of the notice (or within such additional time the Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.

In the event of such termination for cause, VTA shall be relieved of any obligation (including its obligation to purchase the minimum quantity or dollar amount stated herein) of further payment to Contractor and may complete the remainder of the Contractor's obligations by itself or using an alternative, third-party contractor. The reasonable additional cost to VTA for completing the remaining Contractor obligations shall be deducted from any sum due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing will be in addition to any other legal or equitable remedies available to VTA.

C. **RESTRICTION AGAINST MANUFACTURING IN ADVANCE OF REQUIREMENTS:** Unless otherwise authorized in writing by VTA, Contractor will not make commitments for materials nor fabricate in advance of time necessary to permit shipment on delivery dates. In the event of termination of this Contract, no claim will be allowed for goods or materials manufactured or procured in advance of such schedule.

3. WARRANTY:

- A.** Contractor expressly warrants that all services covered by this Contract shall conform to the specifications or other descriptions upon which this Contract is based and shall be fit and sufficient for the purpose intended.
- B.** Contractor agrees to re-perform any services not conforming to the foregoing warranty promptly, without expense to VTA, when notified of such nonconformity by VTA. In the event of failure by Contractor to correct defects in or re-perform non-conforming services promptly, VTA, after reasonable notice to Contractor, may make such corrections or re-perform such services and charge Contractor for the cost incurred by VTA thereby.
- C.** VTA may, at its option, require Contractor to grant full refund or credit to VTA, in lieu of re-performance, with respect to any item VTA is entitled to reject hereunder. VTA shall have the right to cancel this order or any partial order if service conforming to specifications shall not be ready at the time and in the quantities herein set forth. The foregoing shall be in addition to any legal remedies available to VTA.

4. FORCE MAJEURE: An event of force majeure refers to an event beyond the control and without the fault or negligence of the Party affected which prevents a Party from complying with any of its obligations under this Contract, including but not limited to:

- Acts of God (such as, but not limited to earthquakes, flood, fire or other physical natural disaster)
 - War, hostilities (whether declared or not), invasion, acts of terrorism, civil war, rebellion, revolution, requisition
 - Contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- A.** Neither Party is responsible for any failure to perform its obligations under this Contract if it is prevented or delayed in performing its obligations by an event of force majeure.
 - B.** Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Contract (“Affected Party”) must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that Party from, or delaying that Party in, performing its obligations under the Contract, and the Affected Party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Contract and must use reasonable efforts to fulfill its obligations under the Contract.
 - C.** Upon completion of the event of force majeure, the Affected Party must, as soon as reasonably practicable, re-commence the performance of its obligations under this Contract

5. CHANGES: VTA shall have the right at any time prior to the delivery date of the services or goods to make changes in drawings, designs, specifications, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for performance, or otherwise affect any other provision of this Contract, a mutually agreed upon adjustment shall be made and this Contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause shall be deemed waived unless made in writing within ten (10) working days after receipt by Contractor of notice of such change. Price increases or

extensions of time for delivery shall not be binding on VTA unless evidenced by a written change order executed by an authorized agent of VTA.

6. **VTA's PROPERTY:** The Contractor agrees that any documentation and equipment or material, including drawings, patterns and specifications, supplied or paid for by VTA shall be and remain VTA's properties and shall be held by the Contractor for VTA unless directed otherwise by VTA. The Contractor will account for such items and keep them in good/working condition and fully covered by insurance at all times without expense to VTA.
7. **ASSIGNMENTS AND SUBCONTRACTING:** This Contract and any payments to be made hereunder may not be assigned, subcontracted or transferred without the prior written approval of VTA.
8. **WAIVER:** VTA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or VTA's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, rights or privileges.
9. **BANKRUPTCY/INSOLVENCY:** In the event of any proceeding by or against Contractor in bankruptcy, reorganization or insolvency or any assignment for the benefit of creditors or of a receiver, VTA shall have the right, upon written notice to Contractor and without liability, to cancel this Contract with respect to any portion thereof not complete.
10. **ADDITIONAL DOCUMENTS:** All specifications and documents expressly referred to in this Contract are incorporated herein by reference. If such reference is to a portion of such specifications or documents, then only the portions referenced shall be incorporated herein.
11. **COMPLIANCE WITH LAWS:** Contractor warrants that all services performed have been performed in compliance with, and Contractor agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations.
12. **COMPLIANCE WITH VTA'S USE OF PERSONAL ELECTRONIC DEVICES POLICY:** Contractor must adhere to VTA's Use of Personal Electronic Devices by Bus and Light Rail Employees and Contractor Staff (ATU) Policy#OPS-PL-0001, attached hereto as Exhibit P. Contractor is responsible for all fines that Contractor's employees may receive if cited for violation of this policy.
13. **THIRD PARTIES NOT TO BENEFIT:** This Contract is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
14. **AUDIT AND RECORDS:**
 - A. Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for services under this Contract. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services shall be clearly identified and readily accessible.

- B. For the duration of the Contract, and for a period of three (3) years thereafter, VTA, its representatives and the state auditor shall have the right to examine and audit during successful Bidder normal business hours these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.

15. PROHIBITED INTERESTS:

- A. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.
- B. **INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of the VTA during his or her tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- C. **INTEREST OF THE CONTRACTOR:** The Contractor covenants that neither it nor its officers, directors or agents, presently has any interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall knowingly be employed.

16. NONDISCRIMINATION: During performance of this Contract Contractor its employees and sub-Bidders shall not unlawfully discriminate, harass or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation or military and veteran status, and the denial of family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.

17. CONFIDENTIALITY AND PUBLICITY: Without the written consent of VTA, Contractor shall not disclose to third parties other than its employees or authorized sub-Bidders or disclose or use for any purpose other than performance of the services any information provided to Contractor by VTA in connection with performance of this Contract, or any information developed or obtained by Contractor in the performance of this Contract, unless: (1) the information is known to Contractor prior to obtaining same from VTA or performing services under this Contract; (2) the information is, at the time of disclosure by Contractor, then in the public domain; or (3) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto.

18. SEVERABILITY: If any of the provisions or portions or applications thereof of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof shall not be affected thereby.

19. **NOTICES:** Notices provided for under this Contract shall be provided in writing and addressed to VTA’s authorized representative.
20. **INDEPENDENT CONTRACTOR:** Contractor is an independent Contractor and not the agent or employee of VTA in performing its services under this Contract.
21. **ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts or understandings, oral or written.
22. **AMENDMENT:** Except as expressly provided herein, the provisions of this Contract shall not be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
23. **DAYS:** For purposes of this Contract, all references herein to “day” shall mean calendar day, unless specified otherwise. All references to “calendar day” shall mean any day, including Saturday, Sunday and all legal holidays. All references to “working day” shall mean any business day, excluding Saturdays, Sundays and legal holidays.
24. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
25. **FORUM SELECTION:** Contractor will resolve any claim, cause of action or dispute (collectively “claim”) that Contractor has with VTA arising out of or related to this Contract in a state or federal court located in Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
26. **INDEMNIFICATION AND DEFENSE OF CLAIMS:**
- A. GENERAL INDEMNIFICATION AND DEFENSE OF CLAIMS:**
- i. Contractor shall indemnify and hold harmless VTA and its board members, officers, agents, employees, and consultants (each an “Indemnitee”; collectively, the “Indemnitees”) from and against any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, or fees and costs (including reasonable attorneys’ and experts’ fees and costs) (each, a “Claim” and collectively, the “Claims”) arising out of, pertaining to, caused by, or in any way relating to the performance of this Contract, including compliance or non-compliance with the terms of this Contract, by Contractor and/or its agents, employees, suppliers, or subcontractors, whether such Claims are based upon a contract, personal injury, death, property damage, or any other legal or equitable theory whatsoever.
 - ii. Contractor shall, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth above in subparagraph (i) immediately above and regardless of whether Contractor and/or any of its agents, employees, suppliers, or subcontractors, was, in fact, liable. In the event a court of

competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA.

B. INFRINGEMENT INDEMNIFICATION AND DEFENSE OF CLAIMS:

- i. Contractor shall indemnify and hold harmless the Indemnitees from and against any and all Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any actual or alleged infringement of any intellectual property rights (including but not limited to patents, copyrights, trade secrets, service marks, and trademarks) by the goods and/or services provided by Contractor hereunder (referred to as “Goods” and “Services” for purposes of this Infringement Indemnification and Defense of Claims provision), or use of any of the aforementioned.
- ii. Contractor shall, at its own expense, and upon written request by VTA or any individual Indemnitee, immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, or fees and costs covered by Contractor’s indemnity obligation set forth in subparagraph (i) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors did, in fact, infringe any intellectual property rights.
- iii. If any part of the Goods and/or Services is, or in Contractor’s reasonable judgment is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, Contractor will, at its expense and option, do one of the following: (a) procure for VTA the necessary right to continue using the Goods and/or Services; (b) replace or modify the infringing portion of the Goods and/or Services with a functionally equivalent item or portion thereof, or (c) if none of the foregoing are commercially reasonable, Contractor may terminate this Contract upon written notice to VTA, take back any infringing portion of the Goods, and refund to VTA a pro-rated amount of any fees paid for the infringing portion of the Goods and/or Services. The remedies set forth in this subparagraph (iii) are in addition to, and not in lieu of, all other remedies that may be available to VTA, including the indemnification rights under this Indemnification and Defense of Claims provision.
- iv. Contractor will have no liability or obligation hereunder with respect to any Claim to the extent the Claim is based upon (i) modifications, alterations, combinations, or enhancements by VTA of the Goods and/or Services that is not authorized by Contractor or (ii) VTA’s continuation of allegedly infringing activity after being notified thereof.
- v. Infringement Indemnification Procedures: Contractor’s obligations under the Infringement Indemnification and Defense of Claims section are expressly conditioned on the following: VTA shall (a) promptly notify Contractor in writing of any such Claim of which VTA has actual knowledge (provided that failure to do so will only release Contractor from the foregoing indemnification and defense obligations to the extent that

such failure led to material prejudice), (b) in writing, grant Contractor sole control of the defense of any such Claim and of all negotiations for its settlement or compromise (provided that no such settlement or compromise may impose any liability or other obligations on VTA), and (c) reasonably cooperate with Contractor to facilitate the settlement or defense of the Claim. Notwithstanding the foregoing, VTA may participate, at VTA's own expense, in the defense of such Claim.

- C. SURVIVAL:** This Indemnification and Defense of Claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

**SPECIAL CONDITIONS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

1. **COMPENSATION:** As full consideration for the satisfactory performance of the Contract by the Contractor, VTA shall pay to the Contractor amounts designated in Bid Form 1-B – Schedule of Prices and Estimated Quantities.
2. **QUANTITY:** Contractor agrees Bid price(s) apply to any quantity purchased under this Contract and such prices are guaranteed for the term of the Contract unless otherwise agreed by both parties in writing.
3. **TAXES:** Sales tax (when applicable) shall be included in the bid as a separate line item.
4. **INVOICING AND PAYMENTS:**

- A. The successful Bidder shall submit its invoice for payment to the address listed below for the services provided, which have been accepted by VTA.

**VTA ACCOUNTS PAYABLE
3331 NORTH FIRST STREET, BUILDING A
SAN JOSE, CA 95134-1906**

or

VTAAccountsPayable@VTA.org

- B. Payments will be made to the successful Bidder within thirty (30) days following receipt of a properly prepared invoice.
 - C. Payment will be considered to have been made on the date VTA mails payment.
 - D. Discounts offered by Contractor for early payment will be taken by VTA if payment is made within the discount period specified.
 - E. VTA shall not be responsible for late payment charges unless they are an express part of this Contract.
 - F. Upon completion of this Contract, the final payment shall be made on determination by VTA that all requirements hereunder have been completed, and such determination shall not be unreasonably delayed.
5. **LIQUIDATED DAMAGES:** [OMITTED].

SCOPE OF WORK
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

IDIQ CONTRACT:

(a) This is an indefinite-quantity contract for the goods or services specified, and effective for the period stated, in the Contract. The quantities of goods and services specified herein are estimates only and are not purchased by this Contract.

(b) VTA shall order at least the quantity or dollar amount of goods or services designated as the “minimum,” but no more than the quantity or dollar amount designated as the “maximum,” if such maximum designation is made.

(c) VTA may issue purchase orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any purchase order issued during the effective period of this Contract but not completed within that period shall be completed by the Contractor within the time specified in the order. This Contract shall govern the Contractor’s and VTA’s rights and obligations with respect to that order to the same extent as if the order were completed during the Contract’s effective period.

DELIVERABLES:

Contractor will, on the basis of purchase orders issued by VTA, supply and deliver the various types of compressed gas described in Bid Form 1-B Schedule of Prices and Estimated Quantities (Attachment A to this IFB) to the VTA facilities listed under Section 20, “Delivery Address”. Contractor must provide all personnel, transportation, equipment, materials, tools, supervision, and other items and services necessary to perform as required by this contract.

Contractor shall rent to VTA the cylinders needed by VTA.

All cylinders will remain the property of the contractor. The cylinders must be in good condition with an operable valve or regulator. The contractor must hydrostatically test all contractor-owned cylinders, in accordance with applicable state and federal laws. Cylinders must comply with the U.S. Department of Transportation labeling requirements. Cylinders must be (i) sufficiently labeled to identify the contents and (ii) delivered in a clean and useable condition.

TIME FOR DELIVERY:

Contractor will deliver the ordered goods or services within forty-eight (48) hours of receipt of a purchase order hereunder.

**BID FORM 1-A: BIDDER ACKNOWLEDGEMENT OF ADDENDA
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

In compliance with your **Invitation for Bid** for this project, the undersigned Bidder, being thoroughly familiar with the terms and conditions of the solicitation documents, hereby bids and agrees fully to perform the work within the time stated and in strict accordance with the solicitation documents.

Note: It is the Bidder’s responsibility to obtain all addenda to this solicitation.

The Bidder hereby acknowledges receipt of the following Addenda to the solicitation documents:

| | | | | | | | |
|--------------------|-------------|--|--|--------------------|-------------|--|--|
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |
| Addendum No. _____ | Dated _____ | | | Addendum No. _____ | Dated _____ | | |

CONTINUED 

BIDDER'S SIGNATURE PAGE
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

BY SIGNING, THE BIDDER CERTIFIES THAT HE/SHE HAS READ AND UNDERSTANDS THE BID DOCUMENTS AND THAT HE/SHE OFFERS AND AGREES TO FURNISH THE GOODS AND/OR SERVICES SPECIFIED UNDER THE INSTRUCTIONS AND CONDITIONS STATED THEREIN.

SIGNATURE

/ / 20

DATE

PRINT NAME

E-MAIL ADDRESS

FIRM

TELEPHONE

FAX

SMALL BUSINESS ENTERPRISE (SBE) POLICY AND REQUIREMENTS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

1. **POLICY:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Small Business Enterprises (SBEs) as defined in federal regulations at 13 CFR Part 121 shall have the opportunity to participate in the performance of contracts and subcontracts financed with local funds.
 - A. Any certified DBE is eligible to participate as an SBE toward the SBE goal.
 - B. VTA's Office of Business Diversity Program encourages Contractors to call (408) 321-5962 for assistance in identifying eligible SBE firms. Listings of eligible firms are also available on the internet at the following: vta.org/procurement/general/sbe_search.html.
2. **GOAL:** There is no specific goal established for this Contract. However, Contractor is encouraged to make every effort to meet VTA's overall agency goal of 19% where possible.
3. **COUNTING TOWARD THE SBE GOAL:** SBEs may perform as Contractors, subcontractors (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the SBE, including materials and supplies, will be counted toward the SBE goal.
 - A. An SBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

If an SBE does not perform or exercise responsibility of at least thirty percent (30%) of the total cost of its Contract with its own work force, or if the SBE subcontracts a greater portion of work of a Contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a commercially useful function.
 - B. Credit for an SBE vendor of materials or supplies is limited to sixty percent (60%) of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive one hundred percent (100%) credit, less work subcontracted by the SBE to non-SBE firms, toward the SBE goal.
 - C. Credit for SBE trucking firms is limited to the amount performed by the SBE's own trucks and drivers and by certified SBE trucking sub haulers. An SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
 - D. In a joint venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the SBE performs with its own forces will be counted toward the SBE goal.

- E. During the life of a Contract, work performed by SBE firms whose certification has expired will not continue to be counted toward the SBE goal. Only work performed by a certified SBE firm will be counted toward the SBE goal when the SBE firm has been paid.
 - F. Bidders are encouraged to utilize services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in VTA's community and marketplace.
4. **AWARD OF THE CONTRACT:** VTA will award this Contract to the lowest responsible and responsive Bidder as required by federal and California laws.
5. **SUBMITTALS:** All Bidders shall submit the following:
- A. Bid Form 2-A: Listing of SBE Contractor, subcontractor(s) or supplier(s) Bidder intends to use and count toward VTA's overall agency SBE goal, with a complete description of services or supplies to be provided by each, work which the SBE further subcontracts to non-SBE firms, and the dollar value of each such subcontracting or supplies transaction.
 - B. Bid Form 2-B: Supplemental Contractor and Subcontractor Information.
6. **NONDISCRIMINATION:** The Contractor shall make VTA's contracting requirements known to subcontractors, vendors and suppliers who are certified or accepted as certifiable as SBE, as well as to non-SBE businesses, and shall provide a practical opportunity for all firms to participate in the Contract.
7. **SUBSTITUTION OF SBE SUBCONTRACTOR WITH NON-SBE SUBCONTRACTOR:** An SBE subcontractor or supplier shall not be replaced without the prior written consent of VTA. Contractor shall make good faith efforts to find another SBE subcontractor or supplier to substitute for the original SBE. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified SBE firm to substitute for an SBE firm that has to be replaced and shall include the following:
- A. Contractor shall immediately notify VTA in writing of its intent to replace a SBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the VTA Office of Business Diversity Program (OBDP).
 - B. VTA will provide written notice to the SBE firm of Contractor's request for substitution and of the reasons therefor and they will be requested to provide any written objections within five (5) working days.
 - C. Contractor shall utilize the following sources for identifying certified SBE firms for solicitation: California DBE Uniform Certification Program (UCP) database; California Department of General Services Small Business database; VTA SBE database.
 - D. Contractor shall provide written notice to at least five (5) firms in each work or material/supply category to be substituted. If Contractor provides written notice to fewer than (5) five firms Contractor shall explain to OBDP in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of

Santa Clara and its contiguous counties (“local firms”) and then, where appropriate, to out-of-area SBE firms.

- E.** Contractor shall contact the SBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OBDP.
 - F.** Contractor shall provide OBDP with the following information:
 - (1)** A list and copies of all SBE and non-SBE responses to the solicitation, including all Bids received.
 - (2)** If a Bid is rejected by Contractor, the reasons for the rejection.
 - (3)** If Contractor rejected an SBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.
 - G.** A Contractor who fails to use good faith efforts to replace an SBE firm with another SBE firm may be subject to the imposition of a penalty of up to fifteen percent (15%) of the value of the work of the subcontractor or supplier replaced.
- 8. MONTHLY SBE UTILIZATION REPORT:** Contractors are required to submit a monthly SBE Utilization Report electronically to the SBE Administrator, VTA Office of Business Diversity Program. These monthly reports shall be submitted electronically, and the Contractor will document the dollar value of payments to SBE firms, and the percentage of the Contract completed. VTA will monitor the Contract for compliance with SBE requirements.
- A.** This system is web-based, accessible from any computer via the internet at <https://vta.sbdbe.com>. Each Contractor and subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Classroom training will also be provided. Other assistance will be provided upon request.
 - B.** Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.
 - C.** If the SBE Utilization Reports indicate potential problems, the Contractor shall meet with the appropriate VTA representative(s) to address any deficiencies and discuss appropriate corrective actions.
 - D.** Prior to final payment, Contractor will be required to submit a final SBE Utilization Report. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE subcontractors, suppliers of materials, trucking firms, consultants and others.
 - E.** Failure by Contractor to submit required reports as described above may be considered grounds for a determination by VTA of nonresponsibility in consideration of Contractor’s eligibility to bid on or be awarded future work.

9. **PROMPT PAYMENT:** The Contractor must adhere to all federal and California prompt payment laws and regulations. If Contractor does not adhere to prompt payment requirements, penalties may apply.

**LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

Issued **FEBRUARY 3, 2020**

BID FORM 2-A

| | |
|------------------------------|--|
| Firm: _____ | Street Address: _____ |
| City, State: _____ | Zip Code: _____ |
| Phone: _____ | Fax/E-mail: _____ |
| Age of Firm: _____ | Small Business Enterprise: Yes _____ No _____ |
| Name and Title: _____ | Signature: _____ Date: _____ |

Contract dollar value must exclude work performed by non-SBEs except materials or equipment purchased and used in this Contract.

CREDIT FOR SBE VENDOR of materials or supplies is limited to 60% of its expenditures for materials and supplies required under this Contract and obtained from a SBE regular dealer. Credit for SBE manufacturers is given at 100% toward the goal only where the SBE vendor manufactures or substantially alters the material prior to resale.

CREDIT FOR SBE BROKERS (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, towards the SBE goal.

CREDIT FOR SBE TRUCKING FIRMS is limited to amount performed by the SBE's own trucks and drivers and by certified SBE trucking subhaulers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the Contract. *A SBE must be certified or accepted as Certified by VTA.* Refer to 49 CFR Part 26.

**LISTING OF SBE CONTRACTOR OR SUBCONTRACTORS
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

Issued **FEBRUARY 3, 2020**

BID FORM 2-A

| Name & Address of Certified SBE | Certification Number | Agency Certifying | Age Of Firm | M* W** | Description of Work | Bid Item | Dollar Value of Contract |
|---------------------------------|----------------------|-------------------|-------------|-----------|---------------------|----------|--------------------------|
| | | | | | | | \$ |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SBE GOALS ARE DETERMINED ON BASE CONTRACT AMOUNTTOTAL..... **Total \$** _____

| | |
|-----------------------|----|
| Base Contract Amount: | \$ |
| SBE Contract Amount: | \$ |

Goal Achieved _____ % **SBE Goal** _____ %

SBE Amounts and Base Amounts Must Exclude Alternate Bids

*Minority Type: **A** = Asian, **SA**= Subcontinent Asian, **B** = Black, **H** = Hispanic, **NA** = Native American, **O** = Other, ** Woman

$\frac{\text{SBE Contract Amount}}{\text{Base Contract Amount}} \times 100 =$ _____ % _____ %

IMPORTANT! THIS FORM MUST BE SUBMITTED WITH THE BID

**SBE SUPPLEMENTAL CONTRACTOR AND SUBCONTRACTOR INFORMATION
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

Issued **FEBRUARY 3, 2020**

BID FORM 2-B

This form shall be copied by the Bidder and distributed to all sub-Bidders. The completed forms are to be submitted with the Bid.

Date: _____
Contract Name and Number: _____
Firm Name: _____
Firm Address: _____
Phone Number: _____
Fax Number: _____
Age of Firm: _____

| | | | | | | |
|-----------------------------------|--------------|---------------|-----------|-----------|-----------|-------------|
| (Check one) | | | | | | |
| Annual Gross Receipts | | | | | | |
| Indicate bracket of income | Below \$500K | \$500K - \$1M | \$1M-\$4M | \$4M-\$6M | \$6-\$13M | Above \$13M |

| | | | |
|-------------------|------------------------------|------------------------------|--------------------------------------|
| Check One: | DBE <input type="checkbox"/> | SBE <input type="checkbox"/> | Non-SBE/DBE <input type="checkbox"/> |
|-------------------|------------------------------|------------------------------|--------------------------------------|

Ethnicity*: _____ Gender: _____ Work/Trade Category: _____

A = Asian, SA = Subcontinent Asian, B = Black, C = Caucasian, H = Hispanic, NA = Native American, O = Other

Completed by Company _____
 Email Address: _____

Valley Transportation Authority
 Office of Business Diversity Program
 3331 North First Street, Bldg. A San Jose, CA 95134-1906
If you require additional forms or information, call (408) 321-5719

INSURANCE REQUIREMENTS - EXHIBIT M-1

INSURANCE REQUIREMENTS For P20023 COMPRESSED GAS AND CYLINDER RENTALS

CONTRACTOR'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CONTRACTORS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.

I. INSURANCE

Without limiting the Contractor's indemnification of VTA, the Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or sub-contractors. The cost of such insurance must be included in the Contractor's Bid/Proposal. The Contractor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. General Liability coverage; Insurance Services Office "occurrence" form CG 0001. General Liability insurance written on a "claims made" basis is not acceptable.
- b. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims made" basis is not acceptable.
- c. Workers' Compensation insurance, as required by the Labor Code of the State of California, and Employers Liability insurance.
- d. Cargo insurance; coverage equivalent to AIMU "All Risk" form including War, Strikes, Riots & Civil Commotion, and Domestic Transit if applicable. If cargo is shipped on an "On Deck" bill of lading, insurance policy must provide coverage for the full value of the shipment. Property insurance "In Transit" coverage is sufficient if applicable to "customers goods" or "property of others" and there is no exclusion for the means of conveyance.

2. Minimum Limits of Insurance

Contractor must maintain limits no less than:

- a. General Liability (including umbrella/excess liability): \$3,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit

per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying general liability policy, and a “Drop Down” provision.

- b. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage.
- c. Workers’ Compensation and Employers Liability: Statutory Workers’ Compensation limits and Employers Liability limits of \$1,000,000 per accident.
- d. Cargo insurance: The limit shown on the policy must be equivalent to the largest individual shipment traveling on a single conveyance.

B. Self-Insured Retention

The certificate must disclose the actual amount of any deductible or self-insured retention for all coverages. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Proposer/Bidder must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or the proposer/bidder must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

- 1. The policy retroactive date must be no later than the date of this Contract.
- 2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Contractor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.
- 3. No prior acts exclusion to which coverage is subject that predates the date of this Contract.
- 4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

D. Other Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, including VTA’s general supervision of the Contractor; products and

completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. The Contractor's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers must be excess of the Contractor's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- d. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The General Liability General Aggregate limit must apply per project, not per policy.
- f. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

E. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

F. Certificates of Insurance

Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org.

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

D. Maintenance of Insurance

If the Contractor receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor or insurer must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

Ed. Rev. 7-1-17

**QUALITY ASSURANCE PROVISION
P20023
COMPRESSED GAS AND CYLINDER RENTALS**

1. **QUALITY ASSURANCE SYSTEM POLICY:** The Contractor and/or supplier shall have and maintain an effectively defined and documented Quality Assurance System which demonstrates the Contractor and/or supplier's policy, objective and commitment to quality at all levels of the organization. This system manual or current quality program certification document shall be submitted in writing to VTA as part of the Bid package for approval. The Contractor and/or supplier shall also have the capability to ensure original design integrity, inspection, testing, adhering to Scope of Work and/or technical specification by preventing nonconformity at all stages from production through delivery.

2. **MANAGEMENT ORGANIZATION:** The Contractor and/or supplier shall have a designated quality assurance representative with the defined responsibility and authority to verify Contract conformance and initiate corrective and/or preventative actions on the occurrence of any nonconformance relating to product (systems, parts, components, materials, and services), performance, customer service, process and/or Quality Assurance System. VTA reserves the right to audit and assess the effectiveness of this Quality Assurance System organization. The Contractor and/or supplier shall:
 - A. Identify, document and communicate changes to the Quality Assurance System, and any problems relating to the system and its nonconformity.
 - B. Initiate, recommend or provide solutions through designated channels.
 - C. Verify the implementation of corrections, preventative actions and/or solutions.
 - D. Ensure that the Quality Assurance System requirements of this Contract are established, implemented and maintained.
 - E. Review, audit and report on the Quality Assurance System at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this Contract.

**WARRANTY PROVISION
P20023
COMPRESSED GAS AND CYLINDER RENTALS**

1. **WARRANTY:** Warranties in this Document are in addition to any statutory remedies or warranties imposed on the Contractor and/or supplier. Consistent with this requirement, the Contractor and/or supplier shall guarantee and warrant all products adhering to products manufacture performance requirements and VTA's specified requirements. The Contractor and/or supplier shall also have and maintain an effectively defined and documented warranty administration system that demonstrates the Contractor and/or supplier's and/or Products Manufacturer's policy, procedure and commitment to respond to and resolve product returns and warranty claims within a reasonable time. The Contractor and/or supplier is required to submit warranty policy, procedure, and forms for VTA review.

**BIDDER'S QUESTIONNAIRE – EXHIBIT O
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS**

This questionnaire is an integral part of a Bidder's Bid, and shall be completed. Failure to provide the required information may cause rejection of your Bid. All references and information shall be current and traceable. If the Bidder is a joint venture, each shall prepare a separate form.

NAME OF BIDDER:

PRINCIPAL OFFICE

STREET ADDRESS OR P.O. NUMBER

CITY

STATE

ZIP CODE + 4

TELEPHONE

FAX

E-MAIL ADDRESS

- 1.** Are you an individual _____, a partnership _____, a corporation _____, or a joint venture _____?
(Check appropriate business structure).

If partnership, list names and addresses of partners; if corporation, list names of officers and directors and State of incorporation; if joint venture, list names and addresses of venturers and, if any venture is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.

| NAME | ADDRESS |
|------|---------|
| | |
| | |
| | |
| | |

2. How many years has your organization been in business as a Contractor under your present business name? _____years.
3. How many people are currently employed by your firm? _____ In Santa Clara County? _____
4. Of the people employed, what are the job classifications involved in the services required by this solicitation, and how many people are assigned to each classification?

| JOB CLASSIFICATION | NO. OF EMPLOYEES |
|--------------------|------------------|
| | |
| | |
| | |
| | |

5. What is the location of your facility located in Santa Clara County? What is the square footage of this facility? (If the facility is not in Santa Clara County, indicate the location and square footage of the nearest facility to VTA’s Administrative Offices on First Street, San Jose).

6. What are the types and number of vehicles you will use in the performance of services required by this solicitation?

| TYPE | NUMBER |
|------|--------|
| | |
| | |
| | |
| | |

7. List the names of companies and public agencies that you have furnished service to within the last twelve months.

| | |
|-----------------------------|--|
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |

8. List the names of companies and public agencies that you have current orders for the same or similar service.

| | |
|-----------------------------|--|
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |
| NAME AND ADDRESS: | |
| TYPE OF BUSINESS: | |
| CONTACT INFORMATION: | |

9. Have you or your organization, or any officer or partner thereof, failed to complete a contract? If so, give details:

10. Is any litigation pending against your organization? If so, give details:

11. Are you a certified SBE/DBE? If yes, with which agency do you hold your certification:

The undersigned certifies that (s)he is legally authorized by the Bidder to make the statements and representations contained in this document, and represents and warrants that the foregoing information is true and accurate to the best of his knowledge, and intends that the Santa Clara Valley Transportation Authority, Santa Clara County, California, rely thereon in evaluating the Bidder.

NAME OF COMPANY

SIGNATURE

PRINTED NAME/ TITLE

DATE

“NO BID” RESPONSE FORM - EXHIBIT I
IFB P20023
COMPRESSED GAS AND CYLINDER RENTALS

If no Bid is to be submitted, detach this sheet from the Solicitation, complete the information below, and fax the form to the attention of the Buyer listed on page 1 of this solicitation at the fax number above.

Reason for not submitting a Bid:

- Do not provide this service.
- Unable to obtain required insurance.
- Unable to obtain required bonding.
- Not equipped to handle this project.
- Do not carry this item.
- Not within the scope of our capabilities.
- Insufficient bidding time.
- Unable to identify items.
- Can supply item, however, cannot be competitive.
- Cannot comply with delivery/performance period.
- Project size is too large.
- Project size is too small.
- Not interested in this type of project.

Explain:

Cannot comply with Specification:

Explain:

Other:

Explain:

SIGNATURE

/ / 20

DATE

PRINT NAME

E-MAIL ADDRESS

FIRM

TELEPHONE

FAX

EXHIBIT P

**VTA'S USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND
CONTRACTOR STAFF (ATU) POLICY #OPS-PL-0001**

| | | |
|---|-------------------------|-------------|
| POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU) | Document Number: | OPS-PL-0001 |
| | Version Number: | 03 |
| | Date: | 12/20/2016 |

1.0 Purpose:

To establish the standards and restrictions for use of Personal Electronic Devices (PEDs).

2.1 Scope:

This policy applies to all VTA employees, contractors or their staff (hereafter collectively referred to as “Personnel”), who:

- ✓ Operate a VTA bus or Light Rail Vehicle (LRV);
- ✓ Operate hi-rail or any other on-track equipment;
- ✓ Act as Rail Controllers, flaggers, or the Employee In Charge (EIC) or otherwise control the movement of rail vehicles;
- ✓ Perform any task while Fouling the Tracks; and/or
- ✓ Perform work within the Safety Envelope.

Note: Electronic devices prescribed by a licensed medical practitioner to permit an employee to meet minimum levels as required by VTA or by a contractor performing work on VTA property, are exempt. Roadway Worker Protection Devices provided by VTA are also exempt.

3.0 Responsibilities:

All Personnel are responsible for the safe delivery of transportation services. All Personnel who operate vehicles in revenue service or operate hi-rail vehicles or other on-track equipment; or who control the movement of rail vehicles or perform work on the right of way will receive a copy of this Policy, and be responsible for strict adherence to this Policy and State and Federal regulations.

4.0 Policy:

It is VTA policy that all VTA-owned revenue service vehicles, or any hi-rail vehicles and on-track equipment operated on the VTA rail system, will be operated in a safe and responsible manner. Personnel who operate a VTA bus or LRV or control the movement of rail vehicles, or perform work on the right of way or Foul the Tracks in the performance of their duties are responsible for the safety of the passengers and the public at large. Personnel are prohibited from using cellular telephones or any other PEDs (as defined in section 5) while operating VTA buses, LRVs, hi-rail or other on track equipment.

| | | | |
|-----------------------|------------------|-----------------------|-------------|
| Original Date: | Supersede | Revision Date: | Page 1 of 5 |
| | Date: | | |
| 06/12/2009 | 03/05/2012 | 12/20/2016 | |

| | | |
|---|-------------------------|-------------|
| POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU) | Document Number: | OPS-PL-0001 |
| | Version Number: | 03 |
| | Date: | 12/20/2016 |

4.1 Restrictions and Storage:

- 4.1.1 For Personnel operating a VTA bus or LRV, the restrictions include, but are not limited to: making or receiving telephone calls, text messaging, checking e-mail messages, checking the time, using the clock feature of a cell phone, wearing a Fitbit or other fitness monitoring device, wearing a smart watch (e.g., Apple Watch, Samsung Gear, etc.) or similar watch, reading, playing games or listening to music or other audio. Personnel are prohibited from giving the PED to another person, including another employee, on the bus or LRV.

In an emergency, Personnel must proceed to a safe area and stop the bus, LRV, hi- rail vehicle, or on-track equipment, and vacate the operating area. Afterwards, Personnel may use a PED for the purposes of addressing the emergency.

All PEDs shall be Turned Off and Stowed Away while operating a bus or LRV, or while sitting in the Operator’s Area, as defined in Section 5. The bag that the PED is stowed away in must conceal the device so that it is not visible without opening the bag.

PEDs may be used by bus and light rail Operators while on break or at a layover when the vehicle is safely stopped and the Operator is out of the Operator’s Area. The PED must remain Turned Off and Stowed Away until the Operator has cleared the Operator’s Area and must be Turned Off and Stowed Away prior to returning to the Operator Area.

- 4.1.2 For Personnel operating hi-rail or on-track equipment, the restrictions include, but are not limited to, making or receiving telephone calls, text messaging, checking e-mail messages, checking the time, using any feature of a cell phone, wearing a Fitbit or other fitness monitoring device, wearing a smart watch or similar watch, reading, playing games or listening to music or other audio.

PEDs shall be Turned Off and Stowed Away while operating a hi-rail vehicle or on-track equipment. Personnel operating a hi-rail vehicle or on-track equipment, who wish to use their PEDs while on break, must move their hi-rail or on track equipment off of the right of way to a location that is not Fouling the Tracks. Prior to retrieving and turning on their PED for use, Personnel must stop, shut off the engine, and clear the Operator’s Area. The PED must be Turned Off and Stowed Away prior to returning to the Operator’s Area or restarting the engine.

| | | | |
|-----------------------|------------------|-----------------------|-------------|
| Original Date: | Supersede | Revision Date: | Page 2 of 5 |
| | Date: | | |
| 06/12/2009 | 03/05/2012 | 12/20/2016 | |

| | | |
|---|-------------------------|-------------|
| POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU) | Document Number: | OPS-PL-0001 |
| | Version Number: | 03 |
| | Date: | 12/20/2016 |

Use of cell phone communication is allowed to safely direct the movement of pushing a dead-car train only when no other means of communication is available and prior approval has been obtained from the Operations Control Center. Personnel who are directing, flagging, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks may keep the PED in their possession and powered on but must proceed to a safe area outside

the Safety Envelope (minimum 6 feet from the nearest light rail) to use their PED. Rail Controllers in the Operations Control Center must unplug and step away from their console before using their PED.

4.2 Discipline:

Failure to adhere to this Policy may constitute a serious safety violation. Violations of this policy will be considered an instance (adverse entry) under the unsatisfactory record portion of Part A, Section 18.2 of the ATU Collective Bargaining Agreement (CBA) and will be subject to a two-year record review.

VTA employees who violate this policy will be subject to disciplinary action as listed below subject to the underlying circumstances and the individual employee. Talking on a PED, texting, playing video games or other violations that distract the Operator and pose the greatest risk will result in the highest levels of discipline.

Repeat violations of any portion of this Policy is considered a serious matter. The applicable sequence of the offenses (first, second, and third) is based on violations of any portion of this Policy. For example, if an employee violates Section 4.2.5 and six months later violates Section 4.2.2, the second violation will be considered a “Second Offense” and will be issued the corresponding discipline of termination. All “days” referenced in the box below are continuous calendar days of unpaid suspension.

| | VIOLATION | 1st Offense | 2nd Offense | 3rd Offense |
|-------|---|-------------------------------|-------------------------------|-------------------------------|
| 4.2.1 | Any violation of this policy where the employee is involved in an accident (preventable or non-preventable). | Termination | | |
| 4.2.2 | Use of PED while operating a bus, LRV, hi-rail vehicle or on-track equipment. | 20 – 30 days | Termination | |
| 4.2.3 | Use of PED in the Operator’s Area, but not while operating a bus or LRV. | 10 – 20 days | 20 – 30 days | Termination |
| 4.2.4 | Use of PED while directing, flagging, acting as the EIC, or otherwise controlling the movement of rail transit vehicles, or performing any task while Fouling the Tracks. | 10 – 20 days | 20 – 30 days | Termination |
| 4.2.5 | Failure to Turn Off and properly Stow Away PED while operating a bus or LRV, or while in the Operator’s Area. | Up to 10 days | 10 – 30 days | Termination |

| | | | |
|-----------------------|----------------------------|-----------------------|-------------|
| Original Date: | Supersede | Revision Date: | Page 3 of 5 |
| 06/12/2009 | Date: 03/05/2012 | 12/20/2016 | |

| | | |
|---|-------------------------|-------------|
| POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU) | Document Number: | OPS-PL-0001 |
| | Version Number: | 03 |
| | Date: | 12/20/2016 |

4.2.6 Any contractor staff violating this Policy will be removed from the job and will not be allowed to return to the project. The contractor may be made responsible for any fines levied on VTA for the violation. Repeat violations from the same contractor's staff may result in the contract being cancelled.

5.0 Definitions:

- 5.2 Fouling the Track: The placement of an individual in such proximity to a track that the individual could be struck by a moving train or other on-track equipment, or is within six feet of the nearest rail.
- 5.3 Operator: bus and Light Rail Vehicle Operators, hi-rail and on-track equipment operators, service workers, mechanics, and any other authorized VTA employee or contractor and their staff.
- 5.4 Operator's Area: On VTA buses, this area is defined as all area forward of the yellow line and expressly includes the Operator's seat. On Light Rail Vehicles, this is the area inside the Operator's cab and expressly includes the Operator's seat. On hi-rail or on-track equipment, this is the area where the Operator is positioned during operation of the vehicle or equipment.
- 5.5 Personal Electronic Device or PED: means any wireless or portable electronic device. This includes, but is not limited to, wireless phones, personal digital assistants, smart phones, two way pagers, portable internet devices, laptop computers, DVD players, iPods, MP3 players, smart watches, Fitbits or other personal fitness monitors, games, Bluetooth devices, or any headphones or ear buds of any type. The following devices are excluded from this definition:
 - 5.5.6 VTA-owned licensed radio communications equipment such as cab- mounted or portable two-way radios with channels dedicated solely for VTA operations.
 - 5.5.7 Electronic or electrical devices prescribed by a licensed medical practitioner to permit an employee to meet minimum levels as required by the VTA or contractor.
 - 5.5.8 Roadway worker protection devices.
- 5.6 Rail Controllers: Individuals tasked with flagging or otherwise controlling the movement of rail transit vehicles. Tasks include "dispatching" as described in California Public Utilities Commission (CPUC) General Order 172 (Rules and Regulations Governing the Use of Personal Electronic Devices by Employees of Rail Transit Agencies and Rail Fixed Guideway Systems).

| | | | |
|-----------------------|------------------|-----------------------|-------------|
| Original Date: | Supersede | Revision Date: | Page 4 of 5 |
| | Date: | | |
| 06/12/2009 | 03/05/2012 | 12/20/2016 | |

| | | |
|---|-------------------------|-------------|
| POLICY USE OF PERSONAL ELECTRONIC DEVICES BY BUS AND LIGHT RAIL EMPLOYEES AND CONTRACTOR STAFF (ATU) | Document Number: | OPS-PL-0001 |
| | Version Number: | 03 |
| | Date: | 12/20/2016 |

5.7 Safety Envelope: The area within six feet of the closest rail on light rail tracks or within ten feet of the overhead catenary.




5.8 Stowed Away: Not on one's person; must be completely concealed, so that it is not visible, in a backpack or bag and out of reach.

5.9 Turned Off: The power is off.

6.0 Summary of Changes:

Policy title changed. Policy updated to accurately reflect Safety Envelope. Greater clarity on discipline levels for different infractions were provided. Contractor language was added to provide policy on violations by contractors and their staff. Policy now allows for the use of cell phones when dead pulling a train when no other means of communications is available, with prior Operations Control Center approval.

7.0 Approval Information:

| <i>Prepared by</i> | <i>Reviewed by</i> | <i>Approved by</i> |
|--|---|--|
|  George Sandoval Operations Manager-LR Mtc. |  Inez Evans Chief Operating Officer |  For Nuria I. Fernández General Manager/CEO |

Concurrence by Amalgamated Transit Union, Local 265:


 Diana Hermone
 President & Business Agent, ATU


 Nick Smith
 Asst. Business Agent - Maintenance

| | | | |
|-----------------------|------------------|-----------------------|-------------|
| Original Date: | Supersede | Revision Date: | Page 5 of 5 |
| | Date: | | |
| 06/12/2009 | 03/05/2012 | 12/20/2016 | |

Date Approved 12-20-2016

**SAMPLE CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
CONTRACTOR NAME
FOR
COMPRESSED GAS AND CYLINDER RENTALS
SAMPLE CONTRACT NO. P20023**

This contract (“Contract”) is made and entered into by and between Santa Clara Valley Transportation Authority (“VTA”) and _____ (“Contractor”). This Contract expresses the terms and conditions for the purchase of Compressed Gas and Cylinder Rentals.

1. **CONTRACT COMPONENTS:**

The Contract consists of:

- A. Exhibit 1 – Invitation for Bid for P19107 dated February 3, 2020, and any addenda thereto (the “IFB”) dated Month XX, 20XX.
- B. Exhibit 2 – Contractor Price Sheet dated MONTH XX, 20XX

All parts of the Contract are intended to be complementary and what is set forth in any one document is as binding as if set forth in each document.

In case of any conflict among these documents where the parties’ intended resolution is not clear, the order of precedence will be in the order listed above. In the event that any of the language set forth in the Contract is inconsistent or contradictory, then the language that is most favorable to VTA will control.

2. **SCOPE OF WORK:** Contractor must furnish and deliver compressed gas and cylinder rentals, as described in the Scope of Work of the IFB.

3. **TERM OF CONTRACT:** The term of this Contract will commence on the Effective Date (as defined in the signature block below) and continue for five (5) years (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein).

4. **COMPENSATION:** VTA will pay Contractor in accordance with Exhibit 2 in exchange for Contractor’s performance under this Contract.

Total compensation paid by VTA to Contractor hereunder will not exceed \$[xx,xxx.00].

5. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written.

6. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.

7. **FORUM SELECTION:** Any lawsuit or legal action arising from this Contract must be commenced and prosecuted in the courts of Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
8. **AUTHORIZED REPRESENTATIVES, NOTICES, AND POINTS OF CONTACT:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms, and conditions of this Contract, as set forth herein.

A. AUTHORIZED REPRESENTATIVES:

VTA:

Mary Talentinow (Interim)
Chief Procurement Officer
Procurement, Contracts and Materials Management
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
Mary.Talentinow@vta.org

Contractor:

Name/Title
Address
City/State/Zip
Telephone
Email

- B. NOTICES:** Notices must be in writing and addressed to the Authorized Representatives at the address set forth above. Any notice required or permitted to be given under this Contract will be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, as identified immediately above in paragraph A (Authorized Representatives).

- C. POINTS OF CONTACT:** The Points of Contact listed below are authorized to communicate regarding Contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

VTA:

Elena Lazo, Buyer II
3331 N. First Street, Bldg. A
San Jose, CA 95134-1906
Elena.Lazo@vta.org

Contractor:

Name/Title
Address
City/State/Zip
Telephone
Email

- D. Written notification to the other party must be provided, in advance, for changes in the name or address of the designated Authorized Representatives or Points of Contact stated above.

In witness whereof, VTA and Contractor have executed this Contract as of the last date set forth below (“Effective Date”).

VTA

Contractor

Mary Talentinow (Interim) Date
Chief Purchasing Officer

Name Date
Title

Approved as to Form

VTA Counsel Date