



CITY OF TOLEDO, OHIO

Michael P. Bell, Mayor

Company Name

Address

City State Zip

Phone

Email

BID FORM

NOTICE TO BIDDERS

Sealed bids will be received at the **Purchasing Office, One Government Center, 19th Floor, Suite 1970, Toledo, Ohio, 43604, until 2:00 o'clock p.m. (local time):**

On: **TUESDAY FEBRUARY 19, 2013**

For Furnishing the: **TOLEDO POLICE DEPARTMENT**

VEHICLE LEASE FOR THE TOLEDO POLICE DEPARTMENT METRO DRUG TASK FORCE

Every bidder shall present with their bid a Bidder's Bond or a certified or cashier's check payable to the City of Toledo equal to two thousand dollars \$2,000. The bid guaranty shall provide that if the bid is accepted, the bidder shall enter into a proper contract with the City in accordance with the bid, plans, details, specifications and bills of material. *Company checks are not acceptable.*

All bids must be made on the attached bid package.

INVITATION

Sealed bids, subject to the conditions as shown herein, are requested on the following list of articles or services with delivery to the destination shown, including any charges for delivery, containers, packaging, etc. **ENVELOPES MUST BE PLAINLY MARKED:**

BID ON: VEHICLE LEASE FOR THE TOLEDO POLICE DEPARTMENT METRO DRUG TASK FORCE 2/19/13

Background

Lease vehicles are needed for the Toledo Metro Drug Task Force (TMDTF). The TMDTF needs to have the flexibility to change out vehicles frequently due to the nature of the job. These vehicles are used in undercover buys and surveillance during the course of their duties. Because of technology and counter surveillance by drug dealers it is very crucial to rotate vehicles often to accomplish our mission.

The City of Toledo Department of Police Operations (lessee) seeks bids for the lease of a variety of vehicles according to following conditions or specification from lessors.

- Twelve (12) month closed end lease (lessee not responsible for the lease end value).
- The lease term may extend two additional one year terms if agreeable to both parties.
- A lease for shorter than twelve (12) may be initiated, if needed and agreeable to both parties. Lessor to invoice lessee monthly.
- Two year old or newer model vehicles under warranty with mileage of 40,000 or less.
- Mileage of 20,000 for twelve (12) months.
- All maintenance to be performed by lessor.
- Lessee to pay for damages or deductible in excess of \$1,000 associated with non-warranty or non-maintenance repairs.
- Lessee prefers darker less noticeable colors. Lessor to make every effort to comply with lessee preference.
- The lessee prefers vendors to offer an extensive list of vehicles available such as intermediate, standard, full size, luxury, SUV, mini-van, and pick-up types of vehicles.
- Lessee to have flexibility to exchange or rotate a vehicle during the lease, and/or vary the number of vehicles leased per month during the course of the lease agreement without additional fees/charges.

Questions may be directed to Lieutenant Jeff Gorney at 419-936-2153.

Vehicle Make And Model	Price Per month	Price/Mile Excess Mile	Fees Of Any At Initiation
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NOTICE
GOODS & SERVICES CONTRACT

YOUR BID OR PROPOSAL SUBMITTED TO THE CITY OF TOLEDO MUST HAVE THE FOLLOWING **FORMS** COMPLETED AND ATTACHED AT THE TIME OF BID OPENING OR PROPOSAL SUBMISSION:

1. ACKNOWLEDGMENT AND ACCEPTANCE OF CONTRACT SPECIFICATIONS, INSTRUCTIONS TO BIDDERS, AND BID SHEET, OR REQUESTS FOR PROPOSALS, INCLUDING ALL ADDENDA (if any)
2. CONTRACT AFFIDAVIT: Business Entity, Local Preference, Living Wage, Prevailing Wage Rate, Non-Collusion, Tax Compliance, Public Utility Compliance.
3. AFFIRMATIVE ACTION/CONTRACT COMPLIANCE CERTIFICATES (Good Faith Effort Acknowledgement, MBE Goal Commitment Affidavit, Current Employment and BEO Compliance)
4. BID GUARANTY (not applicable to Proposals)
5. COMPLETE GOODS & SERVICES CONTRACT (as approved by City of Toledo and substantially in the form included in the bid packet, including, without limitation, all documents referenced in this Notice)

FAILURE TO SUBMIT THE ABOVE FORMS COMPLETED MAY RESULT IN YOUR BID OR PROPOSAL BEING REJECTED.

THE FOLLOWING FORMS BELOW WILL BE REQUIRED PRIOR TO AWARDING A CONTRACT:

1. MBE PARTICIPATION/INCLUSION DOCUMENTATION; PRIMARY CONTRACTOR SUBCONTRACTOR CERTIFICATES
2. PERFORMANCE BOND (MAY BE APPLICABLE PER TMC 187.28)
3. CERTIFICATES OF INSURANCE (per Insurance Requirements)
4. CURRENT WORKERS' COMPENSATION CERTIFICATE (per Insurance Requirements)
5. TOLEDO MUNICIPAL INCOME TAX COMPLIANCE
6. COURT-ORDERED CHILD SUPPORT COMPLIANCE AFFIDAVIT and CERTIFICATION OF SUBSTANTIAL COMPLIANCE WITH COURT-ORDERED OR AGENCY-ORDERED CHILD SUPPORT.

NOTE: These forms must be provided within seven (7) business days after City's Purchasing Division Commissioner advises you in writing (or email) of the recommendation for the Bid or Proposal award.

ACKNOWLEDGMENT AND ACCEPTANCE OF
CONTRACT SPECIFICATIONS, INSTRUCTIONS TO BIDDERS, AND BID SHEET
OR REQUEST FOR PROPOSALS,
INCLUDING ALL ADDENDA

The undersigned, duly authorized representative of the Contractor submitting the accompanying bid or proposal, hereby acknowledges receipt and acceptance of any and all contract specifications, instructions to bidders, bid sheets, or request for proposals, as the case may be, including all addenda (if any) thereto, issued by the City of Toledo that are the subject of the accompanying bid or proposal.

The undersigned agrees to clearly call-out in its bid or proposal any deviations from any portion of said contract specifications, instructions to bidders, bid sheets, or request for proposals, as the case may be, including all addenda.

[CONTRACTOR]

By: _____
Name: _____
Its: _____
Date: _____

CONTRACT AFFIDAVIT

State of: _____

} ss:

County of: _____

The undersigned, _____ being first duly sworn, deposes and
(Authorized Officer)
says that he/she is the _____ of _____ (“Company”)
(Owner, Partner, President, etc.) (Company Name)

being authorized by and being granted the authority on behalf of said Company to execute a valid, binding and legally enforceable contract with the City of Toledo and to induce the City of Toledo to enter into a contract with said Company hereby states and represents all of the following:

Business Entity

- (1.) Our Company is a (*check one*): (a) _____ sole proprietorship; (b) _____ partnership; (c) _____ limited partnership; (d) _____ corporation (for profit); (e) _____ corporation (not-for-profit); (f) _____ limited liability company; (g) _____ other, _____
(specify)

organized under the laws of the State of _____
(specify)

Local Preference -- (TMC 187.34)

- (2.) Our Company’s principal place of business is:

(Street Address)

(City)

(State)

(Zip Code)

Our Company qualifies for a Local Preference because: (*initial all that apply*)

- (A.) _____ our principal place of business is located in Toledo;
(B.) _____ we have a non-Principal Place of Business located in Toledo having an address of: _____
(C.) _____ we are located Lucas County having an address of: _____
(D.) _____ we are in the Northwest Ohio County Area of Williams, Defiance, Fulton, Henry Wood, Ottawa, Sandusky, Seneca and Erie).

Living Wage – (TMC 187.36-.40)

(3.) *(Initial both paragraphs (a) and (b) or the exemption(s) set forth in paragraph (c):*

(a) _____ Any person who is an employee of our Company or any employee working for a subcontractor of our Company who is directly working under this contract with the City of Toledo will be paid a “living wage” of no less than \$11.67 per hour, or 110% of the updated federal poverty level for a family of four, whichever is greater; and

(b) _____ Our Company and/or any of our subcontractors will either 1) make available single coverage health benefits that do not cost the employee more than 15% of the employees’ monthly wages, except to those employees within an established probationary period that does not exceed sixty work days, or 2) in lieu of making available single coverage health benefits, the employee will be paid a living wage of no less than \$13.79 or 130% of the updated federal poverty level for a family of four, whichever is greater;

or

(c) Our Company qualifies for one or more of the exemptions to the Living Wage requirements because: *(Initial all of the exemption(s) that qualify)*

- (1) _____ our Company employs fewer than 25 persons;
- (2) _____ our Company employs only seasonal employees, interns or volunteers;
- (3) _____ our Company is a nonprofit organization whose sole purpose is to provide cultural, social or educational services;
- (4) _____ our Company pays employees the prevailing wage rate, or a wage rate pursuant to the Davis-Bacon act;
- (5) _____ our Company, in connection with this contract, is a recipient of Community Development Block Grant funding;
- (6) _____ our Company is a financial assistance recipient of the City of Toledo with fewer than 50 employees;
- (7) _____ our Company is an organization whose primary mission is to provide job readiness and training services and whose sole purpose of requesting funding is to provide these services;
- (8) _____ our Company qualifies for the Mayor’s exemption for economic and community development purposes.

Our Company further certifies that 1) there shall be no retaliation against any employee of our Company or our subcontractors who claim violation of the provisions of the Living Wage ordinance or reports or testifies regarding an alleged violation; 2) our Company will post a notice provided by the City of Toledo stating that the employees may be subject to this Living Wage ordinance, and 3) our Company will twice yearly give our employees a notice stating that the employee may be subject to the Living Wage ordinance and explaining the current living wage amount both with and without single medical coverage.

Our Company further certifies that if any change(s) occur that would either change an exemption or qualify the Company for an exemption, our Company will provide written notification of the change(s) immediately to the City of Toledo.

**These rates are subject to change annually per the federal poverty line adjustment*

**Prevailing Wage Rate – (TMC 187.12(b) and ORC 4115 or Toledo ORD #772-03
and US Code 29 CFR 5.5)**

(4.) That the minimum hourly wage rates paid by our Company and our subcontractors for skilled and common labor performed under this contract will be in accordance with the applicable provisions of TMC 187.12(b), Ohio Rev. Code 4115 and the Schedule of Prevailing Hourly Wage Rates ascertained and determined by the Department of Commerce, State of Ohio for the industry involved, for the Toledo area, in effect at the time of the contract bid advertising date, as same may be updated from time to time for the duration of the contract. Likewise, when applicable (ie federally funded projects) pursuant to Toledo Ordinance 772-03 and US Code 29 CFR 5.5, the Davis Bacon prevailing wage rate shall be paid by our company and our subcontractors. The undersigned Company acknowledges that the designated Prevailing Wage Coordinator for the City of Toledo in accordance with Ohio Rev. Code 4115.071 is noted in the Bid Advertisement.

Our Company further certifies that no rebates or deductions for any wages due any person have been directly or indirectly made other than those allowed by law.

Non-Collusion – (TMC 187)

(5.) Our Company further certifies that the price(s) and amount of our bid has been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder. Neither the price(s) or the amount of our bid, and neither the approximate price(s) nor approximate amount of our bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening. No attempt has been made or will be made to induce any entity or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid. Our bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any entity or person to submit a complementary or other noncompetitive bid. This bid does not contain or constitute in whole or in part a pass-through. All subcontractors hereon will perform a bona fide commercially useful function. Our Company, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by local, state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

Tax Compliance

(6.) Our Company and our subcontractors are current with all federal, state and municipal tax obligations including, but not limited to, income tax, sales tax and personal property tax obligations to the City of Toledo and Lucas County, Ohio. Further, our company and our subcontractors are not the subject of an "unresolved finding for recovery" issued by the Auditor of the State of Ohio pursuant to Ohio Revised Code 9.24.

Public Utility Compliance

(7.) Our Company is current with all obligations to the City of Toledo for public utility charges, including, without limitation, water, sewer, and storm water charges.

The undersigned hereby certifies they have read and understand the truth and completeness of the statements herein and understands and acknowledges these statements are for the express purpose of inducing the City of Toledo to enter into a contract with our Company and understands that anyone who furnishes false or misleading information or who omits material information hereon may be subject to criminal prosecution and/or civil liability.

Further Affiant sayeth not.

Affiant Signature

Affiant Printed Name

Sworn and subscribed before me this ____ day of _____, 200 ____.

(SEAL)

Notary Public

PROCEDURES AND GUIDELINES FOR MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION ON CITY FUNDED PROJECTS INCLUDING CONSTRUCTION, GOODS AND SERVICES

Ordinance No. 838-91 established Minority Business Enterprise (MBE) goals for all City of Toledo construction projects, HUD assisted construction projects, and suppliers of goods and services. Likewise, Administrative Policy & Procedure # 13 reiterated and enhanced the City of Toledo's MBE goals. Specifically, the MBE goals for the City of Toledo are: 21% in HUD assisted construction projects, 15.0% in City construction projects, 10% in City-funded purchases of goods, materials, supplies and services. Ordinance # 838-91, as well as AP&P# 13, requires that the Office of Affirmative Action and Contract Compliance establish procedures and guidelines for the implementation of this goal. All City of Toledo departments, divisions, boards, and agencies, as well as, other entities that receive funds through the City of Toledo for construction, renovation projects, goods, materials, supplies, and services shall commit to a "Good Faith Effort" in achieving the City of Toledo's MBE goals.

Commercially Useful Function

MBEs utilized must be independent and continuing operations for profit, performing a commercially useful function. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor. A firm must be responsible for the execution of a distinct element of the work for which the business has the skill and expertise, with its own workforce, and the firm must carry out its responsibilities by actually performing, managing and supervising the work involved.

To perform a commercially useful function, the MBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable) and paying for the material itself. A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of MBE participation.

Collusion

The City will not accept collusion among the prime bidders, an MBE or any other individual, business or joint venture, or allow undue influence on an MBE to alter the committed quantities or its quotation.

Consideration of Other Bidders

In determining whether a bidder has made good faith efforts, the City may take into account the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the goal, but other bidders meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could

have met the goal, If the apparent successful bidder fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Reporting Forms

In reporting MBE participation on project bids, bidders and/or City departments and grant or loan recipients will utilize the forms to be provided by the Office of Affirmative Action/Contract Compliance to demonstrate and document its good faith effort(s).

- Each contractor will supply a list of all subcontractors prior to the awarding of a contract. Any change in subcontractors after the project is awarded must be reported to the Office of Affirmative Action by the originating department, agency and/or entity.

The Office of Affirmative Action /Contract Compliance will assess the “Good Faith Effort” (described below) made by City of Toledo Departments/Divisions, as well as all/any bidders, and will require documentation of MBE participation or inclusion prior to the awarding of a contract.

Good Faith Effort

A Good Faith Effort must be undertaken on each project or purchase regardless of the dollar amount, including price determinate, unit priced and/or State of Ohio schedule of pre-bid goods and services. A Good Faith Effort to secure MBE participation includes, but is not necessarily limited to, the following actions:

1. Advertising and soliciting for bids through all reasonable and available means including, but not limited to, trade association publications, minority-focused media, attendance at pre-bid meetings, advertising and/or written notices, the interest of all certified MBEs who have the capability to perform the work of the contract concerning subcontracting opportunities. The bidder must solicit this interest within sufficient time to allow the MBEs to respond to the solicitation. The bidder must determine with certainty if the MBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Providing written notice to a reasonable number of specific MBEs that their interest in the contract is being solicited. The notice shall be provided in sufficient time to allow the firms to participate effectively.
3. Following up the initial solicitations of interest by contacting MBEs to determine with certainty whether they are interested in the contract.
4. Selecting portions of the work of the contract to be performed by MBEs to increase the likelihood of meeting participation goals including, where appropriate, breaking down contracts into economically feasible units to facilitate participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
5. Providing interested MBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
6. Negotiating in good faith with interested MBEs and not rejecting any such firms as

unqualified without sound reasons based on a thorough investigation of the firm's capabilities. It is the bidder's responsibility to make a portion of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate participation.

7. Maintaining evidence of such negotiations including the names, addresses, and telephone numbers of MBEs that were considered; documentation of dated written communication, fax confirmations, personal contacts, quotes provided by MBEs, a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for the firms to perform the work.

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

8. Making efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the prime bidder.
9. Effectively using the services of available minority community organizations, minority contractor groups, local, State and Federal minority business assistance offices, including the City's Office of Affirmative Action and Contract Compliance, and other organizations that provide assistance for and placement of MBEs
10. Securing an MBE replacement for each MBE firm that will not or cannot honor a commitment to perform subcontract work or supply materials. (Similar documented affirmative action shall be taken in securing MBE and replacements as are required initially).
11. Mere pro forma efforts are not good faith efforts to meet the MBE contract goals.

ACKNOWLEDGEMENT

Bidder/Authorized Representative acknowledges reading and understanding the above-delineated "Good Faith Effort" Statement and guidelines.

Signature of Bidder / Authorized Representative

CONSTRUCTION, RENOVATION & PROFESSIONAL SERVICES PROJECTS

**MINORITY BUSINESS ENTERPRISE GOAL
COMMITMENT**

The City of Toledo has established the following goals for all contracts/agreements relating to the purchase of goods, services, construction and/or renovation projects.

GOODS, SERVICES	10%
CONSTRUCTION, RENOVATION	15%
HUD FUNDS	21%

The bidder(either Prime Contractor or Subrecipient) hereby agrees and commits to the following MBE participation/inclusion in this Project, included in its bid amount:

_____ % or , at least , \$ _____.

Failure to provide a percentage (%) or dollar (\$) goal is because:

_____ bidder is a MBE ; or, _____ there are no known MBE companies that perform this work or provide this service or product.

Also, a WBE participation amount of _____ % or _____ (\$) is hereby committed to and included in this Bid for the Project.

During the process of evaluating the submitted bid and at the City of Toledo's sole discretion, a bidder may be asked to complete the additional forms documenting how the bidder will accomplish the above-stated goal commitment.

It is HEREBY AGREED AND ACKNOWLEDGED:

Print Name of Prime Contractor or Subrecipient

Signature of Authorized Representative

Sworn to and subscribed before me this _____ day of _____, _____.

Notary Public

**Certificate of Current Employment and EEO Compliance
(All Bidders must complete Part I and Part II)**

Part I

Job Category	Total Employees	White Female	Black Female	Black Male	Hispanic Female	Hispanic Male	Am. Indian or Alaskan Native Female	Am. Indian or Alaskan Native Male	Asian or Pacific Islander Male	Asian or Pacific Islander Female
Officials and Managers										
Professional										
Technicians										
Sales Workers										
Office/Clerical										
Skilled Craft Workers										
Semi-Skilled Workers										
Labor (Unskilled)										
Service Workers										
TOTALS										

Part II

We _____ suppliers of materials and/or services and construction contracts do hereby certify that we will comply with all applicable provisions, Executive Orders 11141, 11246, 11375, 11478, 11625, 11701, as implemented by the Code of Federal Regulations, Title 41, Chapter 60 and the City of Toledo Ordinance No. 527-73, and Sections 4112.02, 4112.07, &153.59 of the Ohio Revised Code and other applicable laws or regulatory orders of the State of Ohio.

Section 1.4 – Equal Opportunity Clause, which clause is hereby incorporated and made a part of hereof.

Section 1.8 – Non-Segregated Facilities as follows:

- The supplier certifies to the City of Toledo that all facilities under his/her control and provided for his/her employees are provided in such a manner that segregation on the basis of race, creed, sex, age, national origin or disability does not exist and further that the supplier will not assign or permit his/her employees to be assigned to perform their services at any location under his/her control where facilities are segregated. The supplier may neither require nor permit segregation by habit, local custom or otherwise, whether in writing or orally declared in any facilities under his/her control.
- The supplier further agrees to furnish to the City of Toledo, if requested, copies of certifications to the provisions of these cited Rules and Regulations that he supplier has required of any and all of his/her vendors, suppliers, or building contractors as may apply for all materials, supplies, and/or services including inventory or construction pertinent to fulfillment of this contract, agreement or purchase order.

In addition, if the value of the contract, agreement and/or order exceeds \$50,000 and the supplier has more than 50 employees, the supplier:

- Agrees to file his/her Affirmative Action Program before accepting this order if not presently filed, complete an accurate report on Table I with its Contracting Compliance Agency.
- Affirms that he/she has developed and is maintaining current an Affirmative Action Program to identify, correct and improve any and all problem areas inherent in minority employment and evaluation of opportunities for utilization of women and minority group personnel; that such a program is established upon receipt of this contract, agreement and/or purchase order and that the program established will include each establishment under control of the supplier.

I certify I have read and understand the above-stated information and agree to comply:

Signature of Authorized Representative: _____

Name and Title: _____

Company Name: _____

Date: _____

CONTRACT FOR

between
CITY OF TOLEDO
and

THIS CONTRACT IS MADE by and between the City of Toledo, an Ohio charter municipality ("Toledo") and _____ (name), a [state of jurisdiction] [type of business entity] _____, with a principal mailing address of _____ ("Contractor"), each duly authorized.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms to be kept and performed, it is agreed by the parties as follows:

SECTION 1 GENERAL

This work or services to be performed by the Contractor shall include all work or services contained in this Contract as supplemented by the following, which are attached hereto and made a part hereof or incorporated by reference as if fully written out or attached to this Contract:

- Notice – Goods & Services Contract
- Advertisement and Specifications
- Contractor's Bid/ Quote/ Proposal
- Fiscal Officer Certificate

SECTION 2 CHANGES

A. Toledo may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes –

- (1) in the specifications (including drawings and designs);
- (2) in the method or manner of performance of the work;
- (3) in the quantities to be supplied;
- (4) in the method of shipment or packing; or
- (5) in the place of delivery.

B. If any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from receipt of the written order.

C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted

after final payment under this Contract.

SECTION 3 REQUIREMENTS CONTRACT

If this is a requirements contract, the quantity of supplies or services to be provided under this Contract is the quantity determined to be the actual, good faith, requirements of Toledo. Toledo may purchase supplies identical to those provided under this Contract if one of the following conditions apply:

- A. The supplies or services to be purchased were not anticipated by Toledo at the time this Contract was let and the supplies or services are required in a large quantity;
- B. The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract;
- C. Toledo requires the supplies or services to remedy an emergency and the Contractor is not able to provide the supplies or services as the emergency requires.

SECTION 4 WARRANTIES; TITLE

A. Unless otherwise stated, all supplies shall be new and unused and when authorized, recycled or refurbished products. All products shall carry manufacturer warranties. The Contractor warrants all supplies to be free from defects in labor, material and manufacture and to be in compliance with the Contract Specifications. All goods and services supplied to Toledo pursuant to this Contract shall comply with all express and implied warranties pursuant to applicable law, including, without limitation, Ohio Revised Code Chapters 1302.

B. Title to supplies furnished under this Contract shall pass to Toledo upon formal acceptance, regardless of when or where Toledo takes physical possession, unless the Contract specifically provides for earlier passage of title.

SECTION 5 RETURN GOODS POLICY

Toledo will apply the following return goods policy on all purchases made under this Contract. The Contractor acknowledges to have read, understand and agrees to this policy.

A. Return goods, when due to Contractor error (including, but not limited to, overshipment, defective merchandise, unapproved substitution) shall be returned to the Contractor at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from Toledo's premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to Toledo. At the option of Toledo, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property to be disposed of accordingly.

B. For orders of custom manufactured items, the Contractor shall provide a production sample of the item to Toledo for acceptance. The production sample shall be identical to the item to be provided. Toledo shall provide acceptance of the item prior to the Contractor

continuing with production. Once delivery and acceptance has been completed and Toledo determines for any reason that any remaining quantities will not be used, Toledo may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, Toledo will be responsible for all costs associated with packaging, shipment and transportation including the original shipment to Toledo and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain approval from Toledo shall result in the Contractor bearing all responsibility and costs associated with the return of these goods.

C. Return goods of regular catalog stock merchandise, when due to Toledo error (such as over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by Toledo within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original contained and in suitable condition for resale. Toledo will be responsible for all transportation costs associated with both the original shipment of items to Toledo and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee that does not exceed its standard published fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

SECTION 6 PAYMENT

A. Unless otherwise specified, payment will be due on the forty-fifth (45th) day after the later of (1) the date Toledo actually receives a proper invoice at the office designated in the applicable purchase order to receive it, or (2) the date Toledo accepts the products or services. The date Toledo issues a warrant in payment of the invoice will be considered the date payment is made.

B. Unless otherwise specified, any travel required by the Contractor to perform its obligations under this Contract shall be at the Contractor's expense.

SECTION 7 STATE OF OHIO TAXES

Contractor shall contact the Toledo Purchasing & Supplies Division for a "Blanket Certificate of Exemption" for purchases made on behalf of the City of Toledo.

SECTION 8 TERMINATION

A. Either party may terminate this Contract, in whole or part, in writing, if the other party substantially fails to fulfill its obligations under this Contract through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

B. Toledo may terminate this Contract, in whole or part, in writing, for its convenience, after issuing thirty (30) days written notice to the Contractor.

C. If Toledo terminates for default, an equitable adjustment in the price provided for in this Contract shall be made, but: (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs Toledo incurs because of Contractor's default. If Contractor terminates for default or if Toledo terminates for convenience, the equitable adjustment shall provide for payment to Contractor of reasonable expenses incurred before the termination, in addition to termination settlement costs Contractor reasonably incurs relating to commitments that had become firm before the termination.

D. Upon receipt of a termination action under paragraphs A or B of this section, Contractor shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to Toledo all completed or partially completed supplies and manufacturing materials that the Contractor has specifically produced or acquired for the terminated portion of the Contract.

E. Upon termination under paragraphs A or B of this section, Toledo may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work Toledo takes over for completion will be completed at Toledo's risk, and Toledo will hold harmless Contractor from all claims and damages arising out of improper use of Contractor's work.

F. If, after termination for failure of Contractor to fulfill contractual obligations, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of Toledo. In such event, adjustment of the price provided for in this Contract shall be made as if the Contract were terminated for Toledo's convenience.

SECTION 9 REMEDIES

A. Contractor is liable to Toledo for all actual and direct damages caused by Contractor's default. Toledo may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. Toledo may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. If actual and direct damages are uncertain or difficult to determine, Toledo may recover liquidated damages in the amount of 1% of the value of the order, or \$250.00 per day, whichever is less, for every day the default is not cured by Contractor.

C. Toledo may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the Contract.

D. All claims, counterclaims, disputes and other matters in question between Toledo and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Lucas County, Ohio. This Contract shall be deemed to be executed in the City of Toledo, Lucas County, State of Ohio and

shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Ohio, as applicable to contracts entered into and to be performed entirely within Ohio. Any litigation arising between Toledo and Contractor arising under or regarding this Contract shall occur, if in the state courts, in the Lucas County court having jurisdiction thereof, or if in the federal courts, in the United States District Court for the Northern District of Ohio, Western Division.

SECTION 10 AUDIT; ACCESS TO RECORDS

The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Contract in accordance with generally accepted accounting principles and practices consistently applied. The Contractor shall also maintain the financial information and data used in the preparation or support of any negotiated Contract or change order and a copy of the cost summary submitted to Toledo. Toledo or any of its authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Contractor will provide proper facilities for such access and inspection.

SECTION 11 INDEMNIFICATION

A. Contractor, for itself and its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, agrees to and shall indemnify, hold harmless and defend Toledo, its successors, assigns, officers, employees, agents and appointed and elected officials, for any claim, cost, loss, damage or obligation whatsoever in nature (including reasonable attorneys fees and expenses) arising out of or through in any way from Contractor's breach of any of the conditions of this Contract; excluding, however, claims arising from Toledo's negligence, omission or willful misconduct and for which immunity is not provided by the Ohio Revised Code for such negligence, omission, or willful misconduct. This exception shall not extend to acts, omissions, or intentional torts occurring as a result of or in response to an emergency. . The indemnification obligation shall not be limited in any way by the insurance requirements but shall be in addition to those requirements.

B. In any and all claims against Toledo, its officers, officials, agents or employees by any employee of the Contractor, any subcontractor, agent, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the Contractor hereby expressly waives the immunity provided to Contractor by Article II, Section 35 of the Ohio Constitution and Ohio Revised Code Sections 4123.74 and 4123.741, so that this indemnification obligation may be enforced by Toledo against Contractor in those instances.

C. If the Contractor subcontracts any part of the work required under this Contract, subject to Toledo written approval of each such subcontract(s), it shall require its subcontractor to indemnify Toledo in accordance with this section. Contractor shall provide Toledo in writing information about each subcontractor as Toledo shall request from time to time.

SECTION 12 ASSIGNMENT; COMPLIANCE WITH LAW

Neither party may assign or transfer rights and obligations under this Contract without the written consent of the other party. Each party agrees that it will perform its obligations in

accordance with all applicable Ohio laws, rules, and regulations now or hereinafter in effect.

SECTION 13 EQUAL EMPLOYMENT OPPORTUNITY

Contractor agrees that it will not discriminate against any customer, employee or applicant for employment because of race, ancestry, religion, color, sex, age, national origin, or disability.

SECTION 14 ENTIRE AGREEMENT

This Contract, including any subsequent amendments, contains all representations and the entire understanding of the agreement between the parties. No changes to this Contract shall be valid unless made by a written amendment executed and approved by the parties. Time is of the essence of this Contract. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

SECTION 15 CONFLICTS

In the event of a conflict between the terms and conditions in the foregoing sections of this Contract and the terms and conditions in any of the Contractor's Bid/Quote/Proposal or other Contractor documents attached or incorporated by reference to this Contract, the foregoing terms and conditions shall control unless Toledo specifically waives such terms and conditions in writing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Toledo and the Contractor have caused this Contract to be executed as of the date of the Mayor's signature listed below.

CONTRACTOR

By: _____

Title: _____

By: _____

Title: _____

CITY OF TOLEDO

Mayor

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Department of Law

Director of _____