

DATE:9/12/2024

E-MAIL: Dillon.Byrne@McElroys.com

BID NO. 240912-0020

BID PROPOSAL

PROJECT: TMTA Quincy Street HVAC Upgrades
ESTIMATOR: Dillon Byrne
ADDENDA SEEN: N/A

BASE BID: \$132,646

ALT 2 (ADD): \$22,615

McElroy's Inc. "Work" is defined as follows:

1. Mechanical work per ME pages dated 6/24/2024
2. Insulation for our scope of work.
3. Refrigerant for our scope of work.
4. Demolition for our scope of work.
5. **Quote is valid for 15 days after bid date, due to refrigerant restrictions.**

***Estimated 40 days to complete work once the equipment is received.**

Items Not Included are as follows:

1. Payment and performance bonds.
2. Insurances beyond McElroy's Inc. policy
3. Builders risk insurance.
4. Permits & fees.
5. Taxes.
6. **Costs associated with equipment due to refrigerant phase out at the end of 2024.**
7. DDC Controls.
8. Dumpster fees or trash removal.
9. Dust and floor protection.
10. Demolition or removal of existing equipment.
11. Duct cleaning.
12. Louvers shown on architectural drawings.
13. Housekeeping pads. (Equipment, pumps, etc...)
14. Structural supports for mechanical equipment and systems.
15. Cutting, patching, removal, replacement of roof, walls, ceiling and floors.
16. Priming and painting.
17. Painting of gas piping.
18. Painting of exposed ductwork.
19. Sheetrock access doors / panels.
20. Water treatment.

21. Fire protection / sprinkler system.
22. Roof drainage, gutters or downspouts.
23. Temporary services (i.e., sanitary, water, heating/cooling).
24. Toilet accessories (grab bars, paper towel dispensers, etc..).
25. Equipment curb structural supports.
26. Caulking / sealing for floor and wall penetrations.
27. Electrical.
28. Heat trace.
29. Control wiring.
30. Thermostat rough-in / conduit.
31. Variable Frequency Drives. (VFD's)
32. Starters or disconnects, except those specified to be furnished with the equipment.
33. Overtime.
34. Slab X-Ray.
35. Rock excavation.
36. Supply of backfill materials.
37. Hauling off of excess spoils.
38. BIM modeling.
39. McElroy's Inc. is not responsible for the sawing or drilling of existing conduit, cables, plumbing, electrical lines, etc. that are beneath or within any floors, behind or within any walls that are not visible to us. These items must be identified and brought to our attention before our work begins.



Terms and Pricing included in this Bid Proposal are valid for 30 Days from the proposal date.

If this Bid Proposal and the following Agreement are acceptable to you, please sign and date. We are pleased to have you as a client, and look forward to a long and mutually beneficial relationship.

AGREED TO AND ACCEPTED:

Company Name: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____



AGREEMENT BETWEEN OWNER AND CONTRACTOR

The effective date of this Agreement ("Contract") is the date indicated on the top of this proposal, between McElroy's Inc. ("Contractor") and the party addressed too on this proposal for the project indicated on this proposal.

SECTION 1. SCOPE. The Contractor agrees to furnish all labor, materials, equipment and other facilities required to complete the work per this proposal, which is attached hereto and expressly incorporated herein by reference and made a part hereof. By executing this Contract, owner also agrees to accept the Bid Proposal.

SECTION 2. PRICE AND PAYMENT. The Owner agrees to pay the Contractor for performance of the Work as indicated in the above proposal subject to adjustments for changes in the Work as may be agreed to by the Owner and the Contractor, as may be required under this Contract.

The Owner agrees to pay the Contractor for all work completed. Payments will be due and payable within thirty (30) days of invoices. Without limiting its rights or remedies, as set forth in Sections 6 and 9 below, Contractor shall have the right to suspend or terminate its services until payment is received on all invoices. Should invoices not be paid with thirty (30) days from the date of said invoice, Contractor will charge interest at the rate of fifteen percent (15%) per annum. However, in no event shall the interest rate provided in this Contract be above the highest lawful rate.

In any court action by Contractor for collection of amounts owed by Owner under this Contract, Contractor shall also be entitled to recover from Owner its reasonable costs, expenses, and attorney's fees in prosecuting such action for collection.

SECTION 3. ENTIRE AGREEMENT. This agreement represents the entire agreement between the Contractor and the Owner regarding the Work described in Section 1 and supersedes any prior written or oral agreements or representations as to that Work. No term or provision of this Contract shall be changed or modified by any prior or subsequent statement, conduct, or act of either of the parties, and this Contract may only be changed or modified by written instrument, signed by all parties.

SECTION 4. TIME OF COMPLETION. Time is of the essence in this Contract. The Work to be performed under this Agreement shall commence once all parts arrive and the work is scheduled with the customer. The Contractor shall conform to this schedule, including any changes to that schedule agreed to between the Owner and the Contractor or required by circumstances beyond Contractor's control.

SECTION 5. CHANGES IN WORK. The Work shall be subject to changes or additions, deletions, or revisions by the Owner. The Contractor will be notified by receipt of written additions and/or written orders.

Whenever an adjustment in the Contract price or Contract time is required because of Owner's request or other circumstances beyond the control of Contractor (including lack of worksite access, weather, fires, floods, strikes, acts of God, natural disasters, or acts of third parties), the Contractor shall submit to the Owner within a reasonable time a detailed estimate, with supporting calculations, pricing and adjustments in the schedule of the change to the Contract price and the Contract time. Pricing of the adjustment shall be in general accordance with the pricing structure of this Contract. However, to the extent that such pricing is inapplicable, cost of the change or the amount of the adjustment shall be determined on the basis of the cost to the Contractor plus reasonable amounts for overhead and profit.

The Contractor shall not be obligated to perform changes in the Work or additional work until the Owner has approved, in writing, the changes to the Contract price and the Contract time.

SECTION 6. SUSPENSION OF WORK. If any payment is not made to Contractor as required under this Contract, Contractor may suspend work until such payment is made. Contractor may also suspend work under this Contract if a dispute over payment for extra work, changes by Owner or other circumstances beyond Contractor's control will cause the Contractor to suffer substantial financial hardship if Contractor is required to continue the Work. Contractor may request that Owner provide written proof of Owner's ability to pay Contractor for the Work remaining to be performed by Contractor at any time prior to or during performance of this Contract. Failure of Owner to provide such proof shall be justification for Contractor's suspension of work under this Contract.

Any suspension of work under this Contract will also suspend the progress and completion dates set forth in Section 4.

SECTION 7. INSPECTION OF THE WORK. The Contractor shall make the Work accessible at all reasonable times for inspection by the Owner. The Contractor shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the Contractor's Work.

SECTION 8. PERMITS, LICENSES AND REGULATIONS. Permits and licenses necessary for the Work shall be obtained and paid for by the Contractor. The Owner shall assist the Contractor in obtaining such permits and licenses.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the Work.

SECTION 9. TERMINATION. The Owner reserves the right to terminate the Work for its convenience upon notice in writing to the Contractor.

Additionally, with reasonable cause, either Owner or Contractor may terminate this Contract effective immediately by giving written notice of cause for termination. "Reasonable cause" includes:

- a. A material violation of this Contract Agreement, or
- b. Nonpayment of Contractor's compensation as required in Section 2, after written demand for payment.

In the event of a termination of the Contract, however it is brought about, the Contractor shall be paid its actual costs for the portion of the Work performed to the date of termination, and for all of Contractor's incurred costs of termination, including demobilizations and any termination charges by vendors and subcontractors, plus 20% of all of Contractor's actual and incurred costs for overhead and profit.

SECTION 10. INDEMNIFICATION. Contractor shall indemnify the Owner against claims, demands, lawsuits and liabilities arising out of or connected to the performance of the Work, provided that any such claim, demand, lawsuit or liability is attributable to tangible property damage (other than to the Work itself) or bodily injury but only to the extent caused by any negligent act or omission of Contractor or its subcontractors, suppliers, employees, agents or representatives.

SECTION 11. INSURANCE. Prior to commencement of any work, Contractor shall, at Contractor's expense, purchase from and maintain in a company or companies lawfully authorized to do business in a jurisdiction in which Work is located, the following types of insurance coverage and limits of liability. Such insurance as will protect the Contractor and the Indemnitees from claims which may arise out of or result from the Contractor's operations under this Agreement

and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1 Commercial General Liability Insurance.

The Contractor shall secure and maintain from the date of this Agreement commercial general liability insurance ("CGL") with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such CGL insurance shall be on an occurrence basis and shall cover claims and liability in connection with the Contractor's operations and activities under this Agreement. The insurance shall include liability coverage sufficient to meet the requirements of this Agreement, (including defense costs and attorney's fees assumed under the contract, which shall be payable in addition to the limit of liability).

11.2 Automobile Liability Insurance.

The Contractor shall secure and maintain automobile liability insurance to be on comprehensive form, which shall protect the Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks, and motorized vehicles, in connection with the performance of the Work under this Agreement, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, rented, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident.

11.3 Worker's Compensation Insurance.

The Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect the Contractor from claims for injury, sickness, disease or death of the Contractor's employees, with minimum limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit. The Contractor's workers' compensation shall be in compliance with all applicable laws, including the statutes of the state where the Project is located.

11.4 Waiver of Subrogation.

Owner and Contractor waive all rights against each other for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

SECTION 12. ARBITRATION. Any controversy or claim arising out of or relating to this Contract or its alleged breach, which can not be resolved by mutual agreement, shall be settled by arbitration in accordance with JAMS Rules in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Owner and Contractor agree that, should Contractor be potentially, or actually, a party to a lawsuit or arbitration arising out of or connected to this Contract, Owner shall appear in, and be bound by the decision in, that lawsuit or arbitration. The prevailing party in any action or proceeding to enforce this Contract shall recover its reasonable attorney's fees and costs (including expert witnesses) in that action or proceeding.

SECTION 13. WARRANTY. For a duration of 365 days from the completion of the Work, the Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified and that all work under this agreement will be performed in a good and workmanlike manner, and shall be of good quality, free from faults.

SECTION 14. GOVERNING LAW. This Contract shall be governed by the laws of the state of Kansas.

SECTION 15. SEVERABILITY. If any provision of this Contract is held to be unenforceable for any reason, by any court, governmental agency, body or tribunal, arbitrator, or other deciding authority, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Contract shall be deemed valid and enforceable to the extent possible.

SECTION 16. WAIVER. The waiver of any breach of this Contract by either party shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this Contract.

SECTION 17. BINDING EFFECT. This Contract shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

August 5, 2024

Request for Bids TO-25-03

Quincy Street Station HVAC Equipment Upgrade
Single-Job Contract

Topeka Metropolitan Transit Authority (Metro) is requesting bids from qualified firms to upgrade the HVAC Equipment at our Quincy Street Station location at 820 SE Quincy Street in Topeka, Kansas.

Proposers shall have sufficient experience and qualifications to perform the work as specified in the attached plans (see Appendices 1, 2, & 3). Proposer will be responsible for all aspects of this project, including but not necessarily limited to:

- coordination of all work required to complete the project;
- compliance with all city, state and federal regulations, and payment of any fines levied for failure to comply with said regulations;
- follow all contract requirements on page 3-7;
- acquire all necessary licenses, certifications, and permits, and payment of fees for same;
- furnish all labor, material and equipment necessary for satisfactory contract performance;
- provide at a minimum a one-year warranty from the date of Substantial Completion;
- hire all subcontractors and ensure their compliance with contractual requirements; and,
- ensure that the upgraded HVAC equipment is properly installed, properly tested, and ready for use upon completion.

There will be a pre-bid meeting on Tuesday, August 20, 2024, at 10:30am. The meeting will be held at our Quincy Street Station location at 820 SE Quincy Street, in Topeka, Kansas. The meeting is not mandatory, but it is recommended that bidders attend. A summary of the meeting will be published on Metro's website.

If you would like to inspect the site, you may schedule your site visit with:

Alan Parrish, Director of Maintenance
785-730-8690
maintenance@topekametro.org

This will be a single-job contract. Provide your completion date on the Price Quote form.

General Instructions

Bids must be submitted in the following format:

- 1) Cover sheet signed by the individual authorized to commit the firm to perform the contract requirements, including your firm's name, address, phone, fax, and email;

- 2) Provide a description of your understanding of, and ability to fulfill the specifications and services requested in this RFB;
- 3) Provide a description of your firm's experience and qualifications. Supply at least three references with current contact information, for which you have provided the same or similar services as specified in this RFB;
- 4) Warranty information, including manufacturer's, on both the materials and installation, including length of warranty, coverage, and contact information if warranty work is needed; and,
- 5) The completed cover letter, price quote and certifications on pages 8-15.

In order to be considered for contract award, your bid must be received in the Metro office by **1:00pm on Thursday, September 12, 2024.** Bids received after the deadline will not be considered.

Following are the evaluation criteria, listed by degree of importance. A criterion may have multiple elements with varying degrees of importance.

Experience and Qualifications
Price
Scheduling

The cover sheet, price quote form and the certifications on pages 8-15 are part of your bid and must be completed by all bidders. Bids that do not include the completed price quote and fully executed certifications may not be considered. The successful bidder will be required to follow the contract clauses on pages 3-7.

No advantage shall be taken by the contractor or any subcontractor in fulfilling the terms of this project due to omission of specifications by Metro.

Topeka Metro's current DBE goal is 1.62%. There is no DBE goal for this contract. If your firm is a DBE, or if you will be sub-contracting with a DBE, please attach a copy of the current DBE certificate.

Upon contract award, all proposals will be public record and posted to Metro's website. Metro recommends that proposers exclude any trade secret, proprietary or confidential information from their proposals.

Topeka Metro is a direct deposit payor. The successful bidder will be required to fill out a W-9 Form and the Topeka Metro Electronic Payment/ACH Authorization Form.

If you have any questions concerning this RFB, or if you need clarification or additional information, please contact Richard Appelhanz. Electronic submission of bids is preferred. If submitting bids on paper, please provide an original and three full copies. Bids are to be sent to:

Topeka Metropolitan Transit Authority
Attn: Richard Appelhanz
201 North Kansas Avenue
Topeka, KS 66603
785-730-8621
rappelhanz@topekametro.org

Questions must be received by Metro by August 22, 2024

The preceding specifications and the following clauses and certifications will be part of the contract.

1.0 ACCESS TO RECORDS

The Contractor agrees to provide Metro, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302 and 49 CFR 633.5, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Metro, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR 200.333 and 2 CFR 200.336. FTA does not require the inclusion of these requirements in subcontracts.

2.0 ASSIGNMENT AND DELEGATION

Contractor shall neither delegate any duties or obligations under this contract, nor assign, transfer, convey, sublet, subcontract or otherwise dispose of the contract or its right, duty, title or interest in or to the same, or any part thereof, without previous written consent of Metro.

3.0 BUY AMERICA

The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(c) and 49 CFR 611.11. Rolling stock must be assembled in the United States and have over 60% domestic content for deliveries prior to FY2018, over 65% for deliveries in FY2018 and FY2019, and over 70% for deliveries in FY2020 and thereafter. A bidder or offeror must submit to Metro the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier sub-contractors.

4.0 CARGO PREFERENCE

The contractor agrees: (1) to use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the contract to the extent such vessels are available at fair and reasonable rates for US-Flag commercial vessels; (2) to furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to:

Division of National Cargo
Office of Market Development
Maritime Administration
Washington, DC 20590

with a copy to Metro (through the contractor in the case of a subcontractor's bill-of-lading); and, (3) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5.0 CIVIL RIGHTS

- 5.1 Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, and Federal transit law at 49 USC 5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 5.2 Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
- 5.2.1 Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and Federal transit law at 49 USC 5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of US Department of Labor (USDOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the project. The contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.2 Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and Federal transit law at 49 USC 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.3 Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, the Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
- 5.3 The contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 5.4 If the contract involves federal funds, the provisions of this subsection do not apply. If the contract does not involve federal funds, and if contractor’s contracts with Topeka Metro for the current fiscal year cumulatively total more than \$5,000 and the contractor has four or more employees during the term of this contract, the contractor also agrees to observe the provisions of the Kansas Act Against Discrimination and the Kansas Age Discrimination in Employment Act and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin or ancestry. In all solicitations or advertisements for employees, the contractor shall include the phrase, “equal opportunity employer,” or a similar phrase to be approved by Topeka Metro. If the contractor fails to comply with the reporting or other requirements of the Kansas Human Rights Commission under K.S.A. 44-1031 or K.S.A. 44-1116, and amendments thereto, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Topeka Metro. If contractor is found guilty of a violation of the Kansas Act Against Discrimination or the Kansas Age Discrimination in Employment Act under a decision or order of the Kansas Human Rights Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Topeka Metro. Contractor agrees to include the binding provisions of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

6.0 CLEAN AIR AND WATER

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor agrees to report each violation to Metro and understands and agrees that Metro will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7.0 COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

Contractor shall at all times be solely responsible for complying with all applicable local, state and federal laws, ordinances and regulations in connection with the performance of this contract.

8.0 CONFIDENTIALITY

Between the date and time that proposals are due, until award of the contract by Metro, no information will be released which may have an adverse impact upon the negotiations or selection process. No information will be shared about the distinguishing characteristics or deficient characteristics of any proposal. All documents received by Metro are subject to the Kansas Open Records Act, KSA 45-215, et seq., and the Freedom of Information Act, 5 USC 552.

9.0 CONFLICT OF INTEREST

No director or employee of Topeka Metropolitan Transit Authority, during his/her tenure or within one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

10.0 CONTRACT CHANGES

Any proposed change to this contract shall be submitted to Metro in writing for approval. No change in this contract shall be made unless Metro gives prior written approval. Contractor shall be liable for all costs, damages and/or liabilities, and for proper corrections, resulting from any specification change not properly approved in writing by Metro. Changes that have not been approved by Metro shall place Contractor in default of the contract.

11.0 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- 11.1 This contract is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Metro's overall 2022-2024 goal for DBE participation is 1.62%; the race neutral goal is 0.37%, and the race conscious goal is 1.25%. There is no contract goal for this procurement.
- 11.2 The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Metro deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 11.3 The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Metro.
- 11.4 The contractor may not hold retainage from its subcontractors.
- 11.5 The contractor must promptly notify Metro, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Metro.

12.0 ENERGY CONSERVATION

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

13.0 EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Metro will comply with the requirements of 49 USC 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

14.0 FEDERAL CHANGES

The contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Metro and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15.0 FLY AMERICA

The contractor agrees to comply with 49 USC 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

16.0 INCORPORATION OF FTA TERMS

These contract provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the included contract provisions. All contractual provisions required by USDOT, as set forth in the current version of FTA Circular C 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any Metro requests which would cause Metro to be in violation of the FTA terms and conditions.

17.0 INDEMNIFICATION

Contractor shall be responsible for and indemnify, defend and hold harmless Metro, its directors and employees from all demands, claims, suits and settlements for loss of or damages to property, or personal injuries, including death to persons, and from all judgments recovered, and from all expenses incurred in defending or settling said claims or suits, or enforcing this provision, including court costs and attorney fees and other expenses arising out of the errors, omissions or negligent acts of the Contractor, its employees, or agents in connection with the goods and/or services provided under this contract.

18.0 INSURANCE

Contractor shall maintain for the duration of the contract such insurance as will protect it and Metro from all claims, including Workers' Compensation, and will hold Metro harmless from, and indemnify Metro for, all claims and damages which may arise out of or result from the Contractor's operations under this contract, whether such operations are by Contractor, by a subcontractor, by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Contractor will submit certificates or other proof of insurance to Metro, naming Metro as an additional insured, upon notification of contract award.

19.0 INTEREST OF CONGRESS

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit arising therefrom.

20.0 LEGAL MATTER NOTIFICATION

Contractor agrees to notify Metro if a current or prospective legal matter emerges while this contract is in effect that may affect the Federal Government. Contractor also agrees to include this requirement in all subcontracts issued pursuant to this contract.

21.0 LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20.110, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier, up to Metro.

22.0 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Metro and the contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Metro, the contractor, or any other party (whether or not a party to this contract) pertaining to any matter resulting from this contract. The contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that this clause shall not be modified, except to identify the subcontractor who will be subject to its provision.

23.0 PATENT INFRINGEMENT

Contractor agrees that it will, at its own expense, defend all suits and all proceedings instituted against Metro, if such suits and proceedings are based on any claim that the materials or equipment provided by Contractor, or any part thereof, or any tool, article or process used in the manufacture thereof, constitutes an infringement of any patent. Metro will give Contractor prompt notice in writing of any suit or proceeding, and will give Contractor all needed information, assistance and authority to enable Contractor, through its legal counsel, to defend the same.

24.0 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

- 24.1 The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801, et seq. and US DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of this contract, the contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the Federal Government deems appropriate.
- 24.2 The contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307 on the contractor, to the extent the Federal Government deems appropriate.

- 24.3 The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

25.0 RECYCLED PRODUCTS

The contractor agrees to comply with all of the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

26.0 SEAT BELT USE

In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 USC 402 note, by adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned or rented vehicles or personally owned vehicles, and by including a "Seat Belt Use" provision in each third-party agreement related to the project.

27.0 SUSPENSION AND DEBARMENT

In accordance with 2 CFR Parts 180 and 1200, the contractor is required to verify that none of its principals or affiliates: 1) is included on the federal government's suspended and debarred list; 2) is proposed for debarment, declared ineligible, voluntarily excluded or disqualified; 3) within three years preceding this proposal, has not been convicted of or had a civil judgment rendered against them for (a) commission of fraud or criminal offense pertaining to performing a public transaction, (b) violation of any federal or state antitrust statute, or (c) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; 4) is indicted or charged by a governmental entity for any of the charges in 3) above; and 5) has had any public transaction terminated for cause or default within three years preceding this proposal. The contractor is required to include this requirement in any subcontracts related to this contract. By signing and submitting its proposal, the proposer certifies that the certification in this clause is a material representation of fact relied upon by Metro. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to verify that none of its principals or affiliates is included on the federal government's suspended and debarred list at any time throughout the period of this contract. The proposer further agrees to include a provision requiring the same compliance in its subcontracts related to this contract.

28.0 TERMINATION

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

Termination for Default – If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, Metro may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by Metro that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the contractor, Metro, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure – Metro in its sole discretion may, in the case of a termination for breach or default, allow the contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to Metro's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within ten (10) days after receipt by contractor of written notice from Metro setting forth the nature of said breach or default, Metro shall have the right to terminate the contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude Metro from also pursuing all available remedies against contractor and its sureties for said breach or default.

Waiver of Remedies for Any Breach – In the event that Metro elects to waive its remedies for any breach by contractor of any covenant, term or condition of this contract, such waiver by Metro shall not limit Metro's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

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

COVER SHEET

Proposer Information

Company Name McElroy's Inc

Address 3310 SW Topeka Blvd.

City, State, Zip Topeka,KS 66611

Main Phone 785-266-4870

Contact Person Information


Name Dillon Byrne

Job Title Estimator

Phone 785-267-9065

Alt. Phone 785-266-4870

Email Dillon.Byrne@McElroys.com

Signature  _____

Date: 9/12/2024

PRICE QUOTE

Proposer McElroy's Inc

Quincy Street Station HVAC Equipment Upgrade

<u>Base Bid</u>	<u>\$ 132,646</u>
<u>ALT #2</u>	<u>\$ 22,615</u>
<u>_____</u>	<u>\$ _____</u>
<u>_____</u>	<u>\$ _____</u>
<u>_____</u>	<u>\$ _____</u>
<u>_____</u>	<u>\$ _____</u>
<u>_____</u>	<u>\$ _____</u>
<u>_____</u>	<u>\$ _____</u>
<u>Total Cost</u>	<u>\$ 155,261</u>

Warranty Information _____

Quote is valid for 15 days after the bid date.

Time of completion is 40 days after the equipment is received.

Estimated Start Date _____ Estimated Completion Date _____


Topeka Metro is tax exempt. Do not include sales tax in your proposed price.

BUY AMERICA CERTIFICATION

Proposer will certify either compliance or non-compliance, not both. This certification must be submitted with the proposer's response.

Certificate of Compliance with 49 USC 5323(j)

The bidder hereby certifies that it will meet the requirements of 49 USC 5323(j), and the applicable regulations in 49 CFR Part 661 and any amendments thereto.

Signature:  _____

Name & Title: Dillon Byrne Estimator

Company: McElroy's Inc

Date: 9/12/2024

Certificate of Non-Compliance with 49 USC 5323(j)

The bidder hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) and 49 CFR 661.5, but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Signature: _____

Name & Title: _____

Company: _____

Date: _____

DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Metro’s overall 2022-2024 goal for DBE participation is 1.62%; the race neutral goal is 1.25%, and the race conscious goal is 0.37%. There is no contract goal for this procurement.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Metro deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from Metro.

The contractor may not hold retainage from its subcontractors.

The contractor must promptly notify Metro, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Metro.

Signature:  _____


Name and Title: Dillon Byrne Estimator _____

Company Name: McElroy's Inc _____

Date: 9/12/2024 _____

FLY AMERICA CERTIFICATION

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Signature:  _____

Name and Title: Dillon Byrne Estimator

Company Name: McElroy's Inc

Date: 9/12/2024

LOBBYING CERTIFICATION

The undersigned contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. See 49 CFR 20.100.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 USC 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure. See 49 CFR 20.400.]

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

Signature:  _____

Name and Title: Dillon Byrne Estimator

Company Name: McElroy's Inc

Date: 9/12/2024

NON-COLLUSION CERTIFICATION

This is my sworn statement to certify that this proposal was not made in the interest of or on behalf of any undisclosed entity. This proposal is not collusive.

This proposer has not been a party to any agreement or collusion in restraint of freedom of competition by agreement to bid a fixed price, to refrain from bidding, or otherwise. This proposer has not, directly or indirectly, by agreement, communication or conference with anyone, attempted to induce action prejudicial to the interest of Topeka Metropolitan Transit Authority, or of any proposer, or anyone else interested in the proposed contract.

Signature:  _____

Name and Title: Dillon Byrne Estimator

Company Name: McElroy's Inc

Date: 9/12/2024

SUSPENSION / DEBARMENT CERTIFICATION
In regard to 2 CFR Parts 180 and 1200

In accordance with 2 CFR Parts 180 and 1200, the contractor is required to verify that none of its principals or affiliates:

- 1) is included on the federal government's suspended and debarred list;
- 2) is proposed for debarment, declared ineligible, voluntarily excluded or disqualified;
- 3) within three years preceding this proposal, has been convicted of or had a civil judgment rendered against them for (a) commission of fraud or criminal offense pertaining to performing a public transaction, (b) violation of any federal or state antitrust statute, or (c) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- 4) is indicted or charged by a governmental entity for any of the charges in 3) above; and
- 5) has had any public transaction terminated for cause or default within three years preceding this proposal.

The contractor is required to include this requirement in any subcontracts related to this contract.

By signing and submitting its proposal, the proposer certifies that the certification in this clause is a material representation of fact relied upon by Metro. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to verify that none of its principals or affiliates is included on the federal government's suspended and debarred list at any time throughout the period of this contract. The proposer further agrees to include a provision requiring the same compliance in its subcontracts related to this contract.

Signature:  _____

Name and Title: Dillon Byrne Estimator

Company Name: McElroy's Inc

Date: 9/12/2024