

MILWAUKEE TRANSPORT SERVICES, INC.

Monday, June 22, 2020

ADDENDUM NO: 1

BID NO: 2020-08 TRANSIT BUS TIRES LEASE

OPENING DATE: JUNE 29, 2020 @ 2:00 PM, CST

NEW OPENING DATE: JULY 6, 2020 @ 2:00PM, CST

SEE ATTACHED EXCEPTIONS FORM

QUESTIONS ASKED:

1. County Rights of Access and Audit – Page 5 of PDF: Please add the following as the last sentence: “Any access to the Contractor’s records and reports pursuant to this Section shall be upon thirty (30) days’ prior written notice, during normal business hours and at the sole cost and expense of the accessing party.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

2. Funds – Page 5 of PDF: Please add the following as the second sentence under the first paragraph: “In the event of the unavailability of funding, Purchaser, upon termination, will pay for all unused mileage in the relevant tires and take title to such tires “as is”.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

3. Liquidated Damages – Page 6 of PDF: Please delete this section in its entirety.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

4. Audit of Records. Page 7 of PDF: Please revise the first sentence as follows: “Contractor shall permit the authorized representative of the Milwaukee County Auditor, after thirty (30) days’ prior written notice, during normal business hours and at the sole cost and expense of the

accessing party, the right to inspect and audit all data and records of Contractor related to carrying out the contract for a period of up to three years after completion of the contract.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

5. Tire Types – Section 1.1 (Section 1 - Requirements). Page 13 of PDF: Please revise Sub-Section C by adding “applicable” between “all” and “Federal” on line one.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

6. Product Liability – Section 1.9 (Section 1 - Requirements). Page 16 of PDF: Two Requests –

- a. Please delete the following last sentence from Sub-Section A: “Notwithstanding any other provisions in this contract, in no case shall the Contractor be held responsible for consequential damages, including without limitation, lost profits, lost revenue, overhead, downtime, or any other speculative or indirect damages, except as indicated in section 1.14B.”
- b. Please add the following as Sub-Sections C and D: “MTS shall indemnify, keep and save harmless the Contractor, its directors, members, agents, officers, and employees, for all losses arising from or in connection with third-party claims of injury, death, or tangible property damage, to the extent that such losses are caused by the negligence or willful misconduct of MTS, its agents or employees.

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

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

7. Bus Removed from Service – Section 1.12 (Section 1 - Requirements). Page 17 of PDF: Please revise Sub-Section C by adding the following as the last sentence: “MTS agrees that (i) such scrap tires will be used for the sole and exclusive purpose of transporting and storing vehicles from garages to a storage facility, (ii) such scrap tires are provided as-is with no warranties as to the condition or fitness of such tires for continued use, and (iii) MTS assumes all liability for use and possession of scrap tires furnished by the Contractor.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

8. Liquidated Damages – Section 1.14 (Section 1 - Requirements). Page 17 of PDF: Please delete this Section in its entirety.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

9. Delivery Delays – Section 1.15 (Section 1 - Requirements). Page 18 of PDF: Please delete Sub-Section B and C in their entirety.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

10. Tests and Inspections – Section 2.1 (Section 2 - Samples, Tests, Inspection). Page 19 of PDF: Please revise Sub-Section A by adding the following as the second sentence: “The Contractor shall not be responsible for any warranties or services related to any such test tires from companies other than the Contractor.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

11. Insurance - Unnumbered Section (Insurance Minimums). Page 38 of PDF: Please remove Professional Liability Requirements.

Reason: This is out of scope of our operation. Per Section A.1 note below, we are not architects, consultants, or engineers.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual

satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

12. Staffing and Delivery of Programs/Services – Section 3 (2020 Sample Purchase of Service Contract). Page 42 of PDF: Please revise Sub-Section D by (i) adding “applicable” between “such” and “local” on line 1, and (ii) adding “applicable” between “all” and “federal” on line

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

13. Compensation – Section 4 (2020 Sample Purchase of Service Contract). Page 43 of PDF: Please revise Sub-Section B by adding the following as the last sentence: “In the event of the unavailability of funding, MTS, upon termination, will pay for all unused mileage in the relevant tires and take title to such tires “as is”.”

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

14. Record Keeping and Access to Records – Section 6 (2020 Sample Purchase of Service Contract). Page 44 of PDF: Please add the following as the new Sub-Section C: “Any access to the Contractor's records and reports pursuant to this Section shall be upon thirty (30) days' prior written notice, during normal business hours and at the sole cost and expense of the accessing party.”

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

15. County Rights of Access and Audit – Section 7 (2020 Sample Purchase of Service Contract). Page 44 of PDF: Please add the following as the last sentence: “Any access to the Contractor's records and reports pursuant to this Section shall be upon thirty (30) days' prior written notice, during normal business hours and at the sole cost and expense of the accessing party.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

16. Indemnity – Section 9 (2020 Sample Purchase of Service Contract). Page 46 of PDF: Please add the following as Sub-Sections D and E: “MTS shall indemnify, keep and save harmless the Contractor, its directors, members, agents, officers, and employees, for all losses arising from

or in connection with third-party claims of injury, death, or tangible property damage, to the extent that such losses are caused by the negligence or willful misconduct of MTS, its agents or employees.

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

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

17. Liquidated Damages – Section 11 (2020 Sample Purchase of Service Contract). Page 47 of PDF: Please delete this Section in its entirety.

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

18. Contract Termination – Section 12 (2020 Sample Purchase of Service Contract). Page 47 of PDF: Two changes - (i) Please revise Sub-Section C by adding the following as the last sentence: “In the event of the unavailability of funding, MTS, upon termination, will pay for all unused mileage in the relevant tires and take title to such tires “as is”.” (ii) Please add the following as the new Sub-Section D: “Upon termination of this contract for convenience or default by either party, the Contractor shall be paid its close out costs including the remaining value of tread on leased tires mounted on buses and in spare stock.”

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

19. Access to Records and Reports (Federal Clauses). Page 61 of PDF: Please add the following as the new point 8: “Any access to the Contractor’s records and reports pursuant to this Section shall be upon thirty (30) days’ prior written notice, during normal business hours and at the sole cost and expense of the accessing party.”

Answer: All contract/Bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual

satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

20. Termination (Federal Clauses). Pages 76 of PDF: Six requests with respect to 'Model Clause/Language' –

- a. Sub-Section a - Termination for Convenience (General Provision) – Please replace the first sentence with the following: "Either party may terminate this contract, in whole or in part, at any time by a thirty (30) days' prior written notice to the other party."
- b. Sub-Section a - Termination for Convenience (General Provision) – Please add the following to the end of the second sentence: "along with the remaining value of tread on leased tires mounted on buses and in spare stock"
- c. Sub-Section b - Termination for Default (Breach or Cause) – Please add the following to the end of the last sentence: "along with close-out costs which include the remaining value of tread on leased tires mounted on buses and in spare stock"
- d. Sub-Section b - Termination for Default (Breach or Cause) – Please add the following as the last paragraph: "If Milwaukee County fails to make any payment due or to perform any obligation under this contract, the Contractor may, at its option and without waiving or limiting any of its other rights or remedies under this contract or at law, declare all of Milwaukee County's indebtedness and obligations to the Contractor to be immediately due and payable and may immediately terminate this contract by giving written notice to Milwaukee County to that effect. Upon termination of this contract for default by the Contractor, the Contractor shall be paid its close out costs including the remaining value of tread on leased tires mounted on buses and in spare stock."
- e. Sub-Section c - Opportunity to Cure (General Provision) – Please replace the first sentence of the first paragraph with the following: "Milwaukee County shall, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect."
- f. Sub-Section c - Opportunity to Cure (General Provision) – Please replace "[ten (10) days]" with "thirty (30) days" on line 2 of the second paragraph.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

21. Breaches and Dispute Resolution (Federal Clauses). Pages 81 of PDF: Please replace the language under the head 'Disputes' with the following: "Milwaukee County and the Contractor intend to resolve all disputes under this contract to the best of their abilities in an informal manner. In the event that a resolution of the dispute is not mutually agreed upon,

the parties can agree to mediate the dispute or proceed with litigation. The Contractor shall not be bound by any decision of the Milwaukee County nor shall the Contractor be required to exhaust all administrative remedies before commencing litigation in a court of competent jurisdiction within the state in which Milwaukee County is located. Notwithstanding any provision of this section, or any other provision of this contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under this contract shall be heard by a court de novo and the court shall not be limited in such proceeding to the issue of whether Milwaukee County acted in an arbitrary, capricious or grossly erroneous manner.”

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

In order for us to track our assets, is the transit willing to provide tire fitment and removal documentation? No, that information is in the monthly report.

22. Please remove product liability. Michelin is self-insured

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

23. Please remove as this is not applicable to this contract.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

24. Please remove as this is not applicable to this contract.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer’s Bid from further consideration. Please list all exceptions using the form included in this addendum.

25. Please remove as Michelin does not agree to liquidated damages.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual

satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

26. Please remove as Michelin does not agree to liquidated damages.

Answer: All contract/bid exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

27. Please remove as Michelin does not agree to charges.

Answer: All contract/specification exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

28. Please consider making this section mutual.

Answer: All contract/specification exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

29. As there is no service related to this contract, please detail how the 4.8% DBE is expected to be included.

Answer: DBE goals are set by Milwaukee County. Questions about DBE goals should be discussed with Milwaukee County Community Business Development Partners <https://county.milwaukee.gov/EN/Administrative-Services/Community-Business-Development-Partners>

30. Is the submission expected to be emailed or physically mailed? How many copies are expected? If physical, Binder/USB?

Answer: Directions for submission are listed in the Bid documents.

31. Will the monthly mileage and vehicle usage report be provided in Excel format? Would the transit also consider reporting the mileage by the 10th of each month?

Answer: It will be in excel format. See section 3.7

32. What is your current price per mile rate? The price is \$521.01.

33. If the successful bidder is someone other than the incumbent would they be responsible for removal and disposal of competitors tires?

Answer: Explained in specification, section 3.4

34. Please confirm the awarded Contractor will be given at least 30 days from award to start date.

Answer: Explained in specification, section 3.10

35. Would the transit be willing to consider Michelin's standard tire leasing contract?

Answer: If Proposer has a standard contract they would like MTS to consider, Proposer should include that document along with the other Bid documents. Inclusion of Proposer's standard contract in the Bid documents is not acceptance by MTS.

36. Specification No. FM-01-20. Section 1 – Requirements. Please confirm if retreads are being utilized in the current contract from bid 2015-12.

Answer: No, in specification – classification

37. Specification No. FM-01-20. Section 1 – Requirements. Please confirm if retreads are allowed in bid 2020-08.

No, in specification - classification

38. Specification No. FM-01-20. Section 1 – Requirements. 1.2 Service Required. Please confirm that "Mileage Sales Field Manager" and "engineer" are being used interchangeably and refer to the same individual.

Answer: Confirmed

39. Specification No. FM-01-20. Section 1 – Requirements. 1.9 Product Liability. Please modify paragraph A as follows: The contractor shall agree to save, keep, bear harmless and ~~fully~~ indemnify MTS and all of its employees or agents from any claim of any party on account of injuries to said party, or damage to his/her property, suffered in connection with this contract and from all claims, action or causes of action for damage arising out of the use or possession of any tire furnished hereunder, in each case, to the extent resulting from the negligence of the contractor or defective manufacturer of such tires arising from bid submitted by the contractor. Contractor shall not be held responsible for loss, damage, liability, injury or death occasioned by the ~~active~~ negligent acts or willful misconduct of MTS, its agents or employees. Notwithstanding any other provisions in this contract, in no case shall the Contractor be held responsible for consequential damages, including without limitation, lost profits, lost revenue, overhead, downtime, or any other speculative or indirect damages, except as indicated in Section 1.14B.

Answer: All contract/specification exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

40. Specification No. FM-01-20. Section 1 – Requirements. 1.12 Bus Removed from Service. Please confirm the approximate advanced notice on buses scheduled for disposal in order to collect no-value/scrap tires for bus disposal.

Answer: See Section 1.12A of the specification

41. Specification No. FM-01-20. Section 1 – Requirements. 1.13 Loss and Abuse. Please modify paragraph A as follows:

If any tires are lost, stolen, purchased or sold or damaged by accident or fire, MTS shall reimburse contractor for those tires by paying for any mileage remaining thereon at the lease rate then in effect. The remaining mileage shall be prorated by determining the percentage of tread rubber remaining multiplied by the contract fixed cost per 32nd of useable tread available.

Answer: All contract/specification exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

42. Specification No. FM-01-20. Section 1 – Requirements. 1.19 Services Provided by MTS. Please confirm the space provided to store tires is enclosed, away from the elements.

Answer: Confirmed

43. DBE. Please confirm if there is any DBE utilization on the current contract through BID 2015-12.

Yes, there is a 4.8% DBE goal for current contract.

44. Insurance Minimums. General Liability. Please confirm the general liability coverage can be provided through self-insured retentions. REASON: The major global companies participating in this procurement utilize self-insured retentions as a part of their insurance program.

Answer: Confirmed

45. Insurance Minimums. Please modify the first paragraph as follows:

Contractor agrees to self-insure or maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Contractors activities, by whomever performed, in such coverage and amounts as required and approved by MTS. Acceptable proof of such coverage shall be furnished to MTS prior to commencement of activities under this agreement. A Certificate of Insurance ~~including declarations page~~, shall be submitted for review for each successive period of coverage for the duration of this agreement, unless otherwise specified by MTS, in the minimum amounts specified below.

REASON: Major global corporation contract with thousands of entities. As a matter of practicability, specific contract information is conveyed on the Certificate(s) of Insurance. Additionally, a declarations page is a part of the policy. Major global corporations consider policies confidential and proprietary and do not provide copies. In lieu of copies, inspection of policies can be arranged.

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

46. Insurance Minimums. Please remove the requirement for Professional Liability coverage as not applicable to this procurement.

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

47. Insurance Minimums. Umbrella Liability. Please change the limits to \$1M per occurrence and \$1M aggregate.

Answer: All contract exceptions are subject to the discretion and approval of the MTS. Should the Proposer and the MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration. Please list all exceptions using the form included in this addendum.

48. Insurance Minimums. Additional insured. Please confirm your understanding that additional insured can be provided on policy coverage, but not coverage through self-insured retentions.

Answer: Confirmed

The question period has ended, no further questions will be answered.

BID NO: 2020-08

Please sign and return one copy with the BID Documents.

We acknowledge receipt of Addendum #1.

Name

Company Name

Signature

Date

EXCEPTIONS

If the Proposer takes exception or requires clarification on any points of the Bid before signing an agreement with MTS, please list the items on a blank page attached to this Attachment. All exceptions are subject to the discretion and approval of MTS. Should the Proposer and MTS be unable to resolve any exceptions to the mutual satisfaction of both parties, MTS reserves the right to reject the Proposer's Bid from further consideration.

If no exceptions are listed, the undersigned agrees to all terms and conditions contained in the RFP, including all appendices and the Processional Service Contract. If exceptions are listed, the undersigned agrees to all terms and conditions contained in the RFP, with these noted exceptions.

Exceptions attached? Yes

No

Company Name: _____

Signature: _____

Print Name: _____ Date: _____