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**Morongo Basin Transit Authority on behalf of the**

**California Association for Coordinated Transportation**

**Request for Proposal**

**ZERO EMISSION SHUTTLES**

**RFP No. 19-01**

**December 2019**

Contents

[SECTION 1: NOTICE OF REQUEST FOR PROPOSALS 5](#_Toc519520682)

[NR 1. Purpose of the Procurement and Period of Performance 5](#_Toc519520683)

[NR 2. Description of the Work to be Done 5](#_Toc519520684)

[NR 3. Validity of Proposals 6](#_Toc519520685)

[NR 4. Pre-Proposal Meeting Information 6](#_Toc519520686)

[SECTION 2: INSTRUCTIONS TO PROPOSERS 8](#_Toc519520687)

[IP 1. Background Information 8](#_Toc519520688)

[IP 2. Proposed Schedule for the Procurement 8](#_Toc519520689)

[IP 3. Obtaining Proposal Documents 9](#_Toc519520690)

[IP 4. Proposal Security Requirements – None 9](#_Toc519520691)

[IP 5. Pre-Proposal Meeting/Information for Proposers 9](#_Toc519520692)

[IP 6. Questions, Clarifications and Omissions 9](#_Toc519520693)

[IP 7. Addenda to RFP 10](#_Toc519520694)

[IP 8. DBE Requirements for Transit Vehicle Manufacturers 10](#_Toc519520695)

[IP 9. Conditions, Exceptions, Reservations or Understandings 10](#_Toc519520696)

[IP 10. Protest Procedures 11](#_Toc519520697)

[IP 11. Preparation of Proposals 12](#_Toc519520698)

[IP 12. Proposal Evaluation, Negotiation and Selection 15](#_Toc519520699)

[IP 13. Response to Proposals 21](#_Toc519520700)

[IP 14. Conflicts of Interests and Gratuities 22](#_Toc519520701)

[IP 15. Agency-Specific Provisions 23](#_Toc519520702)

[SECTION 3: GENERAL CONDITIONS 24](#_Toc519520703)

[GC 1. Definitions 26](#_Toc519520704)

[GC 2. Materials and Workmanship 26](#_Toc519520705)

[GC 3. Conformance with Specifications and Drawings 26](#_Toc519520706)

[GC 4. Inspection, Testing and Acceptance 26](#_Toc519520707)

[GC 5. Title and Warranty of Title 27](#_Toc519520708)

[GC 6. Intellectual Property Warranty 27](#_Toc519520709)

[GC 7. Data Rights 28](#_Toc519520710)

[GC 8. Changes 28](#_Toc519520711)

[GC 9. Legal Clauses 29](#_Toc519520712)

[GC 10. Agency-Specific Provisions – Not Used 38](#_Toc519520713)

[SECTION 4: SPECIAL PROVISIONS 39](#_Toc519520714)

[SECTION 5: FEDERAL REQUIREMENTS 50](#_Toc519520715)

[FR 1. Access to Records 51](#_Toc519520716)

[FR 2. Federal Funding, Incorporation of FTA Terms and Federal Changes 51](#_Toc519520717)

[FR 3. Federal Energy Conservation Requirements 51](#_Toc519520718)

[FR 4. Civil Rights Requirements 52](#_Toc519520719)

[FR 5. No Government Obligation to Third Parties **52**](#_Toc519520720)

[FR 6. Program Fraud and False or Fraudulent Statements or Related Acts](#_Toc519520721) 52

[FR 7. Suspension and Debarment](#_Toc519520722) 52

FR 8 Buy America…………………………………………………………………………………………………53

[FR 9. Pre-Award and Post-Delivery Audits 53](#_Toc519520730)

[FR 10. Cargo Preference 54](#_Toc519520731)

[FR 11. Fly America 54](#_Toc519520732)

[FR 12. Contract Work Hours and Safety Standards Act 54](#_Toc519520733)

[FR 13. ADA Access 55](#_Toc519520734)

[SECTION 6: TECHNICAL SPECIFICATIONS 57](#_Toc519520735)

[TS 1. GENERAL 57](#_Toc519520736)

[SECTION 7: WARRANTY REQUIREMENTS 58](#_Toc519520737)

[WR 1. Basic Provisions 58](#_Toc519520738)

[WR 2. Repair Procedures 62](#_Toc519520739)

[SECTION 8: QUALITY ASSURANCE 65](#_Toc519520740)

[QA 1. Contractor’s In-Plant Quality Assurance Requirements 65](#_Toc519520741)

[QA 2. Inspection 67](#_Toc519520742)

[QA 3. Acceptance Tests 69](#_Toc519520743)

[QA 4. Agency-Specific Requirements 71](#_Toc519520744)

[SECTION 9: FORMS AND CERTIFICATIONS 72](#_Toc519520745)

[CER 1. Proposer’s Checklist 7](#_Toc519520746)3

[CER 2. Request for Pre-Offer Change or Approved Equal 7](#_Toc519520747)4

[CER 3. Acknowledgement of Addenda 75](#_Toc519520748)

[CER 4. Contractor Service and Parts Support Data 75](#_Toc519520749)

[CER 5. Price Worksheet 76](#_Toc519520750)

[CER 6. Pre-Award Evaluation Data Form 77](#_Toc519520751)

[CER 7. Federal Certifications and Other Certifications 78](#_Toc519520752)

[CER 8. Vehicle Questionnaire and Instructions (Attached) 85](#_Toc519520753)

[SECTION 10: CONTRACT 86](#_Toc519520754)

[SECTION 11: APPENDIXES 89](#_Toc519520755)

[Appendix B 89](#_Toc519520761)

[Appendix C 93](#_Toc519520762)

[Appendix D 93](#_Toc519520763)

[Appendix E 95](#_Toc519520764)

SECTION 1: NOTICE OF REQUEST FOR PROPOSALS

1. Purpose of the Procurement and Period of Performance

The purpose of this procurement is to establish a Local Government Purchasing Schedule for Zero Emission Shuttle Vehicles. The Morongo Basin Transit Authority (“MBTA” or “Agency”) a member of the California Association for Coordinated Transportation (“CalACT”) is the lead agency for the solicitation. The resulting contract excludes any acquisitions to be made using Federal Transit Administration (FTA) funding. Following contract award, CalACT shall provide contract administration support. However, the resulting Contract may only be modified or amended by written action of MBTA.

The initial period of performance shall be two years. The MBTA shall have the right to extend the period of performance for three (3) one-year options under the provisions of SP 3.

1. Description of the Work to be Done

The Agency requests Proposals for the manufacture and delivery Zero Emission Shuttles in accordance with the terms and conditions set forth in RFP No. 19-01. A single Contract will be executed by MBTA acting on behalf of the all participants. Participating agencies will issue individual purchase orders against the basic contract as funding becomes available to the agencies during the life of the contract. The purchase orders would reflect the basic contract unit prices and reference the basic contract for other terms and conditions.

**The proposer must confirm that it is willing to accept an order of a single bus.**

Specifically, the Agency is requesting proposals and pricing for the following types of buses: **Electric Mobility Vans (Att Z-1), Electric Cutaway (Att Z-2), Electric Minibus (Att Z-3).**

Proposal due Date and Submittal Requirements:

**Proposals must be received by 11 a.m. on Friday, March 27, 2020.**

1. Sealed Proposals shall be submitted to following addresses:

Morongo Basin Transit Authority/Joe Meer

62405 Verbena Road, Joshua Tree, California, 92252

1. Envelopes or boxes containing Proposals shall be sealed and clearly labeled with the Agency’s Proposal number and the solicitation title: RFP No. 19-01, Zero Emission Shuttles.
2. Proposers are requested to submit to the Agency the hard copy marked “Original,” and one (1) additional printed copy, and eight (8) marked and labeled USB thumb drives, each containing an electronic PDF copy of the Proposal and all required Excel files and Buy America documents. Files are to be formatted to include Optical Character Recognition (OCR) so items can be searched. **The electronic files are to be separated and organized according to the packaging requirements outlined in IP 11.3, a single large PDF of the entire proposal is not acceptable.** In case of any discrepancies, the hard copy shall be considered by the Agency in evaluating the Proposal, and the electronic version is provided for the Agency’s administrative convenience only. A Proposal is deemed to be late if it is received by the Agency after the deadline stated above. Proposals received after the submission deadline shall be rejected.

Firms that intend to propose multiple vehicle manufacturer lines may consolidate their electronic responses into eight (8) single high capacity drives provided that the media is labeled with “Manufacturer or Dealer name, RFP 19-01” and the electronic files are organized into subfolders with file names by manufacturer and type of file.

Example: Main Folder named “Acme Bus,” containing subfolders for “Acme Class H Proposal,” “Acme Class H Price Worksheet,” “Acme Vehicle Information Worksheet” etc.

1. Validity of Proposals

Proposals and subsequent offers shall be valid for a period of one hundred twenty (120) days.

1. Pre-Proposal Meeting Information

A Pre-Proposal Meeting shall be held on **Thursday, February 6, 2020**. The meeting shall convene at 10:00 a.m. at the Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, California 92252. Proposers are asked to notify the Contracting Officer of their attendance and the number of person/s attending so that they may be accommodated. **A limit of three (3) representatives per proposing firm is requested.**

Proposers are requested to submit written questions to the Contract Administrator, identified below, in advance of the Pre-Proposal Meeting. In addition, questions may be submitted up to the date specified in “Proposed Schedule for the Procurement.” Responses shall be shared with all prospective proposers. Prospective Proposers are reminded that any changes to the RFP shall be by written addenda only, and nothing stated at the Pre-Proposal Meeting shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Agency.

Pre-Contract Contracting Officer’s Contact Information:

Name: Mr. Joe Meer

Title: Director of Cooperative Purchasing Programs

Address: 62504 Verbena Road, Joshua Tree, CA 92252

Phone number: 760-366-2986

E-mail: joe@mbtabus.com

Fax number: 760-366-2445

Identification of Source of Funding

Financial support of this project is provided through financial assistance grants from the State of California, California Department of Transportation (CalTrans) and other sources of local and state public funding. **Purchases using Federal Transit Administration (FTA) funding are excluded from participation on this contract**.

Signed and Dated for Posting

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Signature/Title Date

SECTION 2: INSTRUCTIONS TO PROPOSERS

1. Background Information/Estimated Quantities

The Work under these Contract documents consists of the development of a Local Government Purchasing Schedule for the manufacture and delivery of accessible, zero-emission transit/paratransit vehicles which may be ordered by members of CalACT.  Agencies placing orders under this Contract will have the ability to select among various vehicle models and configurations.  Individual orders may include optional features, spare parts, training materials, and manuals.

Owing to the fact that electric vehicles are new to the transit market, neither CalACT nor MBTA possesses historical data on cumulative demand for these vehicles or the capacity of individual CalACT members to establish the necessary infrastructure to support electric vehicles.

In submitting proposals, Offerors acknowledge that they have received other good and valuable consideration for any contract resulting from this solicitation, and that neither CalACT nor MBTA guarantee the purchase of any particular model or configuration of vehicle offered.  Because multiple awards are contemplated, no individual vendor receiving an award based on this procurement can be guaranteed a minimum number of sales.

` The overall minimum quantity established for all awards is three units (3).

The maximum number of orders per year, based on the foreseeable needs of CalACT members is one hundred fifty (150).

1. Schedule for the Procurement

The following is the solicitation schedule for proposers:

* Pre-Proposal Meeting: **February 6, 2020, 10 am 62405 Verbena Rd, Joshua Tree, Ca 92253.**
* Proposer communications and requests: **February 20, 2020.**
* Responses to Proposer’s communications and/or Agency addenda: **March 3, 2020**
* Proposals Due Date: 11 a.m., Friday **March 27, 2020.**

1. Obtaining Proposal Documents

Proposal documents may be obtained from Morongo Basin Transit Authority electronically at www.mbtabus.com. Documents requested by mail shall be packaged and sent postage paid. Documents requested by courier shall be packaged and sent only at the Proposers’ expense.

1. Proposal Security Requirements – None
2. Pre-Proposal Meeting/Information for Proposers

A Pre-Proposal Meeting shall be held on February 6, 2020 at 10 a.m. The meeting shall convene at the Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, California, 92252. Prospective Proposers are urged to make every effort to attend this meeting.

Prospective Proposers are requested to submit written questions to the Contracting Officer, identified above, in advance of the Pre-Proposal Meeting. In addition, questions may be submitted up to the date specified in “Proposed Schedule for the Procurement.” Responses shall be shared with all prospective Proposers. Prospective Proposers are reminded that any changes to the RFP shall be by written addenda only, and nothing stated at the Pre-Proposal Meeting shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Agency.

1. Questions, Clarifications and Omissions

All correspondence, communication and contact in regard to any aspect of this solicitation or offers shall be only with the Contracting Officer identified above. Unless otherwise instructed by the Contracting Officer, proposers and their representatives shall not make any contact with or communicate with any member of the Agency, or its employees and consultants, other than the designated Contracting Officer, in regard to any aspect of this solicitation or offers.

At any time during this procurement up to the time specified in “Proposed Schedule for the Procurement,” Proposers may request, in writing, a clarification or interpretation of any aspect, a change to any requirement of the RFP, or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names, which whenever used in this solicitation shall mean the brand name or approved equal. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to the Agency as identified on the form Request for Pre-Offer Change or Approved Equal. Any request for a change to any requirement of the Contract documents must be fully supported with technical data, test results or other pertinent information showing evidence that the exception shall result in a condition equal to or better than that required by the RFP, without a substantial increase in cost or time requirements.

All responses to Request for Pre-Offer Change or Approved Equal shall be provided to all proposers. Any response that is not confirmed by a written addendum shall not be official or binding on the Agency.

If it should appear to a prospective Proposer that the performance of the Work under the Contract, or any of the matters relating thereto, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts of the Contract or with any federal, state, local or Agency law, ordinance, rule, regulation or other standard or requirement, then the proposer shall submit a written request for clarification to the Agency within the time period specified above.

1. Addenda to RFP

The Agency reserves the right to amend the RFP at any time in accordance with “Proposed Schedule for the Procurement.” Any amendments to the RFP shall be described in written addenda. Notification of or the addenda also shall be distributed to all such prospective Proposers officially known to have received the RFP. Failure of any prospective proposer to receive the notification or addenda shall not relieve the Proposer from any obligation under the RFP therein. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum in their Proposals on the form Acknowledgement of Addenda. Failure to acknowledge in the Proposal receipt of addenda may at the Agency’s sole option disqualify the Proposal.

If the Agency determines that the addenda may require significant changes in the preparation of Proposals, the deadline for submitting the Proposals may be postponed no less than ten (10) days from the date of issuance of addenda or by the number of days that the Agency determines shall allow Proposers sufficient time to revise their Proposals. Any new Due Date shall be included in the addenda.

1. DBE Requirements for Transit Vehicle Manufacturers

This procurement is not subject to the Disadvantaged Business Enterprise requirements of 49 CFR Part 26. Notwithstanding this exclusion, MBTA and the CalACT member agencies expected to purchase vehicles under contract(s) resulting from this solicitation are recipients of non-federal funds from state and local funding sources. It is the policy of MBTA and CalACT to provide maximum opportunity for small businesses and those owned by disabled veterans to compete and to foster increased participation of those businesses in this contracting program. Therefore, proposers are expected to take reasonable steps to ensure those businesses are afforded fair opportunities to participate in the provision of goods and services under any contract resulting from this solicitation and affirmatively required to ensure nondiscrimination in that provision of goods and services.

1. Conditions, Exceptions, Reservations or Understandings

Proposers are cautioned to limit exceptions, conditions and limitations to the provisions of this RFP, as they may be determined to be so fundamental as to cause rejection of the Proposal for not responding to the requirements of the RFP.

1. Protest Procedures

All protests must be in writing, stating the name and address of protestor, a contact person, Contract number and title. Protests shall specify in detail the grounds of the protest and the facts supporting the protest.

* 1. Address

All protests must be addressed as follows:

* Agency Contact: Mr. Joe Meer
* For U.S. Mail, special delivery or hand delivery:

Morongo Basin Transit Authority

62405 Verbena Road

Joshua Tree, CA 92252

Protests not properly addressed to the address shown above may not be considered by the Agency.

Copies of the Agency’s protest procedures and may be obtained from Mr. Joe Meer, Director of Cooperative Purchasing Programs, Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, CA 92252, 760-366-2986. Proposals shall be opened and a Notice of Award shall be issued by the Agency in accordance with the Agency’s protest procedures.

* 1. Pre-Proposal Protests

Pre-Proposal protests are protests based upon the content of the solicitation documents. Three copies of Pre-Proposal protests must be received by the Agency’s office no later than ten (10) calendar days after the RFP is first advertised or where the contested material is contained in an addendum or amendment, ten days after the issuance of the subject addendum or amendment. Protests shall be considered and either denied or sustained in part or in whole, in writing, in a manner that provides verification of receipt, prior to the Due Date for Proposals. A written decision specifying the grounds for sustaining all or part of or denying the protest shall be transmitted to the protestor prior to the Due Date for Proposals in a manner than provides verification of receipt prior to the Due Date for Proposals. If the protest is sustained, the Proposal Due Date may be postponed and an addendum issued to the solicitation documents or, at the sole discretion of the Agency, the solicitation may be canceled. Protests on the Recommended Award

**IP 10.2.1 Post Proposal Protests**

All proposers shall be notified of the recommended award. This notice shall be transmitted to each proposer at the address contained in its Proposal form in a manner that provides verification of receipt. Any Proposer whose Proposal has not lapsed may protest the recommended award on any ground not specified in “Pre-Proposal Protests,”above. Three (3) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the Agency at the appropriate address in “Address,” above, no later than fifteen (15) calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest shall be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt.

* 1. FTA Review

There is no FTA participation nor review of this solicitation and it’s resulting contract.

1. Preparation of Proposals
   1. Use of Proposal Forms

Proposers are advised that the forms contained in this RFP are required to be used for submission of a Proposal.

* 1. Alternate and Multiple Proposals

A Proposer may submit multiple proposals. However, each proposal may only contain information for one vehicle. Proposers are expressly prohibited from submitting a single proposal covering multiple vehicles.

* 1. Proposal Format Requirements

Proposals shall be submitted in four separately sealed packages identified below. In this case, the contents of Package 1, Package 3 and Package 4 may be “combined” into a single package and can be placed in a single binder. 3 ring binders to be used marked with Proposers name, Manufacturer and Line Item Proposed on cover and spine of folder. Each package shall be marked as specified below and shall contain all of the Proposal documents for which the package is required to be marked and shall include no other documents. **Package 2, Price Proposal Requirements, must be submitted separately in a marked sealed package**. These same requirements shall apply to any Best and Final Offers (BAFOs) that may be requested.

Package 1: Technical Proposal Requirements

1. Letter of Transmittal
2. Acknowledgement of Addenda – CER 3
3. Contractor Service and Parts Support Data – CER 4. In addition, the Proposer should include a description of support resources available for the proposed vehicles. Include an overview of available training, parts locations and availability, help lines and service assistance resources. A Written Service Plan is to accompany CER 4.
4. Vehicle Questionnaire – CER 9
5. Manufacturing facilities plant layout including a narrative or list of the work being done at each station.
6. Typical delivery schedule from date of order placement
7. Warranty Provisions and Warranty Administration Plan. Each Proposer shall provide the proposed warranty for their vehicle and the major components. This information shall be submitted on the form provided for this purpose. In addition, the Proposer is to be submit a narrative on how warranties shall be handled, the forms, the process, etc.
8. Quality Assurance Procedures

Package 2: Price Proposal Requirements

Each Price Proposal shall be on the prescribed Proposal form(s) and shall be for the entire Contract, including all Proposal items*.*

1. Letter of Transmittal
2. Price Worksheet (including but not limited to such pricing elements as optional bus features). Note: Subject to the provisions of SP 4, Pricing, the selected Contractors shall agree to sell vehicle(s), including proposed optional equipment, at the same price and under the terms and conditions of this Agreement from the time of contract award to the expiration of the initial contract term. Contractors are prohibited from offering any parts credits, rebates, etc. following Contract award. An executed form shall be packaged and marked separately as “Original.” Copies are to be furnished electronically in an Excel spreadsheet on the required USB drives.

The Proposer is required to complete and execute the Agency’s Pricing Form, contained as part of the Proposal documents, and provide same in the Price Proposal. The Contractor shall be liable for payment of all local taxes applicable to the complete bus as delivered and should add these amounts to the Proposal price.

Package 3: Qualification Package Requirements

1. Pre-Award Evaluation Data Form - CER 6
2. If the Proposer is not the vehicle manufacturer, the Proposal must include a confirmation from the vehicle manufacture that the Proposer is a bona-fide authorized factory dealer for the manufacture of the vehicle.
3. A copy of the three (3) most recent financial statements of the Proposer audited by an independent third party. If the proposal is from a bus dealer, statements from the dealer and manufacturer are to be submitted.
4. Letter(s) for insurance, indicating the manufacturer and/or the Contractor’s ability to obtain the insurance coverage in accordance with the RFP requirements
5. Proposal Form – CER 1.9
6. Buy America and Federal Motor Vehicle Standards (FMVSS) Certification. **(Although this procurement excludes FTA funding, these items are required by MBTA)**

Package 4: Proprietary/Confidential Information Package Requirements

The Proposer is directed to collect and submit any information it deems to be proprietary or confidential in nature in a separate marked and sealed package. If there is no confidential information, then the Proposer should include a statement to that effect. Subject package shall be submitted in accordance with the terms and conditions governing the submittal of proposer’s Proposal to this RFP. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information shall not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

The Proposer is advised that the Agency is public and as such may be subject to certain state and/or local Public Records Act provisions regarding the release of information concerning this RFP. If a request is received by the Agency for the release of Proposer’s propriety/confidential information, subject request shall be referred to the Proposer for review and consideration. If Proposer chooses to declare the information proprietary/confidential and withhold it from release, it shall indemnify, defend and hold harmless the Agency from any legal action arising from such a declaration.

* 1. Agency Treatment of Proprietary/Confidential Information

Access to government records is governed by the laws of the State of California. Except as otherwise required to be disclosed by applicable State law, the Agency shall exempt from disclosure proprietary information identified in Package 4.

Upon a request for records from a third party regarding this Proposal, the Agency shall notify the Proposer in writing. The Proposer must respond within twenty (20) business dayswith the identification of any and all “proprietary, trade secret, or confidential commercial or financial” information. Failure to respond within the allowed period shall be deemed an approval to release. The proposer shall indemnify the Agency’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The Agency shall employ sound business practices no less diligent than those used for the Agency’s own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proposers and the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the California Law against disclosure of such information and material to third parties, except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information — with such determinations to be made by the Agency in its sole discretion — bears appropriate notices relating to its confidential character.

* 1. Signing of Proposal Forms

Proposals shall include firm name (and, in the event that the Proposer is a joint venture, the names of the individual firms comprising the joint venture); business address; and the name, title and business address of the responsible individual(s) with their telephone, facsimile (fax) numbers and email address who may be contacted during the Proposal evaluation period for scheduling oral presentations and for receiving notices from the Agency. The proposer shall submit with their Proposal a copy of the joint venture agreement.

Proposals shall be signed by those individual(s) authorized to bind the proposer. The proposer shall submit evidence of the official’s authority to act for and bind the Proposer in all matters relating to the Proposal. (In the event the Proposer is a joint venture or consortium, a representative of each of the members of the joint venture or consortium shall execute the Proposal. Each joint venture or consortium member is jointly and severally liable for the joint venture or consortium.)

* 1. Modification or Withdrawal of Proposals

A modification of a Proposal already received shall be accepted by the Agency only if the modification is received prior to the Proposal Due Date, is specifically requested by the Agency, or is made with a requested BAFO. All modifications shall be made in writing and executed and submitted in the same form and manner as the original Proposal.

A Proposer may withdraw a Proposal already received prior to the Proposal Due Date by submitting to the Agency, in the same manner as the original Proposal, a written request for withdrawal executed by the Proposer’s authorized representative. After the Proposal Due Date, a Proposal may be withdrawn only if the Agency fails to award the Contract within the Proposal validity period prescribed in “Duration of the Validity of Proposals,” or any agreed-upon extension thereof. The withdrawal of a Proposal does not prejudice the right of a Proposer to submit another Proposal within the time set for receipt of Proposals.

* 1. Cost of Proposal Development

This RFP does not commit the Agency to enter into a Contract, to pay any costs incurred in the preparation or presentation of a Proposal, nor to procure or contract for the equipment.

1. Proposal Evaluation, Negotiation and Selection

Proposals shall be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those that are applicable to a competitive negotiated procurement whereby Proposals are evaluated to determine which Proposals are within a Competitive Range. Discussions and negotiations may then be carried out with Proposers within the Competitive Range, after which BAFOs may be requested.

**However, the Agency may select a Proposal or Proposals for award without any discussions or negotiations or request for any BAFOs.** Proposers are hereby notified that the selected firms are expressly prohibited from offering any rebates, parts credits and any other price discounts following contract award. Thus, the initial proposal should represent the “best offer.”

Subject to the Agency’s right to reject any or all Proposals, the Proposer or Proposers whose Proposal or Proposals are found to be most advantageous to the Agency shall be selected, based upon consideration of the criteria of “Proposal Selection Process,” below.

* 1. Confidentiality of Proposals

Proposals shall not be publicly opened. All Proposals and evaluations shall be kept strictly confidential throughout the evaluation, negotiation and selection process, except as otherwise required by applicable law. Only the members of the Selection Committee and Evaluation Team and other Agency officials, employees and agents having a legitimate interest shall be provided access to the Proposals and evaluation results during this period.

* 1. Duration of the Validity of Proposals

Proposals and subsequent offers shall be valid for the period stated in “Section 1: Notice of Request for Proposals.”The Agency may request Proposers to extend the period of time specified herein by written agreement between the Agency and the Proposer(s) concerned.

* 1. Evaluation Committee

An Evaluation Committee, which shall include officers, employees and agents of the Agency and/or other participating agencies, shall be established. The Evaluation Committee shall carry out the detailed evaluations, including establishing the Competitive Range, carrying out negotiations and making the selection of the Proposer, if any, that may be awarded the Contract.

The Evaluation Committee may report its recommendations and findings to the appropriate Agency individual or body responsible for awarding the Contract.

* 1. Proposal Selection Process

The following describes the process by which Proposals shall be evaluated and a selection made for a potential award. Any such selection of a Proposal shall be made by consideration of only the criteria set forth below.

“Qualification Requirements” specifies the requirements for determining responsible Proposers, all of which must be met by a Proposer to be found qualified. Final determination of a Proposer’s qualification shall be made based upon all information received during the evaluation process and as a condition for award.

“Proposal Evaluation Criteria” contains all the evaluation criteria, and their relative order of importance, by which a Proposal from a qualified Proposer shall be considered for selection. An award, if made, shall be to responsible Proposer(s) for a Proposal that is found to be in the Agency’s best interests, based on price and other evaluation criteria considered. The procedures to be followed for these evaluations are provided in “Evaluation Procedures,” below.

Qualification Requirements

The following are the requirements for qualifying responsible proposers. All of these requirements should be met; therefore, they are not listed by any particular order of importance. Any Proposal that the Evaluation Committee finds not to meet these requirements, and cannot be made to meet these requirements, may be determined by the Evaluation Committee not to be responsible and the Proposal rejected. The requirements are as follows:

1. Sufficient financial strength, resources and capability to finance the Work to be performed and to complete the Contract in a satisfactory manner, as measured by the following:
2. Proposer’s financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the proposer is located, and audited by an independent certified public accountant. If the proposal is from a bus dealer, statements from the dealer and manufacturer are to be submitted.

* Proposer’s ability to obtain required insurance with coverage values that meet minimum requirements evidenced by a letter from an underwriter confirming that the proposer can be insured for the required amount.

1. Evidence that the human and physical resources are sufficient to perform the Contract as specified and to ensure delivery of all equipment within the time specified in the Contract, to include the following:

* Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience and equipment to complete the Contract as required and to satisfy any engineering or service problems that may arise during the warranty period.
* Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.
* A spare parts procurement and distribution system sufficient to support equipment maintenance without delays and a service organization with skills, experience and equipment sufficient to perform all warranty and on-site Work.

1. Evidence that proposer is qualified in accordance with the provisions of “Section 8: Quality Assurance.”
2. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability and steps Proposer took to resolve any judgments, liens, Fleet Defects history or warranty claims. Evidence shall be confirmed by client references.

Proposal Evaluation Criteria

The following are the complete criteria, listed by their relative degree of importance, by which Proposals from responsible Proposers shall be evaluated and ranked for the purposes of determining any Competitive Range and to make any selection of any Proposal for a potential award. Any exceptions, conditions, reservations or understandings explicitly, fully and separately stated on Form for Proposal Deviation, which do not cause the Agency to consider a Proposal to be outside the Competitive Range, shall be evaluated according to the respective evaluation criteria and sub-criteria that they affect.

**Pass-Fail Elements**

|  |  |
| --- | --- |
| **Category** | **Scoring Method** |
| Responsiveness requirements (Certificates and forms) | Pass/Fail |
| Vehicle Proposed (Product meets specifications) | Pass/Fail |

**POINT ALLOCATION**

|  |  |  |
| --- | --- | --- |
| **Category** | | **Scoring Method** |
| **Non-Cost Factors (60%)** | |  |
| Proposer Qualifications and Requirements: | |  |
|  | Past Performance information gathered from reference inquiries\* | 10 Points |
|  | Warranty Provisions and Warranty Administration Plan\* | 10 Points |
|  | Customer Service, Parts Support, Service Plan | 15 Points |
|  | Proposer, Manufacturer and Electric Powertrain Modifier Qualifications and Experience | 25 Points |
|  | **Total Non-Cost Factor Points** | **60 Points** |
| **PRICE Factors (40%)** | |  |
|  | Price Sheet- Base Models | 25 Points |
|  | Price Sheet- Optional Features | 15 Points |
|  | **Total Cost Factor Points** | **40 Points** |
| **Total Possible Points** | | **100 Points** |

**\*Provide list of last 5 agency deliveries made of the specific model proposed and all deliveries of the bus model proposed made over the last three years with contact information.**

As noted, pricing will be scored on a basis of 40 points. The proposer’s price score will be calculated in the following manner:

Proposer Price Score = Lowest Price Proposed X Proposer’s Price Points

Proposer's Cost

Under this formula, the proposer with the lowest proposed price for the base model vehicle will receive 25 points. The other proposals will receive a proportionate share of points based on how much higher their proposed price is in relationship to the low proposed price. This same formula will be used to score the pricing for selected optional features.

* 1. Evaluation Procedures

Proposals shall be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient or not be considered for the Competitive Range. The Agency reserves the right to request that a Proposer provide any missing information and make corrections. Proposers are advised that the detailed evaluation forms and procedures shall follow the same Proposal format and organization specified in “Preparation of Proposals.” Therefore, Proposers should pay close attention to and strictly follow all instructions. Submittal of a Proposal shall signify that the Proposer has accepted the whole of the Contract documents. Any such conditions, exceptions, reservations or understandings that do not result in the rejection of the Proposal are subject to evaluation under the criteria set forth in “Proposal Selection Process.”

Evaluations shall be made in strict accordance with all of the evaluation criteria specified in “Proposal Selection Process,” above. The Agency shall choose the Proposal/s that it finds to be most advantageous to the Agency, based upon the evaluation criteria.

* 1. Evaluations of Competitive Proposals

1. Qualification of responsible Proposers. Proposals shall be evaluated to determine the responsibility of proposers. A final determination of a Proposer’s responsibility shall be made upon the basis of initial information submitted in the Proposal, any information submitted upon request by the Agency, information submitted in a BAFO (if required) and information resulting from Agency inquiry of Proposer’s references and its own knowledge of the Proposer.
2. Detailed evaluation of Proposals and determination of Competitive Range. The Agency shall carry out and document its evaluations in accordance with the criteria and procedures set forth in “Proposal Selection Process.” Any Proposal deficiencies that may render a Proposal unacceptable shall be documented. The Agency shall make specific note of questions, issues, concerns and areas requiring clarification by Proposers and to be discussed in any meetings with Proposers that the Agency finds to be within the Competitive Range.

Rankings of the Proposals against the evaluation shall then be made for determining which Proposals are within the Competitive Range, or may reasonably be made to be within the Competitive Range.

1. Proposals not within the Competitive Range. Proposers of any Proposals that have been determined by the Agency as not in the Competitive Range, and that cannot be reasonably made to be within the Competitive Range, shall be notified in accordance with the Agency’s policies.
2. Discussions with Proposers in the Competitive Range. The Proposers whose Proposals are found by the Agency to be within the Competitive Range, or that may be reasonably made to be within the Competitive Range, shall be notified and any questions or requests for clarifications provided to them in writing. Each such Proposer may be invited for an interview and discussions with the Agency to discuss answers to written or oral questions, clarifications and any facet of its Proposal. In the event that interviews and discussions are held, these interviews and discussions may be scored. MBTA reserves the right to accept proposals as submitted without conducting discussions.

No information, financial or otherwise, shall be provided to any Proposer about any of the Proposals from other Proposers, to the extent permitted by applicable law. Proposers shall not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Proposers shall not be told of their rankings among the other Proposers prior to Contract award.

1. Factory and site visits. The Agency reserves the right to conduct factory visits of the Proposer’s facilities and/or the facilities of major sub-suppliers included in the Proposal.
2. Best and final offers. After all interviews, if any, have been completed, the Proposers in the Competitive Range may be afforded the opportunity to amend their Proposals and make their BAFOs. If MBTA decides to request a BAFO, the Request for BAFOs shall include the following:

* Notice that discussions and negotiations are concluded.
* A complete listing of the conditions, exceptions, reservations or understandings that have been approved.
* A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs.
* Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs.
* Notice to Proposers that do not submit a notice of withdrawal or a BAFO that their immediately previous Proposal shall be construed as their BAFO.

Any modification to the initial Proposal made by a Proposer in its BAFO shall be identified in its BAFO. BAFOs shall be evaluated by the Agency according to the same requirements and criteria as the initial Proposals, (“Proposal Selection Process”). The Agency shall make appropriate adjustments to the initial scores for any sub-criteria and criteria that have been affected by any Proposal modifications made by the BAFOs. These final scores and rankings within each criterion shall again be arrayed by the Agency and considered according to the relative degrees of importance of the criteria defined in “Proposal Selection Process.”

The Agency shall then choose the Proposal(s) that it finds to be most advantageous to the Agency, based upon the evaluation criteria. The results of the evaluations and the selection of a Proposal(s) for any award shall be documented. In this instance, the Agency expects to award to multiple Proposers. Subsequent orders shall be placed following the Ordering Procedures outlined in Section 4, Special Provisions.

**The Agency reserves the right to make an award to a Proposer(s) who’s Proposal(s) it judges to be most advantageous to the Agency based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs**.

1. Debriefing. Subsequent to the award, the unsuccessful Proposers shall be notified and may request a debriefing. Proposers shall be debriefed in accordance with Agency policies, including information regarding the shortcomings of their Proposal.
2. Response to Proposals
   1. Single Proposal Response

If only one Proposal is received in response to this RFP and it is found by the Agency to be acceptable, a price or cost analysis, or both, possibly including an audit, may be performed by or for the Agency. The Proposer has agreed to such analysis by submitting a Proposal in response to this RFP.

* 1. Availability of Funds

Orders placed as a result of this procurement are subject to the availability of funding.

* 1. Agency Contract Approval Process

Following completion of the evaluation process, firms being considered for award shall show compliance with the Pre-Award Buy America requirements. **Refusal to provide the required information shall result in the immediate elimination of the specific manufacturer(s) for award consideration.** This required information is to include a copy of the electronic Bill of Materials showing all of the components of the “base vehicle.” The Bill of Materials is to show the component manufacturer name, the cost of each component and whether the item is foreign or meets Buy America requirements for being classified as “domestic”. Following the initial review, MBTA may require Buy America certifications from component suppliers to be provided. In addition, the same information is to be provided for all of the optional features. **Once the Buy America Pre-Award audit is completed, MBTA and/or its reviewers shall return all provided information. Copies of the data shall not be kep**t.

Once compliance with the Buy America requirements is verified, the Agency shall prepare a written recommendation for contract award(s) to the recommended firm(s). This recommendation shall then be presented to the Board of Directors for approval.

* 1. Agency Rights

The Agency reserves the right to cancel the procurement in whole or in part, at its sole discretion, at any time before the Contract is fully executed and approved on behalf of the Agency.

The Agency reserves the right to reject any or all Proposals, to undertake discussions with one or more Proposers, and to accept that Proposal or modified Proposal which, in its judgment, shall be most advantageous to the Agency, considering price and other evaluation criteria. The Agency reserves the right to determine any specific Proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be nonresponsive. The Agency reserves the right to waive any Defects, or minor informalities or irregularities in any Proposal which do not materially affect the Proposal or prejudice other Proposers.

If there is any evidence indicating that two or more proposers are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the Proposals of all such Proposers shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by the Agency.

The Agency may reject a Proposal that includes unacceptable Deviations as provided in Form for Proposal Deviation.

* 1. Execution of Contract

The acceptance of a Proposal for award, if made, shall be evidenced in writing by a notice of award of Contract delivered to those Proposers whose Proposal is accepted. Upon notice of award of the Contract to a Proposer, the Proposer shall commence performance under the Contract by furnishing copies of the certificates of insurance required to be procured by the Contractor pursuant to the Contract documents within thirty (30)calendar days after the date of receipt of the notice of award. Failure to fulfill these requirements within the specified time may be cause for termination of the Contract under “Termination for Default” in Section 3.

1. Conflicts of Interests and Gratuities

Proposers are prohibited from engaging in any practice that may be considered as a conflict of interests under existing Agency policies and/or state law, and to refrain from participating in any gifts, favors or other forms of compensation that may be viewed as a gratuity in accordance with existing policies and laws.

1. Agency-Specific Provisions
   1. Purpose of the Solicitation

The purpose of this solicitation is to establish a multi-vendor contract for the purchase of public transportation vehicles. The requirement has been divided into multiple types of vehicles that shall be competed separately and assembled into a listing of vehicles after award. The selected contractors shall accept purchase orders directly from the users. Each purchase order shall incorporate the base contract and all terms and conditions. The intent is to reduce the cost and effort needed to order these vehicles in order to make the funds and equipment available to increase services available to transit organizations.

* 1. Roles of the Parties for this Solicitation

The Morongo Basin Transit Authority (“MBTA”), a member of the California Association for Coordinated Transportation (“CalACT”), is the lead agency role for this solicitation for Zero Emission Shuttle Vehicles.

The specific roles and obligations of the MBTA and CalACT are described in detail in the Cooperative Purchasing Agreement entered into by the parties. For the purposes of this solicitation, the arrangement entered into by the MBTA and CalACT shall hereinafter be referred to as the “Cooperative.” As a general matter, MBTA staff, consultants, and counsel shall be responsible for the development of RFP solicitation documents, the technical product specifications and the awarding of vehicle contracts on behalf of the Cooperative. After the vehicle contract is awarded, CalACT shall be responsible for providing participating agencies with the ordering instructions and forms required to insure compliant purchasing, solicitation documentation required for the agency’s files, collecting fees, and the general administration of the vehicle contract. Participating Agencies must contact CalACT-MBTA to secure formal letters of assignment prior to execution of any orders.

SECTION 3: GENERAL CONDITIONS

1. Definitions

The following are definitions of special terms used in this document:

Agency:Morongo Basin Transit Authority (MBTA). Any contract modification involving the base contract shall be issued by MBTA. The term Agency shall also refer to any Agency which that places a purchase order under the resulting contract.

Authorized Signer: The person who is executing this Contract on behalf of the Contractor and who is authorized to bind the Contractor.

Best And Final Offer (BAFO):The last Proposal made by a Proposer. If a BAFO is not specifically requested by the Agency, or if the Proposer does not promptly respond to a request for BAFO, then the most recent, current Proposal is the BAFO.

Class 1 Failure (physical safety):A failure that could lead directly to passenger or operator injury and represents a severe crash situation.

Class 2 Failure (road call):A failure resulting in an en route interruption of revenue service. Service is discontinued until the bus is replaced or repaired at the point of failure.

Competitive Range:The range of proposals that are identified as the most highly rated, unless the range is further reduced for purposes of efficiency.

Contract: The Proposal and its acceptance by the Agency as manifested by the Contract documents specified in “Section 10: Contract.”

Contracting Officer: The person who is executing this Contract on behalf of the Agency and who has complete and final authority except as limited herein. For this solicitation, the Contracting Officer prior to Contract award is the authorized representative of MBTA. The Contracting Officer for administration of the contract following Contract award is the authorized representative of CalACT. Each order placed shall also designate a Contracting Officer for the Agency placing the order.

Contractor: The successful Proposer(s) who is awarded a Contract for providing buses and equipment described in the Contract documents.

Cooperative: Term used to describe the relationship between MBTA and CalACT for the establishment of the joint procurement.

Days: Unless otherwise stated, “days” shall mean calendar days.

Defect: Patent or latent malfunction or failure in manufacture, installation or design of any component or subsystem.

Deviation: [Variance](http://www.businessdictionary.com/definition/variance.html) from a requirement or [specification](http://www.businessdictionary.com/definition/specification-spec.html) that does not alter the basis of a [contract](http://www.businessdictionary.com/definition/contract.html) or adversely affects its [performance](http://www.businessdictionary.com/definition/performance.html).

Due Date: The date and time by which Proposals must be received by the Agency as specified in “Section 1: Notice of Request for Proposals.”

Extended Warranty:A warranty available for purchase above the standard warranty.

Fatigue Failure (Corrosion Fatigue): The mechanical degradation of a material under the joint action of corrosion and cyclic loading.

Local Government Purchasing Schedule: An arrangement that a local government entity has established with multiple vendors in which those vendors agree to provide specific property or services in the future at established prices. In this case, the specific property includes accessible transit and paratransit vehicles

Ordering Agency: Term for the agency that shall be purchasing vehicles from the Schedule.

Pass-Through Warranty: A warranty provided by the Contractor but administered directly with the component Supplier.

Proposal: A promise, if accepted, to deliver equipment and services according to the underlying solicitation of the Agency documented using the prescribed form in the solicitation, including any Proposal or BAFO.

Proposer: A legal entity that makes a Proposal. For this solicitation, the Proposer may be a vehicle manufacturer or a dealer representing a vehicle manufacturer.

Related Defect: Damage inflicted on any component or subsystem as a direct result of a separate Defect.

Solicitation: Agency’s request for proposals.

Superior Warranty:A warranty still in effect after all contractually required warranties have expired. The remaining warranty is administered directly between the sub-Supplier and the Agency.

Supplier: Any manufacturer, company or Agency providing units, components or subassemblies for inclusion in the bus that is installed by the Contractor. Supplier items shall require qualification by type and acceptance tests in accordance with requirements defined in “Section 8: Quality Assurance.”

Subcontractor:Any manufacturer, company or Agency providing units, components or subassemblies for inclusion in the bus that is installed by a Subcontractor. Subcontractor items shall require qualification by type and acceptance tests in accordance with requirements defined in “Section 8: Quality Assurance.”

Work:Any and all labor, supervision, services, materials, machinery, equipment, tools, supplies and facilities called for by the Contract and necessary to the completion thereof.

1. Materials and Workmanship

The Contractor shall be responsible for all materials and workmanship in the construction of the bus and all accessories used, whether the same are manufactured by the Contractor or purchased from a Supplier. This provision excludes any equipment leased or supplied by the Agency, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the buses.

1. Conformance with Specifications and Drawings

Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and other Contract documents. Notwithstanding the provision of drawings, technical specifications or other data by the Agency, the Contractor shall have the responsibility of supplying all parts and details required to make the bus complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. Items that are installed by the Agency shall not be the responsibility of the Contractor unless they are included in this Contract.

1. Inspection, Testing and Acceptance
   1. General

The pre-delivery tests and inspections shall be performed at the Contractor’s plant; they shall be performed in accordance with the procedures defined in “Section 8: Quality Assurance”; and they may be witnessed by the resident inspector or agency representative. When a bus passes these tests and inspections, the resident inspector or agency representative, if one is present, shall authorize release of the bus.

Within fifteen (15) calendar days after arrival at the designated point of delivery, the bus shall undergo the Agency tests defined in “Post-Delivery Tests.” If the bus passes these tests or if the Agency does not notify the Contractor of non-acceptance within 15 calendar days after delivery, then acceptance of the bus by the Agency occurs on the 15th day after delivery. If the bus fails these tests, it shall not be accepted until the repair procedures defined in “Repairs after Nonacceptance” have been carried out and the bus retested until it passes. Acceptance occurs earlier if the Agency notifies the Contractor of early acceptance or places the bus in revenue service. .

* 1. Risk of Loss

The Agency shall assume risk of loss of the bus on delivery, as defined in “Bus Delivery.” Prior to this delivery, the Contractor shall have risk of loss of the bus, including any damages sustained during the delivery regardless of the status of title or any payments related to the bus. If the vehicle is driven to the designated point of delivery, drivers shall keep a maintenance log en route, and it shall be delivered to the Agency with the bus. If the bus is released back to the Contractor for any reason, the Contractor has the risk of loss upon such release.

1. Title and Warranty of Title

Adequate documents for registering the bus in California shall be provided to the Contractor not less than ten (10) business days before delivery to the Agency. Sales and Use taxes to be paid by Contractor and reflected in its quotes and invoices to the ordering agencies. Contractor understands that ADA equipment installed on the vehicle is tax exempt and will reflect this in its quotes and invoices to the ordering agencies. Upon acceptance of each bus, the Contractor registers the vehicle and warrants that the title shall pass to the Agency free and clear of all encumbrances. See Appendix "D" for additional information on ADA equipment that is exempt for Sales or Use Tax.  Upon acceptance of each bus, the Contractor registers the vehicle and warrants that the title shall pass to the Agency free and clear of all encumbrances.

1. Intellectual Property Warranty

The Agency shall advise the Contractor of any impending patent suit related to this Contract against the Agency and provide all information available. The Contractor shall defend any suit or proceeding brought against the Agency based on a claim that any equipment, or any part thereof, furnished under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the Agency. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for the Agency the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

The Contractor’s obligations under this section are discharged and the Agency shall hold the Contractor harmless with respect to the equipment or part if it was specified by the Agency and all requests for substitutes were rejected, and the Contractor advised the Agency under “Questions, Clarifications and Omissions” of a potential infringement, in which case the Contractor shall be held harmless.

1. Data Rights
   1. Proprietary Rights/Rights in Data

The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. It includes the proprietary rights of the following:

* Shop drawings and working drawings
* Technical data including manuals or instruction materials, computer or microprocessor software
* Patented materials, equipment, devices or processes
* License requirements

The Agency shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow the Agency to utilize such information in order to maintain the vehicles. In the event that the Contractor no longer provides the information the Agency has the right to reverse engineer patented parts and software.

The Agency reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data for its purposes: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

* 1. Access to Onboard Operational Data

The Agency grants to the Contractor the right to inspect, examine, download, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable Contractor to perform reliability maintenance analysis, corrective action and/or other engineering type Work for the bus. This right expressly excludes access to information or data collected on any equipment not provided and installed by the Contractor.

1. Changes
   1. Contractor Changes

Any proposed change in this Contract shall be submitted to the Agency for its prior approval. Oral change orders are not permitted. No change in this Contract shall be made without the prior written approval of the Contracting Officer. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

* 1. Agency Changes

The Agency may obtain changes to the Contract by notifying the Contractor in writing. As soon as reasonably possible but no later than thirty (30) calendar days after receipt of the written change order to modify the Contract, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the Work to be performed. This Proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time, a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with “Disputes,” below. Regardless of any disputes, the Contractor shall proceed with the Work ordered.

1. Legal Clauses
   1. Indemnification

GC 9.1.1The Contractor shall, to the extent permitted by law: (1) protect, indemnify and save the Agency and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses and suits or actions or proceedings, including reasonable expenses, costs and attorneys’ fees incurred by the Agency and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of or resulting from the intentional misconduct or negligent acts, errors or omissions of the Contractor in the performance of the Contract, including intentional misconduct, negligent acts, errors or omissions of its officers, employees, servants, agents, Subcontractors and Suppliers; and (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the Agency and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of such claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The Agency shall not make any admission that might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The Agency shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The Agency shall have the right to be represented therein by advisory council of its own selection at its own expense.

GC 9.1.2 The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, death or damages are caused solely by the negligent acts, errors or omissions of the Agency, its officers, employees, agents or consultants, including, without limitation, negligence in: (1) the preparation of the Contract documents, or (2) the giving of directions or instructions with respect to the requirements of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where the injury, death or damages are caused, in whole or in part, by the negligence of any third-party operator, not including an assignee or Subcontractor of the Contractor, subject to the right of contribution. In case of joint or concurrent negligence of the parties giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

* 1. Suspension of Work
     1. The Agency may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.
     2. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from the Agency.
     3. The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.
  2. Excusable Delays/Force Majeure
     1. If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Agency or by a cause as described below, then the time for completion and/or affected delivery date(s) shall be extended by the Agency subject to the following cumulative conditions:

1. The cause of the delay arises after the Notice of Award and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award. Such cause may also include force majeure events such as any event or circumstance beyond the reasonable control of the Contractor, including but not limited to acts of God; earthquake, flood and any other natural disaster; civil disturbance, strikes and labor disputes; fires and explosions; war and other hostilities; embargo; or failure of third parties, including Suppliers or Subcontractors, to perform their obligations to the Contractor;
2. The Contractor demonstrates that the completion of the Work and/or any affected deliveries shall be actually and necessarily delayed;
3. The Contractor has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions, efforts and measures, whether before or after the occurrence of the cause of delay; and
4. The Contractor makes written request and provides other information to the Agency as described in GC 9.3.4 below.

A delay in meeting all of the conditions of this section shall be deemed an excusable delay. Any concurrent delay that does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

* + 1. None of the above shall relieve the Contractor of any liability for the payment of any liquidated damages owing from a failure to complete the Work by the time for completion that the Contractor is required to pay pursuant to “Liquidated Damages for Late Delivery of the Bus” for delays occurring prior to, or subsequent to the occurrence of an excusable delay.
    2. The Agency reserves the right to rescind or shorten any extension previously granted, if subsequently the Agency determines that any information provided by Contractor in support of a request for an extension of time was erroneous; provided, however, that such information or facts, if known, would have resulted in a denial of the request for an excusable delay. Notwithstanding the above, the Agency shall not rescind or shorten any extension previously granted if the Contractor acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the Contractor.
    3. No extension or adjustment of time shall be granted unless: (1) written notice of the delay is filed with the Agency within fourteen (14) calendar days after the commencement of the delay and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with the Agency within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. The Agency shall make its determination within thirty (30) calendar days after receipt of the application.
  1. Termination
     1. Termination for Convenience

The performance of Work under this Contract may be terminated by the Agency in accordance with this clause in whole, or from time to time in part, whenever the contracting officer shall determine that such termination is in the best interest of the Agency. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

After receipt of a notice of termination, and except as otherwise directed by the Contracting Officer, the Contractor shall do the following:

* Stop Work under the Contract on the date and to the extent specified in the notice of termination.
* Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.
* Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; assign to the Agency in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
* Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he or she may require, which approval or ratification shall be final for all the purposes of this clause.
* Transfer title to the Agency and deliver in the manner, at the times and to the extent, if any, directed by the Contracting Officer the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Agency.
* Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the Contracting Officer, and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Agency to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct.
* Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
* Take such action as may be necessary, or as the Contracting Officer may direct, for the protection or preservation of the property related to this Contract that is in the possession of the Contractor and in which the Agency has or may acquire an 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 Agency to be paid the Contractor. Settlement of claims by the Contractor under this termination for convenience clause shall be in accordance with the provisions set forth in Part 49 of the Federal Acquisition Regulations (48 CFR 49) except that wherever the word “Government” appears, it shall be deleted and the word “Agency” shall be substituted in lieu thereof.

* + 1. Termination for Default

The Agency may, by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other material provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) business days, or such longer period as the Contracting Officer may authorize in writing, after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, the Agency may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the Agency for any excess costs for such similar supplies or services, and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of a cause beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources and in sufficient time to permit the Contractor to meet the required delivery schedule.

Payment for completed supplies delivered to and accepted by the Agency shall be at the Contract price. The Agency may withhold from amounts otherwise due the Contractor for such completed supplies such sum as the Contracting Officer determines to be necessary to protect the Agency against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of the Agency.

* 1. Compliance with Laws and Regulations

Contractor shall at all times comply with all applicable laws, regulations, policies, procedures and directives (together, the “Law”), including without limitation, federal and state regulations, policies, procedures and directives, including those listed directly or by reference in the agreement between the Agency and agencies that fund any part of this Contract, 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.

* 1. Changes of Law

Changes of Law that become effective after the Proposal Due Date may result in cost changes. If a such cost changes are material and significant, either upward or downward, it may be negotiated at the sole discretion of the MBTA between the Agency and the Contractor and the final Contract price shall be adjusted upwards or downwards to reflect such changes in Law. Such price adjustment may be audited, where required.

* 1. Governing Law and Choice of Forum

This Contract shall be governed by the laws of State of California without regard to conflict of law rules. The Contractor consents to the exclusive jurisdiction of the identified State and federal courts exercising jurisdiction over the physical location where the purchasing location is headquartered.

* 1. Disputes

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract that is not disposed of by agreement shall be decided in accordance with the following steps. However, by mutual agreement the matter may be taken immediately to any higher step in the dispute resolution process, or mutually agreed to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration) or litigation. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer’s or Chief Executive Officer’s decision, as the case may be.

1. Notice of dispute. All disputes shall be initiated through a written dispute notice submitted by either party to the other party within 10 (ten) calendar days of the determination of the dispute.

2. Negotiation between contracting officers. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between the designated Contracting Officer of the Agency ordering the vehicles and the Contractor’s executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business as provided in (1) above. Within 14 (fourteen) calendar days after delivery of the dispute notice, the receiving party shall submit to the other party a written response. The dispute notice and written response shall include: (a) a statement of the party’s position and a summary of the arguments supporting that position, (b) any evidence supporting the party’s position and (c) the name of the executive who shall represent that party and of any others who shall accompany the executive in negotiations. Within 28 (twenty-eight) calendar days after delivery of the dispute notice, the Contracting Officer of both parties shall meet at a mutually acceptable time and place, and thereafter as they reasonably deem necessary to attempt to resolve the dispute. All reasonable requests for information by one party to the other shall be honored.

If the matter has not been resolved by these people within 42 (forty-two) calendar days of the dispute notice, the dispute may be referred to more senior executives of both parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute.

* 1. Maintenance of Records; Access by Agency; Right to Audit Records

In accordance with 49 CFR § 18.36(i), 49 CFR § 19.48(d), and 49 USC § 5325(a), the Contractor agrees to provide the Agency or any cognizant State authority or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts and transcriptions and (2) when conducting an audit and inspection.

* + - 1. In the event of a sole source Contract, single Proposal, single responsive Proposal, or competitive negotiated procurement, the Contractor shall maintain and the Contracting Officer, the State (if applicable) or the representatives thereof shall have the right to examine all books, records, documents and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract shall be made available for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.
      2. For Contract modifications or change orders the Contracting Officer, the State, if applicable*,* or their representatives shall have the right to examine all books, records, documents and other cost and pricing data related to a Contract modification, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract modification or change order shall be made available for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract modification or change order for the purpose of conducting a cost analysis. If an examination made after execution of the Contract modification or change order reveals inaccurate, incomplete or out-of-date data, the Contracting Officer may renegotiate the Contract modification or change order price adjustment, and the Agency shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.

The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract documents.

* 1. Confidential Information

Access to government records is governed by the statutes of the State of California. Except as otherwise required by the statutes of the State of California, the Agency shall exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted or disclosed during the Contract period. Any such proprietary information, trade secrets or confidential commercial and financial information that a Contractor believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information shall not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

Upon a request for records from a third party regarding the Contract, the Agency shall notify the Contractor in writing. The Contractor must respond within twenty (20) days with the identification of any and all “proprietary, trade secret or confidential commercial or financial” information, and the Contractor shall indemnify the Agency’s defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The Agency shall employ sound business practices no less diligent than those used for the Agency’s own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Contractor pursuant to the Contract that contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the statutes of the State of California against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by the Agency in its sole discretion, bears appropriate notices relating to its confidential character.

During the performance of the Work under the Contract, it may be necessary for either party (the “Discloser”) to make confidential information available to the other party (the “Recipient”). The Recipient agrees to use all such information solely for the performance of the Work under the Contract and to hold all such information in confidence and not to disclose same to any third party without the prior written consent of the Discloser. Likewise, the Recipient agrees that all information developed in connection with the Work under the Contract shall be used solely for the performance of the Work under the Contract, and shall be held in confidence and not disclosed to any third party without the prior written consent of the Discloser.

This Confidentiality section shall survive the termination or expiration of the Contract.

* 1. Conflicts of Interest, Gratuities

No member, officer, or employee of the Agency or of a local public body during his or her tenure, or one year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

* 1. General Nondiscrimination Clause

In connection with the performance of Work provided for under this Contract, the Contractor agrees that it shall not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of people in any manner prohibited by federal, state or local laws.

* 1. Amendment and Waiver
     1. Amendment

Any modification or amendment of any provisions of any of the Contract documents shall be effective only if in writing, signed by authorized representatives of both the Agency and Contractor, and specifically referencing this Contract.

* + 1. Waiver

In the event that either party elects to waive its remedies for any breach by the other party of any covenant, term or condition of this Contract, such waiver shall not limit the waiving party’s remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

* 1. Remedies not Exclusive

The rights and remedies of the Agency provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

* 1. Counterparts

This Contract may be executed in any number of counterparts. All such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original thereof.

* 1. Severability

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and valid under applicable law. However, if any provision, or part of any provision, should be prohibited or invalid under applicable law, such provision, or part of such provision, shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Contract.

* 1. Third-Party Beneficiaries

No provisions of the Contract shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract.

* 1. Assignment of Contract

Neither party shall assign or subcontract its rights nor obligations under the Contract without prior written permission of the other party, and no such assignment or subcontract shall be effective until approved in writing by the other party. Contractor accepts that the right to Purchase may be reassigned by the original agency identified in the Joint Procurement to unlisted parties.

* 1. Independent Parties

The Contractor is an independent contractor with respect to the performance of all Work hereunder, retaining control over the detail of its own operations, and the Contractor shall not be considered the agent, employee, partner, fiduciary or trustee of the Agency.

* 1. Survival

The following sections shall survive the nominal expiration or discharge of other Contract obligations, and the Agency may obtain any remedy under law, Contract or equity to enforce the obligations of the Contractor that survive the manufacturing, warranty and final payment periods:

* “Intellectual Property Warranty”
* “Data Rights”
* “Indemnification”
* “Governing Law and Choice of Forum”
* “Disputes”
* “Confidential Information”
* “Parts Availability Guarantee”
* “Access to Records”
* “Training”

1. Agency-Specific Provisions – Not Used

SECTION 4: SPECIAL PROVISIONS

1. Authorization to Use the Local Government Purchasing Schedule

The use of the Local Government Purchasing Schedule shall be restricted to members in good standing of CalACT. These members include publicly funded transit agencies, city transit systems, other governmental agencies or non-profit organizations performing governmental services. **Acquisitions using Federal Transit Administration (FTA) funding are excluded from participation under this contract.**

1. Assignability

MBTA reserves the right to assign the ability to use the contract to any other public agencies or non-profits performing governmental functions. A letter of Assignment shall be issued by either MBTA or by CalACT acting for MBTA under the terms of their Cooperative Purchasing Contract. MBTA reserves the right to withhold assignments at its unilateral discretion. Each Assignment shall be valid for a one-year period.

1. Period of Performance

The initial period of performance shall be two (2) years. MBTA shall have the right to extend the period of performance for three (3) one-year options. **The three (3) one-year option periods are a unilateral right that shall not be refused by the Contractor**. Subject to the Agency’s right to order modifications, the Option Vehicles shall have the same specifications as the vehicles purchased under the initial Contract. The Agency may exercise the Options by written notice to the Contractor (“Notice of Exercise of Option”) at least ninety (90) days prior to the expiration of the initial period of performance.

In the event that these option is exercised, the pricing for each option period shall be established per the provisions of SP 5.3, Price Validity for Option Periods.

1. Procurement Fee

A procurement fee of 1.5% of total pre-tax price per vehicle, up to a maximum of $20,000 per transaction shall be paid by the Contractor(s) to the Cooperative each month based on activity on this contract. This fee shall be shown as a separate line item on the invoice to the Agency ordering the vehicles. It shall be payable to the Cooperative within thirty (30) days of delivery to agencies. Contractors shall also supply monthly activity reports showing all orders and payments to the Cooperative. This activity may be audited. The Cooperative may charge interest for late payment if payment is delayed more than ten (10) days after the payment Due Date set forth above. Interest will be charged at a rate of 10% of the procurement fee that is due. MBTA reserves the right to unilaterally revise these fees at any time by giving written notice to the contractor.

Failure to report shall also be seen as failure to perform the contract and may lead to corrective action up to and including Termination for Default.

1. Pricing
   1. Price Validity for the Initial Contract Term

Contractor agrees to sell vehicle(s), including proposed optional equipment, at the same price and under the terms and conditions of this Agreement from the time of contract award to the expiration of the initial contract term. By submittal and acceptance of its pricing, the Contractor also agrees to provide any of the listed optional features at the listed pricing for the initial two-year contract term.

* 1. Vehicle and Optional Feature Pricing for Option Periods

Subject to the provisions of SP 5.4 Price Adjustments, the price of the vehicles and of the optional features for each option period shall be the unit price established in the initial contract adjusted by multiplying the Base Order Price by the following fraction:

|  |
| --- |
| Preliminary Index Number on Month Prior to Notice of Exercise of Option |
| Index Number on Effective Date of the Contract |

The Index shall be the Producer Price Index for Truck and Bus Bodies, Series No. 1413 published by the United States Department of Labor or if such Index is no longer in use, then such replacement which is most comparable to the Index as may be designated by the Bureau of Labor Statistics, or as agreed by the parties.

* 1. Prohibitions

Contractors are expressly prohibited from offering any rebates, parts credits and any other price discounts following contract award.

* 1. Price Adjustments

With the exception of price changes permitted under SP 5.2, Section GC 9.6, Changes of Law, is the only provision that provides for price adjustments.

1. Ordering Procedures

Agencies utilizing the contract resulting from this solicitation shall follow the following ordering procedures:

1. The Agency shall develop a requirements list showing all optional features, if any, that are required. In addition, the Agency shall identify any other evaluation factors that shall be considered in determining which vehicle is to be ordered. (Factors that may also be considered include past performance, special features of the specific vehicle required for effective program performance, warranty considerations, if any, maintenance or inventory considerations, if any and proposed delivery schedule.)
2. The Agency shall issue a request for delivery schedule to Contractors. The RFQ shall list any other additional information that is required. It shall also note how information shall be evaluated and the deadline for submittal.
3. Following receipt of the information, the Agency shall evaluate the submittals according to the evaluation criteria and select the quote that represents the offer that is most advantageous to the Agency when all factors are evaluated. The vehicle selected for purchase and criteria to be used in the determination will be at the discretion of the Purchasing Agency.
4. The recommended firm shall receive a written Order Confirmation form from the Ordering Agency. This form shall indicate:
   1. Itemized list of all vehicles, parts, etc. being ordered and prices
   2. Designated delivery point
   3. Delivery due date.
5. The Order Confirmation form does not replace any other required document such as Purchase Orders that may be issued by the agency.
6. All eligible orders must provide a quote from the selected Dealer or Manufacturer that provides at a minimum the following information:

Vehicle Type-provide description that includes make, model, vehicle class, propulsion type and capacity

Full and legal Ordering Agency Name as it will appear on the Assignment

Contact at Ordering Agency (including email, title, mailing address, phone number). Provide additional name if your contact is not the person that will receive the Assignment Letter.

Sales person

Quantity ordered-quote is to reflect entire and complete bus order, and is not per bus

Price of all options

1. **Ordering agency to initiate the transaction in the Cooperative’s online ordering program.** The agency and Contractor to update all information and changes as needed. Awarded contractors to be briefed by Cooperative staff on use of this program prior to beginning sales activity on the contract. A Cooperative representative will issue a Letter of Assignment only after all the aforementioned steps have taken place. Orders directly assigned by the MBTA may not be initiated using the ordering system.

ADA eligible Items identified for sales tax exemption

Published and Non Published Options are to be listed separately

Total Price of Bus subject to the procurement fee

Document Fee

Taxes

Quotes are to be supplied with any applicable credits (ex. HVIP) applied

Procurement Fee

Delivery fee as quoted on Price Worksheet with expected delivery date-**quotes issued without a delivery date are not valid.**

Date of Order

Prices entered in the Price Worksheet should be exclusive of applicable credits available under state or federal law (e.g., California’s Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP)) and a brief summary of currently available credits noted separately on the Price Worksheet.  The Contractor shall promptly notify the Agency when any such credit is no longer available and when any such credit subsequently becomes available.  All such credits will inure to the benefit of purchasing agencies.  Individual quotes provided to purchasing agencies must clearly and unambiguously disclose all applicable and available such credits.

Optional items not listed and proposed on the original price worksheet may be proposed at a price no more than 10% over contractor cost from the optional accessory supplier. Pricing is subject to audit. No options deemed to be cardinal changes to the scope of work will be permitted. Approval of the unlisted options will be reviewed and are to be accepted at the sole discretion of the MBTA or it’s duly authorized representatives and the Purchasing Agency.

All quotes from the contractor must be written using the same format and approved by the MBTA or it’s representatives prior to first order. Any changes to the order by the buyer or seller after receipt need to be sent to the Cooperative. All buses ordered must be compliance with contract including but not limited to the buyer being a current member of CalACT unless otherwise authorized by MBTA in writing. Questions about buyer eligibility to purchase from the contract need to be sent to the Cooperative for verification. Any change orders made to the initial purchase order are to be communicated as soon as possible to the Cooperative.

1. Inspection, Testing, Acceptance and Repairs
   1. First Article/Facility Inspection

At the sole election of MBTA, the Agency may conduct an on-site inspection of the first vehicle produced to confirm compliance with the specification and to validate the Post-Delivery Buy America and any other audit requirements. The first production bus shall serve as the “First Article” vehicle and standard for the units that follow as ordered. This shall not relieve the Contractor and manufacturer from an obligation to manufacture all units in compliance with all specifications.

At least thirty (30) days prior to completion of the Facility/First Article bus, the Contractor is to notify the MBTA in writing. The First Article bus is to be available for inspection either at the point of delivery or at the manufacturing facility.  **Failure to Notify the Cooperative may be determined to be a Breach of Contract which could lead to Termination.  In addition, the lack of compliance may result in a determination of Non-Responsibility which could prohibit future contract awards.** If the MBTA elects to conduct an inspection to be held at the manufacturing facility prior to award, the Contractor shall pay travel expenses and $50 per day per diem for one (1) Cooperative representative. Additionally, the Contractor may be required to pay a flat rate up to a total of $2000 per vehicle for one independent inspection consulting per vehicle to be invoiced by the Cooperative. Parties that are to be present include representatives from the successful manufacturer, the Contractor if proposed by a dealer and representative(s) from the MBTA.

* 1. Pre-Delivery Tests

The Contractor’s or manufacturer’s pre‑delivery tests and inspections of all Vehicles shall be performed at or near the manufacturing plant; they shall be performed in accordance with the procedures defined in Quality Assurance Provisions, and they may be witnessed by the Resident Inspector, if one is assigned to a specific order. The records of this testing shall be provided to the ordering agency in accordance with the Quality Assurance Provisions.

* 1. Service Prior to Delivery

Prior to delivery, each vehicle shall be inspected and serviced by the Contractor or by an authorized dealer of the manufacturer in a service shop located near the Ordering Agency. The service shall include not less than the following:

1. Check and ensure battery charge levels are at an acceptable range.
2. Complete wash and detail of the vehicle and removal of all unnecessary dealer stickers prior to delivery and inspection.
3. A four-wheel alignment at final point of inspection. Wheel alignment shall take place after delivery to the Contractor's location. Documentation of alignment settings for camber, caster, and toe-in settings shall be furnished for the final inspection, and must accompany delivery documentation to Ordering Agency***.***
4. Full charge at the Contractors location.
5. Documentation of the alignment of headlights shall be provided to the Ordering Agency at delivery***.***
6. Check to insure proper operation of all accessories, gauges, lights, mechanical, and hydraulic features. Particular attention shall be given to door alignment, lift operation, weather-stripping, hardware, paint condition, and labeling of the cooling system.
7. Copy of the Contractor’s pre-delivery inspection and all subsequent inspections by Contractor's inspectors shall be provided to the Ordering Agency upon delivery.
8. A certified weight certificate showing the “as built” weight of the vehicle shall be provided with each vehicle at the time of delivery. The weight certificate shall be included with the bus and available for review at time of inspection.
   1. Delivery Coordination and Pricing of Delivery

All vehicle deliveries shall be coordinated with the ordering agency. The Contractor shall contact the ordering agency to agree upon a delivery schedule at least three (3) working days prior to delivery. Delivery shall be made during normal working hours. Delivery terms are FOB Destination to be specified by the ordering agency to their place of business. For orders placed by other ordering agencies, the delivery charges shall be based on the delivery cost per zone as established in the price worksheet.

* 1. Delivery Inspection, Post-Delivery Tests and Acceptance

Upon delivery of the Vehicle at a point of delivery, the Agency shall take possession of the Vehicle and shall perform the inspections and tests. Each bus shall be inspected and road tested per Appendix B, Visual Inspection and Road Test Forms or Purchasing Agency equivalent. For vehicles funded by or through Caltrans, each bus may be inspected using Appendix C, Caltrans Vehicle Inspection Report. If the Vehicle passes these inspections and tests, the Agency shall accept the Vehicle no later than the fifteenth day after Contractor delivers the Vehicle to the Agency. The Agency may accept a Vehicle earlier upon Notice of early Acceptance to the Contractor. If the Agency has not issued a Notice of Acceptance, the Agency shall be deemed to have accepted a Vehicle on the date it places the Vehicle into revenue service.

Vehicles that fail to pass the post-delivery tests are subject to non-acceptance. The Agency shall record details of all Defects on the appropriate test forms and shall notify the Contractor of acceptance or non-acceptance of each bus after completion of the tests. The Defects detected during these tests shall be repaired according to procedures defined in “Repairs after Non-Acceptance.”

* 1. Documentation and Deliverables Per Bus Order

The Technical Specification identifies all technical deliverables that must be provided with each bus order. In addition to those items, the Contractor shall provide deliver the following documentation and deliverables with the bus (es).

* Warranty papers – forms, policy, procedures

The Contractor also shall exert its best efforts to keep maintenance manuals, operator manuals and parts books up to date for a period of five (5) years. The supplied manuals shall incorporate all equipment ordered on the buses covered by this procurement. In instances where copyright restrictions or other considerations prevent the Contractor from incorporating major components information into the bus parts and service manuals, separate manual sets as published by the subcomponent Supplier shall be provided.

* 1. Repairs after Non-Acceptance

The Contractor, or its designated representative, shall perform the repairs after non-acceptance.

1. Orientation with Delivery

The Contractor shall provide a vehicle orientation with each vehicle delivered to an Agency. If an agency orders more than one (1) vehicle of identical specifications, the orientations shall be provided on the first vehicle delivered. The orientation shall be conducted by the Contractor for the maintenance and operations supervisory and training personnel. The orientation shall include but not be limited to:

* Powertrain operation and maintenance.
* Function of all controls on the vehicle.
* Function of all controls on the driver control panel
* Location and function of controls on all add-on equipment, such as the A/C, etc.
* Location and identification of all visible and audible alarms.
* Location and identification of tire pressure ID plate
* Location of batteries and how to service the batteries if applicable.
* Information on servicing and maintaining the vehicle including identification of any hazardous conditions.

1. Registration of Vehicles

The Contractor shall register all vehicles. A certification of compliance for vehicle emissions must be supplied at the time of delivery of each vehicle. Any additional requirements involving vehicle registration such as listing of lien holders shall be provided by the ordering Agency and included in the Order Confirmation form. The Contractor warrants that the title shall pass to the Agency free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character following the Agency’s Acceptance of each bus.

1. Payment

All payments shall be made as provided herein, less any additional amount withheld as provided below and less any amounts for liquidated damages in accordance with “Liquidated Damages for Late Delivery of the Bus.”

The Agency shall make payments for buses at the unit prices itemized in the price worksheet offered by firm within thirty (30) calendar days after the delivery and acceptance of each bus and receipt of a proper invoice.

The Agency shall make payments for spare parts and/or equipment at the unit prices itemized in the price worksheet offered by firm within thirty (30) calendar days after the delivery and acceptance of said spare parts and/or equipment and receipt of a proper invoice.

The Agency shall make a final payment for all withholding within thirty (30) calendar days of receipt of a final proper invoice and the following:

1. Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract, excluding training.
2. Contractor provision of any certifications as required by law and/or regulations.
3. Completion of post-delivery audits required under the Contract.
   1. Invoices

Contractor shall submit invoices for all Vehicles, Spare Parts, and all equipment and other items purchased under this Contract to the Agency thirty (30) calendar days prior to each delivery. Payment shall be within 30 days after Acceptance of each item. Proforma invoices shall be acceptable.

* 1. Payment of Taxes

Unless otherwise provided in this Contract, the Contractor shall pay all federal, state and local taxes, and duties applicable to and assessable against any Work, goods, services, processes and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business and special taxes. The Contractor is responsible for ascertaining and paying the taxes when due. The total Contract price shall include compensation for all taxes the Contractor is required to pay by laws in effect on the Proposal Due Date. The Contractor shall maintain auditable records, subject to the Agency reviews, confirming that tax payments are current at all times. Each invoice for vehicles shall specifically indicate the tax exemption for handicapped equipment (California Revenue and Taxation Code Section 6394.4).

1. Delivery Schedule

The Contractor shall deliver all buses on or before the delivery date contained in the Order Confirmation issued by each ordering agency. The Order Confirmation shall also indicate the point of delivery as well as days and hours of delivery.

1. Liquidated Damages for Late Delivery of the Bus

It is mutually understood and agreed by and between the parties to the Contract that time is of the essence with respect to the completion of the Work and that in case of any failure on the part of the Contractor to deliver the buses within the time specified in “Delivery Schedule,” except for any excusable delays as provided in “Excusable Delays/Force Majeure” or any extension thereof, the Agency shall be damaged thereby. The amount of said damages, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages due to the Agency shall be fixed at $50 per business day.

The Contractor hereby agrees to pay the aforementioned amounts as fixed, agreed and liquidated damages, and not by way of penalty, to the Agency and further authorizes the Agency to deduct the amount of the damages from money due the Contractor under the Contract, computed as aforesaid. If the money due the Contractor is insufficient or no money is due the Contractor, then the Contractor shall pay the Agency the difference or the entire amount, whichever may be the case, within thirty (30) days after receipt of a written demand by the Contracting Officer.

The payment of aforesaid fixed, agreed and liquidated damages shall be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by the Agency arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

1. Service and Parts
   1. Contractor Service and Parts Support/Service Plan

The Contractor shall state on the form the location/s of the nearest distribution center, which shall furnish a complete supply of parts and components for the repair and maintenance of the buses to be supplied. The Contractor also shall state in its Proposal its policy on transportation charges for parts other than those covered by warranty. The Contractor must identify in its proposal that it has the resources and experience to service a contract of this scale. Physical service centers with the proximity and the technical capacity to serve the Cooperative’s statewide participants are to be identified. Alternatively, if a proposer intends to utilize a subcontractor to provide service and warranty the proposed subcontractor must be identified in the Proposal. A letter documenting the manufacturer’s approval and authorization of the proposed service provider to perform service and warranty repairs for this contract, along with a letter from the subcontract service provider agreeing to perform the proposed service and warranty requirements, must be submitted with the Proposal. A **Written Service Plan** that identifies the representatives responsible for assisting the Agency and fully describes the Contractor’s plan to address the service and support requirements of this procurement is required and will be delivered with the proposal. The MBTA reserves the right to evaluate and approve the subcontractor’s technical capacity to adequately serve a contract of the size and scope anticipated for this procurement.

* 1. Parts Availability Guarantee

The Contractor hereby guarantees to provide, within reasonable periods of time, the spare parts, software and all equipment necessary to maintain and repair the buses supplied under this Contract for a period of at least twelve (12) years after the date of acceptance. Parts shall be interchangeable with the original equipment and shall be manufactured in accordance with the quality assurance provisions of this Contract. Prices shall not exceed the Contractor’s then-current published catalog prices.

Where the parts ordered by the Agency are not received within two working days of the agreed-upon time and date and a bus procured under this Contract is out of service due to the lack of said ordered parts, then the Contractor shall provide the Agency, within eight (8) hours of the Agency’s verbal or written request, the original Suppliers’ and/or manufacturers’ parts numbers, company names, addresses, telephone numbers and contact persons’ names for all of the specific parts not received by the Agency.

Where the Contractor fails to honor this parts guarantee or parts ordered by the Agency are not received within thirty (30) days of the agreed-upon delivery date, then the Contractor shall provide to Agency, within seven (7) days of the Agency’s verbal or written request, the design and manufacturing documentation for those parts manufactured by the Contractor and the original Suppliers’ and/or manufacturers’ parts numbers, company names, addresses, telephone numbers and contact persons’ names for all of the specific parts not received by the Agency. The Contractor’s design and manufacturing documentation provided to the Agency shall be for its sole use in regard to the buses procured under this Contract and for no other purpose.

1. Federal Motor Vehicle Safety Standards (FMVSS)

The Contractor shall submit either a manufacturer’s FMVSS self-certification that the vehicle complies with relevant FMVSS or a manufacturer’s certified statement that the contracted buses shall not be subject to FMVSS regulations. One copy of the statement shall be provided to each Agency with the delivery of the buses.

1. Motor Vehicle Pollution Requirements

The Contractor shall furnish to each Agency a certification in writing with each Vehicle delivered that:

* Vehicles shall meet Federal and California pollution requirements.
* The horsepower of the Vehicle is adequate for the speed, range, and terrain in which it shall be required to operate and meet the demands of all auxiliary power equipment.

1. Insurance

The Agency recognizes that the Contractor may be a dealer whose role is warranty and service of the vehicle or the manufacturer of the vehicles. In either case, the Contractor shall maintain in effect during the term of this Contract, including any warranty period, at its own expense, at least the following coverage and limits of insurance:

* Statutory Workers Compensation and Employers Liability insurance and/or qualified self-insurance program covering Supplier’s employees while on Agency property.
* Commercial General Liability Insurance:
* Bodily Injury and Property Damage, including Contractual Liability covering the indemnification contained herein, $1,000,000 combined single limits per occurrence, $5,000,000 aggregate, where applicable.
* Product liability: $1,000,000 per occurrence, for a period of five (5) years after acceptance of the last bus delivered under this Contract (Products Liability coverage may be effected through one or more excess liability policies).
* Automobile Liability Insurance: Bodily Injury and Property Damage, $1,000,000 combined single limits per occurrence.

In addition, the vehicle manufacturer whose role is to provide the vehicle shall maintain in effect during the term of this Contract, including any warranty period, at its own expense, at least the following coverage and limits of insurance:

* Commercial General Liability Insurance:
* Bodily Injury and Property Damage, including Contractual Liability covering the indemnification contained herein, $1,000,000 combined single limits per occurrence, $5,000,000 aggregate, where applicable.
* Product liability: $1,000,000 per occurrence, for a period of five (5) years after acceptance of the last bus delivered under this Contract (Products Liability coverage may be effected through one or more excess liability policies).

Contractor shall deliver to the Agency, within thirty (30) days after receiving Notice of Award of this Contract, evidence of the above. Prior to the expiration of any insurance during the time required, the Supplier shall furnish evidence of renewal to the Agency’s Contract Administrator.

1. Buy America Post-Delivery Audit

At the Purchasing Agency’s discretion, prior to delivery of the first vehicle, the Contractor shall provide documentation or access to documentation required to evidence compliance with the Buy America Post-Delivery audit requirements. The documentation shall be provided in the same format as was submitted for the Pre-Award Buy America audit. The Agency shall not retain a copy of any audit documentation that is provided.

Contractor acknowledges and agrees that it will comply with MBTA’s Buy America requirements established for this Contract. Contractor acknowledges and agrees that, for purposes of this Contract, 49 CFR Part 661 (Buy America Requirements) and 49 CFR Part 663 (Pre-Award and Post-Delivery Audits) (collectively, the Federal Buy America Regulations) shall apply to this Contract; provided, however, the terms “Federal Transit Administration” and “FTA” in the Federal Buy America Regulations shall mean Agency. The term “Administrator” in the Federal Buy America Regulations shall mean the Contracting Officer. The terms “Grantee” and “Recipient” in the Federal Buy America Regulations shall mean MBTA. Notwithstanding anything to the contrary contained in this Contract or the Federal Buy America Regulations, for purposes of this Contract, Contractor must verify that vehicles will contain a minimum of seventy percent (70%) domestic content by cost, and final assembly of the vehicles will take place in the United States. MBTA’s Buy America Program will be conducted by Agency personnel or contracted representatives. The Contractor shall facilitate and cooperate in any Buy America Audit required by Agency. In addition to the exceptions set forth in the Federal Buy America Regulations, MBTA will consider waiver where significant demonstrated cost savings can be achieved (provided such cost savings are reviewed and approved in advance by MBTA). Contractor may apply for a waiver of all or a portion of MBTA’s Buy America Program by submitting a written request to the Contracting Officer.

1. Interchangeability

All buses delivered under this Contract, whether provided by a Subcontractor or Supplier, or manufactured by the Contractor, shall be duplicates in design and manufacture, and installed to assure Interchangeability among Buses in each separate order. This Interchangeability shall extend to the components and parts as well as to their locations in the Buses for all buses produced during the first year of the contract.

For buses being produced during the second base year of the Contract, MBTA shall consider changes such as product improvements on a case-by-case basis. MBTA’s basic expectation for any such change is that the new product shall perform at least as well if not better than the original. To that end, the Contractor may be required to obtain and provide an extended warranty at no cost for any proposed change in components.

In the event that a supplier discontinues a product during the Contract period, MBTA shall consider a substitute product on a case-by-case basis. No substitutions are to be made without the express written consent of MBTA. MBTA’s basic expectation for any such change is that the new product shall perform at least as well if not better than the original. To that end, the Contractor may be required to obtain and provide an extended warranty at no cost for any proposed change in components. The MBTA may elect to inspect the manufacturing facility, a pilot bus and confirm Buy America compliance as a part of the process for approval. The contractor will reimburse the agency up to $1500 per vehicle for consulting and travel expenses.

All such changes shall be processed according to the provisions of GC 8, Changes. The Contractor shall not modify any of the listed items contained on the Technical Submittal which was submitted with the proposal without the express written consent of MBTA.

1. New Technology

The MBTA reserves the right to add new devices, accessories or components to be substituted or added to this contract that may evolve or become available through new technology to the resulting contract. Such additions must be for the same general purpose as equipment awarded or represent an enhancement towards the fitness of purpose of the vehicle and fall within the original scope. Such equipment shall only be added if it is presented as an items addition or approved replacement by an awarded Contractor.

SECTION 5: FEDERAL REQUIREMENTS

1. Access to Records

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 the Agency, the State of California or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The following access to records requirements apply to this Contract:

sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

1. Federal Funding, Incorporation of FTA Terms and Federal ChangesFederal Energy Conservation Requirements

This procurement excludes FTA participation, however any federal terms and certifications not deleted are to be provided and complied with.

1. Civil Rights Requirements

California law protects individuals from illegal discrimination by employers based on the following:

* Race, color
* Ancestry, national origin
* Religion, creed
* Age (over 40)
* Disability, mental and physical
* Sex, gender (including pregnancy, childbirth, breastfeeding or related medical conditions)
* Sexual orientation
* Gender identity, gender expression
* Medical condition
* Genetic information
* Marital status
* Military and veteran status

The Contractor agrees that it will not discriminate against any employee or applicant for employment for any of the reasons above and shall require every subcontractor and supplier at every level to so agree.

1. Suspension and Debarment

These provisions apply to the Contractor and each subcontract at any tier of $25,000 or more. The Contractor shall verify that its principals, affiliates, and subcontractors are not presently declared by any Federal or State department or agency to be:

* Debarred from participation in any federal or state assisted award;
* Suspended from participation in any federal or state assisted award;
* Proposed for debarment from participation in any federal or state assisted award;
* Declared ineligible to participate in any federal or state assisted award;
* Voluntarily excluded from participation in any federal or state assisted award; or
* Disqualified from participation in ay federal or state assisted award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the proposer knowingly rendered an erroneous certification, the Agency may pursue available remedies, including but not limited to suspension and/or debarment. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1. Disadvantaged Business Enterprise (DBE)

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 Contractor shall maintain compliance with “DBE Approval Certification” throughout the period of Contract performance.

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 49CFR 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 the Agency deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

1. Clean Air Requirements
2. The 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*. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency shall, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.
3. Compliance with Federal Lobbying Policy

Contractors who apply or propose for an award of $100,000 or more shall file the certification required by 49CFR Part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it shall 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, an 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 the recipient.

1. Buy America

**Although there is no federal participation with the project, MBTA has elected to ensure that awarded vehicles comply with Federal Buy America standards and will follow the procedures in place to confirm Buy America Act compliance**. The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that steel, iron and manufactured products used 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. A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, software or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content.

Proposer must submit to the Agency the appropriate Buy America Certificates, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and may be rejected as nonresponsive.

1. Pre-Award and Post-Delivery Audits

The Contractor agrees to comply with 49 USC § 5323(l) and 49 CFR Part 663 and to submit the following certifications:

1. Buy America requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the recommended Proposer certifies compliance with Buy America, it shall submit documentation that lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that shall take place at the final assembly point and the cost of final assembly.
2. Solicitation specification requirements: The Contractor shall submit evidence that it shall be capable of meeting the solicitation’s specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) manufacturer’s FMVSS self-certification, Federal Motor Vehicle Safety Standards, that the vehicle complies with relevant FMVSS or (2) manufacturer’s certified statement that the contracted buses shall not be subject to FMVSS regulations.
4. Cargo Preference

The Contractor agrees to the following:

* To use privately owned U.S.-flag commercial vessels to ship at least fifty (50) percent 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 underlying Contract to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels;
* To furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a Subcontractor’s bill-of-lading.)
* 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.

1. 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 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.

1. Contract Work Hours and Safety Standards Act
2. Overtime requirements: No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such Work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
3. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph 1 of this section, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section.
4. Withholding for unpaid wages and liquidated damages: The Morongo Basin Transit Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section.
5. Subcontracts: The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any Subcontractor or lower-tier Subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.
6. ADA

The Contractor and any of its Subsuppliers under this Contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC; The California Fair Employment and Housing Act of 1959 and the following regulations and any amendments thereto:

1. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
2. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, “American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38;
3. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
4. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
5. General Services Administration regulations, “Accommodations for the Physically Handicapped,” 41 CFR Subpart 101-19;
6. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
7. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, Subpart F;
8. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194; and
10. Any implementing requirements FTA may issue.

SECTION 6: TECHNICAL SPECIFICATIONS

GENERAL

Technical specifications define requirements for transit vehicles and are contained in Appendix Z-1 through Z-3which are embedded here.



SECTION 7: WARRANTY REQUIREMENTS

1. Basic Provisions
   1. Warranty Requirements
      1. Contractor Warranties

Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor warrants and guarantees to the original Agency each complete bus and specific subsystems and components as follows. Performance requirements based on design criteria shall not be deemed a warranty item.

Contractor to provided standard OEM and supplier warranties for chassis, powertrain, wheelchair lifts or ramps and climate control systems describing these on the vehicle information sheets and as submissions on the proposal. **Warranties proposed are subject to evaluation as a condition of award and may be evaluated post award by the ordering agencies to evaluate the vehicles they will choose.**

* + 1. Complete Bus

The complete bus, propulsion system, components, major subsystems and body and chassis structure are warranted to be free from Defects and Related Defects for a minimum of one (1) year or 50,000 miles, whichever comes first, beginning on the date of revenue service but not longer than 15 days after acceptance under “Inspection, Testing, Acceptance and Repairs.” The warranty is based on regular operation of the bus under the operating conditions prevailing in the Agency’s locale. [Information from the selected firm(s) will be inserted at time of Contract award.]

* + 1. Body and Chassis Structure

Body, body structure, structural elements of the suspension and motor cradle are warranted to be free from Defects and Related Defects for three years or 150,000 miles, whichever comes first. [Information from the selected firm(s) will be inserted at time of Contract award.]

Primary load-carrying members of the bus structure, including structural elements of the suspension, are warranted against corrosion failure and/or Fatigue Failure sufficient to cause a Class 1 or Class 2 Failure for a minimum period of 12 years or 500,000 miles for the Transit and Commuter buses, 10 years and 350,000 miles for the trolleys on this solicitation whichever comes first. [Information from the selected firm(s) will be inserted at time of Contract award.]

* + 1. Propulsion System

Propulsion system components, specifically the pwertrain, transmission (if applicable) or drive motors, and generators and drive and non-drive axles shall be warranted to be free from Defects and Related Defects for the standard 2 years or 100,000 miles, whichever comes first. The propulsion system manufacturer’s standard warranty, delineating items excluded from the Extended Warranty, submitted in accordance with the Request for Pre-Offer Change. [Information from the selected firm(s) will be incorporated at time of Contract award.]

* + 1. Warranty Summary including Subsystems

Other subsystems shall be warranted to be free from Defects and Related Defects for the period shown below: [Information from the selected firm(s) will be incorporated at time of Contract award.]

|  |  |  |
| --- | --- | --- |
| **Item** | **Years** | **Mileage** |
| Body Structure |  |  |
| Chassis |  |  |
| Powertrain |  |  |
| Batteries |  |  |
| Air Conditioner |  |  |
| Lift/Ramp |  |  |
| Other Optional Features |  |  |

* + 1. Extension of Warranty

If, during the warranty period, repairs or modifications on any bus are made necessary by defective design, materials or workmanship but are not completed due to lack of material or inability to provide the proper repair for thirty (30) calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period.

**WR 1.1.8 Serial Numbers**

Upon delivery of each bus, the Contractor shall provide a complete electronic list of serialized units installed on each bus to facilitate warranty tracking. The list shall include, but is not limited to the following:

Powertrain ID # (If applicable)

Transmission (If applicable)

Battery Serial or Part #’s

Starter (If applicable)

A/C compressor and condenser/evaporator unit

Drive axle

Power steering unit (If applicable)

Air compressor

Wheelchair ramp/lift (if applicable)

The contractor shall provide updated serial numbers resulting from warranty campaigns. The forma of the list to be approved prior to the delivery of the first production bus.

* 1. Voiding of Warranty

The warranty shall not apply to the failure of any part or component of the bus that directly results from misuse, negligence, accident or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty also shall be void if the Agency fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor’s maintenance manuals and if that omission caused the part or component failure. The Agency shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the Contractor’s maintenance manuals.

* 1. Exceptions and Additions to Warranty

The warranty shall not apply to the following items:

* scheduled maintenance items
* normal wear-out items
* items furnished by the Agency

Should the Agency require the use of a specific product and has rejected the Contractor’s request for an alternate product, then the standard Supplier warranty for that product shall be the only warranty provided to the Agency. This product shall not be eligible under “Fleet Defects,” below.

The Contractor shall not be required to provide warranty information for any warranty that is less than or equal to the warranty periods listed.

* + 1. Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the sub-Suppliers, or to others, the Contractor shall request this waiver.

Contractor shall state in writing that the Agency’s warranty reimbursements shall not be impacted. The Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of vehicles and/or components. At any time during the warranty period, the Contractor may request approval from the Agency to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by the Agency. Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of the Contractor.

* + 1. Superior Warranty

The Contractor shall pass on to the Agency any warranty offered by a component Supplier that is superior to that required herein. The Contractor shall provide a list to the Agency noting the conditions and limitations of the Superior Warranty not later than the start of production. The Superior Warranty shall not be administered by the Contractor.

* 1. Fleet Defects
     1. Occurrence and Remedy

A Fleet Defect is defined as cumulative failures of three (3) of the same components in the same or similar application where the fleet size is fewer than twelve (12) buses where such items are covered by warranty. Where the fleet size is twelve (12) or more buses, a Fleet Defect is defined as twenty-five (25) percent of the same components in the same or similar application where such items are covered by warranty. A Fleet Defect shall apply only to the base warranty period in sections entitled “Complete Bus,” “Propulsion System” and “Major Subsystems.” When a Fleet Defect is declared, the remaining warranty on that item/component stops. The warranty period does not restart until the Fleet Defect is corrected.

For the purpose of Fleet Defects, each order placed through the joint procurement shall be treated as a separate bus fleet.

The Contractor shall correct a Fleet Defect under the warranty provisions defined in “Repair Procedures.” After correcting the Defect, the Agency and the Contractor shall mutually agree to and the Contractor shall promptly undertake and complete a work program reasonably designed to prevent the occurrence of the same Defect in all other buses and spare parts purchased under this Contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the work program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the work program shall include inspection and/or correction of all of the buses in the fleet via a mutually agreed-to arrangement. The Contractor shall update, as necessary, technical support information (parts, service and operator’s manuals) due to changes resulting from warranty repairs. The Agency may immediately declare a Defect in design resulting in a safety hazard to be a Fleet Defect. The Contractor shall be responsible to furnish, install and replace all defective units.

* + 1. Exceptions to Fleet Defect Provisions

The Fleet Defect warranty provisions shall not apply to Agency-supplied items, such as radios, fare collection equipment, communication systems and tires. In addition, Fleet Defects shall not apply to interior and exterior finishes, hoses, fittings and fabric.

1. Repair Procedures
   1. Repair Performance

The Contractor is responsible for all warranty-covered repair Work. To the extent practicable, the Agency shall allow the Contractor or its designated representative to perform such Work. At its discretion, the Agency may perform such Work if it determines it needs to do so based on transit service or other requirements. Such Work shall be reimbursed by the Contractor.

* 1. Repairs by the Contractor

If the Agency detects a Defect within the warranty periods defined in this section, it shall, within thirty (30) days, notify the Contractor’s designated representative. The Contractor or its designated representative shall, if requested, begin Work on warranty-covered repairs within five calendar days after receiving notification of a Defect from the Agency. The Agency shall make the bus available to complete repairs timely with the Contractor’s repair schedule.

The Contractor shall provide at its own expense all spare parts, tools and space required to complete repairs. At the Agency’s option, the Contractor may be required to remove the bus from the Agency’s property while repairs are being affected. If the bus is removed from the Agency’s property, repair procedures must be diligently pursued by the Contractor’s representative.

* 1. Repairs by the Agency
     1. Parts Used

If the Agency performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the Agency may use Contractor-specified parts available from its own stock if deemed in its best interests.

* + 1. Contractor-Supplied Parts

The Agency may require that the Contractor supply parts for warranty-covered repairs being performed by the Agency. Those parts may be remanufactured but shall have the same form, fit and function, and warranty. The parts shall be shipped prepaid to the Agency from any source selected by the Contractor within fourteen (14) days of receipt of the request for said parts and shall not be subject to an Agency handling charge.

* + 1. Defective Component Return

The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The freight costs for this action shall be paid by the Contractor. Materials should be returned in accordance with the procedures outlined in “Warranty Processing Procedures.”

* + 1. Failure Analysis

The Contractor shall, upon specific request of the Agency, provide a failure analysis of Fleet Defect or safety-related parts, or major components, removed from buses under the terms of the warranty that could affect fleet operation. Such reports shall be delivered within 60 days of the receipt of failed parts.

* + 1. Reimbursement for Labor and Other Related Costs

The Agency shall be reimbursed by the Contractor for labor. The amount shall be determined by the Agency for a qualified mechanic at a straight time wage rate per hour, which shall include fringe benefits and overhead adjusted for the Agency’s most recently published rate in effect at the time the Work is performed, plus the cost of towing the bus if such action was necessary and if the bus was in the normal service area. These wage and fringe benefit rates shall not exceed the rates in effect in the Agency’s service garage at the time the Defect correction is made.

* + 1. Reimbursement for Parts

The Agency shall be reimbursed by the Contractor for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable, plus fifteen (15) percent handling costs. Handling costs shall not be paid if part is supplied by Contractor and shipped to Agency.

* + 1. Reimbursement Requirements

The Contractor shall respond to the warranty claim with an accept/reject decision including necessary failure analysis no later than sixty (60) days after the Agency submits the claim and defective part(s), when requested. Reimbursement for all accepted claims shall occur no later than sixty (60) days from the date of acceptance of a valid claim. The Agency may dispute rejected claims or claims for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty claims during the following quarter to reach an equitable decision to permit the disputed claim to be resolved and closed. The parties also agree to review all claims at least once per quarter throughout the entire warranty period to ensure that open claims are being tracked and properly dispositioned.

* 1. Warranty after Replacement/Repairs

If any component, unit or subsystem is repaired, rebuilt or replaced by the Contractor or by the Agency with the concurrence of the Contractor, the component, unit or subsystem shall have the unexpired warranty period of the original. Repairs shall not be warranted if the Contractor-provided or authorized parts are not used for the repair, unless the Contractor has failed to respond within five days, in accordance with “Repairs by the Contractor.”

If an item is declared to be a Fleet Defect, the warranty stops with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have three (3) months or remaining time and/or miles of the original warranty, whichever is greater. This remaining warranty period shall begin on the repair/replacement date for corrected items on each bus if the repairs are completed by the Contractor or on the date the Contractor provides all parts to the Agency.

* + 1. Warranty Processing Procedures

The following list represents requirements by the Contractor to the Agency for processing warranty claims. One failure per bus per claim is allowed.

* bus number and VIN
* total vehicle life mileage at time of repair
* date of failure/repair
* acceptance/in-service date
* Contractor part number and description
* description of failure
* all costs associated with each failure/repair (invoices may be required for third-party costs):
* towing
* road calls
* labor
* materials
* parts
* handling
* troubleshooting time
  1. Forms

The Contractor shall supply warranty forms to each Ordering Agency. The completed forms shall be accepted by the Contractor if all of the above information is included. Electronic submittal may be used if available between the Contractor and Agency.

* 1. Return of Parts

When returning defective parts to the Contractor, the Agency shall tag each part with the following:

* bus number and VIN
* claim number
* part number
  1. Timeframe

Each claim must be submitted no more than thirty (30) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, no more than forty-five (45) days from date of repair.

* 1. Reimbursements

Reimbursements are to be transmitted to the address provided by the Agency.

SECTION 8: QUALITY ASSURANCE

1. Contractor’s In-Plant Quality Assurance Requirements
   1. Quality Assurance Organization
      1. Organization Establishment

The Contractor shall establish and maintain an effective in-plant quality assurance organization. It shall be a specifically defined organization and should be directly responsible to the Contractor’s top management.

* + 1. Control

The quality assurance organization shall exercise quality control over all phases of production, from initiation of design through manufacture and preparation for delivery. The organization shall also control the quality of supplied articles.

* + 1. Authority and Responsibility

The quality assurance organization shall have the authority and responsibility for reliability, quality control, inspection planning, establishment of the quality control system, and acceptance/rejection of materials and manufactured articles in the production of the transit buses.

* 1. Quality Assurance Organization Functions
     1. Minimum Functions

The quality assurance organization shall include the following minimum functions:

* Work instructions: The quality assurance organization shall verify inspection operation instructions to ascertain that the manufactured product meets all prescribed requirements.
* Records maintenance: The quality assurance organization shall maintain and use records and data essential to the effective operation of its program. These records and data shall be available for review by the resident inspectors. Inspection and test records for this procurement shall be available for a minimum of one year after inspections and tests are completed.
* Corrective action:The quality assurance organization shall detect and promptly ensure correction of any conditions that may result in the production of defective transit buses. These conditions may occur in designs, purchases, manufacture, tests or operations that culminate in defective supplies, services, facilities, technical data or standards.
  + 1. Basic Standards and Facilities

The following standards and facilities shall be basic in the quality assurance process:

* Configuration control:The Contractor shall maintain drawings, assembly procedures, and other documentation that completely describe a qualified bus that meets all of the options and special requirements of this procurement. The quality assurance organization shall verify that each transit bus is manufactured in accordance with these controlled drawings, procedures, and documentation.
* Measuring and testing facilities:The Contractor shall provide and maintain the necessary gauges and other measuring and testing devices for use by the quality assurance organization to verify that the buses conform to all specification requirements. These devices shall be calibrated at established periods against certified measurement standards that have known, valid relationships to national standards.
* Production tooling as media of inspection: When production jigs, fixtures, tooling masters, templates, patterns, and other devices are used as media of inspection, they shall be proved for accuracy at formally established intervals and adjusted, replaced, or repaired as required to maintain quality.
* Equipment use by resident inspectors:The Contractor’s gauges and other measuring and testing devices shall be made available for use by the resident inspectors to verify that the buses conform to all specification requirements. If necessary, the Contractor’s personnel shall be made available to operate the devices and to verify their condition and accuracy.
  + 1. Maintenance of Control

The Contractor shall maintain quality control of purchases:

* Supplier control: The Contractor shall require that each Supplier maintains a quality control program for the services and supplies that it provides. The Contractor’s quality assurance organization shall inspect and test materials provided by Suppliers for conformance to specification requirements. Materials that have been inspected, tested, and approved shall be identified as acceptable to the point of use in the manufacturing or assembly processes. Controls shall be established to prevent inadvertent use of nonconforming materials.
* Purchasing data: The Contractor shall verify that all applicable specification requirements are properly included or referenced in purchase orders of articles to be used on transit buses.
  + 1. Manufacturing Control
* Controlled conditions: The Contractor shall ensure that all basic production operations, as well as all other processing and fabricating, are performed under controlled conditions. Establishment of these controlled conditions shall be based on the documented Work instructions, adequate production equipment and special working environments if necessary.
* Completed items: A system for final inspection and test of completed transit buses shall be provided by the quality assurance organization. It shall measure the overall quality of each completed bus.
* Nonconforming materials:The quality assurance organization shall monitor the Contractor’s system for controlling nonconforming materials. The system shall include procedures for identification, segregation and disposition.
* Statistical techniques:Statistical analysis, tests and other quality control procedures may be used when appropriate in the quality assurance processes.
* Inspection status: A system shall be maintained by the quality assurance organization for identifying the inspection status of components and completed transit buses. Identification may include cards, tags or other normal quality control devices.
  + 1. Inspection System

The quality assurance organization shall establish, maintain and periodically audit a fully documented inspection system. The system shall prescribe inspection and test of materials, Work in process and completed articles. As a minimum, it shall include the following controls:

* Inspection personnel:Sufficient trained inspectors shall be used to ensure that all materials, components and assemblies are inspected for conformance with the qualified bus design.
* Inspection records: Acceptance, rework or rejection identification shall be attached to inspected articles. Articles that have been accepted as a result of approved materials review actions shall be identified. Articles that have been reworked to specified drawing configurations shall not require special identification. Articles rejected as unsuitable or scrap shall be plainly marked and controlled to prevent installation on the bus. Articles that become obsolete as a result of engineering changes or other actions shall be controlled to prevent unauthorized assembly or installation. Unusable articles shall be isolated and then scrapped. Discrepancies not**e**d by the Contractor or resident inspectors during assembly shall be entered by the inspection personnel on a record that accompanies the major component, subassembly, assembly, or bus from start of assembly through final inspection. Actions shall be taken to correct discrepancies or deficiencies in the manufacturing processes, procedures or other conditions that cause articles to be in nonconformity with the requirements of the Contract specifications. The inspection personnel shall verify the corrective actions and mark the discrepancy record. If discrepancies cannot be corrected by replacing the nonconforming materials, then the Agency shall approve the modification, repair or method of correction to the extent that the Contract specifications are affected.
* Quality assurance audits: The quality assurance organization shall establish and maintain a quality control audit program. Records of this program shall be subject to review by the Agency.

1. Inspection
   1. Inspection Stations

Inspection stations shall be at the best locations to provide for the Work content and characteristics to be inspected. Stations shall provide the facilities and equipment to inspect structural, electrical, hydraulic and other components and assemblies for compliance with the design requirements.

Stations shall also be at the best locations to inspect or test characteristics before they are concealed by subsequent fabrication or assembly operations. These locations shall minimally include underbody structure completion, body framing completion, body prior to paint preparation, water test, motor installation completion, underbody dress-up and completion, bus prior to final paint touchup, bus prior to road test and bus final road test completion.

* 1. Optional Resident Inspectors

For orders greater than ten (10) buses, the Ordering Agency shall determine if a Resident Inspector is required under 49 CFR Part 663.37, In the event that the agency decides to have a Resident Inspector either full time or part-time, the following sections apply.

* + 1. Resident Inspector’s Role

The Agency may be represented at the Contractor’s plant by resident inspectors, at the discretion of the . Resident inspectors may be Agency employees or outside contractors. The Agency shall provide the identity of each inspector and shall also identify their level of authority in writing. They shall monitor, in the Contractor’s plant, the manufacture of transit buses built under the procurement. The presence of these resident inspectors in the plant shall not relieve the Contractor of its responsibility to meet all of the requirements of this procurement. The Agency shall designate a primary resident inspector, whose duties and responsibilities are delineated in “Pre-Production Meetings,” “Authority” and “Pre-Delivery Tests,” below. Contractor and resident inspector relations shall be governed by the guidelines included as Attachment A to this “Section 8: Quality Assurance.”

* + 1. Pre-Production Meetings

If there are Pre-Production Meetings scheduled, the primary resident inspector may participate in design review and pre-production meetings with the Agency. At these meetings, the configuration of the buses and the manufacturing processes shall be finalized, and all Contract documentation provided to the inspector.

No less than thirty (30) days prior to the beginning of bus manufacture, the primary resident inspector may meet with the Contractor’s quality assurance manager and may conduct a pre-production audit meeting. They shall review the inspection procedures and finalize inspection checklists. The resident inspectors may begin monitoring bus construction activities two weeks prior to the start of bus fabrication.

* + 1. Authority

Records and data maintained by the quality assurance organization shall be available for review by the resident inspectors. Inspection and test records for this procurement shall be available for a minimum of one year after inspections and tests are completed.

The Contractor’s gauges and other measuring and testing devices shall be made available for use by the resident inspectors to verify that the buses conform to all specification requirements. If necessary, the Contractor’s personnel shall be made available to operate the devices and to verify their condition and accuracy.

Discrepancies noted by the resident inspector during assembly shall be entered by the Contractor’s inspection personnel on a record that accompanies the major component, subassembly, assembly or bus from start of assembly through final inspection. Actions shall be taken to correct discrepancies or deficiencies in the manufacturing processes, procedures or other conditions that cause articles to be in nonconformity with the requirements of the Contract specifications. The inspection personnel shall verify the corrective actions and mark the discrepancy record. If discrepancies cannot be corrected by replacing the nonconforming materials, the Agency shall approve the modification, repair or method of correction to the extent that the Contract specifications are affected.

If applicable, the primary resident inspector shall remain in the Contractor’s plant for the duration of bus assembly Work under this Contract. Only the primary resident inspector or designee shall be authorized to release the buses for delivery. The resident inspectors shall be authorized to approve the pre-delivery acceptance tests. Upon request to the quality assurance supervisors, the resident inspectors shall have access to the Contractor’s quality assurance files related to this procurement. These files shall include drawings, assembly procedures, material standards, parts lists, inspection processing and reports, and records of Defects.

* + 1. Support Provisions

The Contractor shall provide office space for the resident inspectors in close proximity to the final assembly area. This office space shall be equipped with desks, outside and interplant telephones, Internet access, file cabinet and chairs.

* + 1. Compliance with Safety Requirements

At the time of the Pre-Production meeting, the Contractor shall provide all safety and other operational restrictions that govern the Contractor’s facilities. These issues shall be discussed and the parties shall agree which rules/restrictions shall govern the Agency’s inspector(s) and any other Agency representatives during the course of the Contract.

1. Acceptance Tests
   1. Responsibility

Fully documented tests shall be conducted on each production bus following manufacture to determine its acceptance to the Agency. These acceptance tests shall include pre-delivery inspections and testing by the Contractor and inspections and testing by the Agency after the buses have been delivered.

* 1. Pre-Delivery Tests

The Contractor shall conduct acceptance tests at its plant on each bus following completion of manufacture and before delivery to the Agency. These pre-delivery tests shall include visual and measured inspections, as well as testing the total bus operation. The tests shall be conducted and documented in accordance with written test plans approved by the Agency.

Additional tests may be conducted at the Contractor’s discretion to ensure that the completed buses have attained the required quality and have met the requirements in Section 6: Technical Specifications. The Agency may, prior to commencement of production, demand that the Contractor demonstrate compliance with any requirement in that section if there is evidence that prior tests have been invalidated by the Contractor’s change of Supplier or change in manufacturing process. Such demonstration shall be by actual test, or by supplying a report of a previously performed test on similar or like components and configuration. Any additional testing shall be recorded on appropriate test forms provided by the Contractor and shall be conducted before acceptance of the bus.

The pre-delivery tests shall be scheduled and conducted with thirty (30) days’ notice so that they may be witnessed by the resident inspectors, who may accept or reject the results of the tests. The results of pre-delivery tests, and any other tests, shall be filed with the assembly inspection records for each bus. The underfloor equipment shall be available for inspection by the resident inspectors, using a pit or bus hoist provided by the Contractor. A hoist, scaffold or elevated platform shall be provided by the Contractor to easily and safely inspect bus roofs. If there is an on-site inspector, delivery of each bus shall require written authorization of the primary resident inspector. Authorization forms for the release of each bus for delivery shall be provided by the Contractor. An executed copy of the authorization shall accompany the delivery of each bus.

* + 1. Visual and Measured Inspections

Visual and measured inspections shall be conducted with the bus in a static condition. The purpose of the inspection testing includes verification of overall dimension and weight requirements, that required components are included and are ready for operation, and that components and subsystems designed to operate with the bus in a static condition do function as designed.

* + 1. Total Bus Operation

Total bus operation shall be evaluated during road tests. The purpose of the road tests is to observe and verify the operation of the bus as a system and to verify the functional operation of the subsystems that can be operated only while the bus is in motion.

Each bus shall be driven for a minimum of fifteen (15) miles during the road tests. If requested, computerized diagnostic printouts showing the performance of each bus shall be produced and provided to the Agency. Observed Defects shall be recorded on the test forms. The bus shall be retested when Defects are corrected and adjustments are made. This process shall continue until Defects or required adjustments are no longer detected.

1. Agency-Specific Requirements
   1. Pre-Delivery Bus Documentation Package (BDP)

The Contractor’s quality assurance organization shall be responsible for preparing a documentation package for each Bus. The BDP shall be inserted into a manila envelope which shall be labeled with the Agency name and the bus number on the front of the envelope. This envelope shall be placed into the Bus and shall be presented to the Agency upon delivery.

At a minimum, each BDP shall contain the following items:

* BDP Check-off Sheet listing the following:
* QA Certificate of Completion (signed by Contractor QC representative).
* Applicable Battery certifications.
* Water test Certification.
* Alignment and Steering Stop Adjustment Certification.
* Smoke Opacity Test (Exhaust Emissions), if applicable.
* “Completed Bus” Inspection document.
* Copy of defects noted during any Agency on-site inspection.
* List of “Open Items”- if any
* VIN number (copy of bus data plate)
* Certificate of Origin
* Weight slip (curb weight)
* Certificate of compliance for high voltage/energy storage protective devices, if applicable.
* Copy of FMVSS plate
* Component Serial Number List - List of serialized components installed on each Bus to include, but not limited to:
  + Electric Drivetrain
  + Alternator (If applicable)
  + Starter (If Applicable)
  + A/C Compressor
  + Drive Axle
  + Power Steering Unit
  + Air Compressor
  + Other serialized components for which the Contractor shall require serial numbers for the processing of warranty claims.

SECTION 9: FORMS AND CERTIFICATIONS

1. Proposer’s Checklist

|  |  |
| --- | --- |
| **RFP No. 19-01, Joint Procurement For Zero Emission Shuttles** | |
| **Package 1: Technical Proposal (Note: Package 1, 3 and 4 may be combined into one submittal.)** | |
| □ | * 1. Letter of Transmittal |
| □ | * 2. Acknowledgement of Addenda |
| □ | * 3. Contractor Service and Support Data, References List |
| □ | 4. Vehicle Questionnaire |
| □ | 5. Manufacturing facility plant layout including description of work by station |
| □ | 6. Warranty Provisions and Warranty Administration Plan, Written Service Plan |
| □ | 7. Quality Assurance Program |
| **Package 2: Price Proposal (Package 2 must be a separate sealed submittal.)** | |
| □ | 1. Letter of Transmittal |
| □ | 2. Pricing Worksheet (including option bus features) |
| **Package 3: Qualifications Package** | |
| □ | 1. Pre-Award Evaluation Data Form |
| □ | 2. Authorized Factory Dealer Confirmation (If dealer submitted proposal) |
| □ | 3. A copy of the proposing firm’s three (3) most recent audited financial statements |
| □ | 4. Letter for insurance |
| □ | 5. Proposal Form |
| □ | 6. Required executed Certifications and Qualifications |
| □ |  |
| **Package 4: Proprietary/Confidential Information Package1** | |
| □ | 1. Proprietary/Confidential Information |
| 1. There may be items in the first three packages that are included in Package 4 because they are considered to be proprietary/confidential information. When this occurs, the Proposer must note that fact in Packages 1 through 3. | |

1. Request for Pre-Offer Change or Approved Equal

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name and must be submitted as far in advance of the Due Date, as specified in “Questions, Clarifications and Omissions.” Please submit the document electronically with separate files for clarifications on the contract and each bus type. File names should indicate Proposing Firm and RFP #. Submissions are to be made in a single consolidated document per bus. Please describe the item requested, cite the section and attachment #, provide supporting information and suggested language for revision if appropriate to expedite a response.

**Morongo Basin Transit Authority**

**RFP No. 19-01, Joint Procurement for Zero Emission Shuttles**



1. 3

Failure to acknowledge receipt of all addenda may cause the Proposal to be considered nonresponsive to the Solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Proposal.

|  |  |
| --- | --- |
| The undersigned acknowledges receipt of the following addenda to the documents: | |
| Addendum No.: | * Dated: |
| Addendum No.: | * Dated: |
| Addendum No.: | * Dated: |
| Addendum No.: | * Dated: |
| Proposer:  Name:  Title:  Phone:  Street address:  City, state, ZIP: | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized signature Date | |

1. Contractor Service and Parts Support Data

|  |
| --- |
| **Location/s of nearest Technical Service Representative and Facilities to Agency** |
| Name:  Address:  Telephone:  Describe technical services readily available from said representative: |
| **Location of nearest Parts Distribution Center/s to Agency:** |
| Name:  Address:  Telephone:  Describe the extent of parts available at said center: |
| **Policy for delivery of parts and components to be purchased for service and maintenance:** |
| Regular method of shipment:  Cost to Agency: |

2. Price Worksheet

The Price Worksheet is contained in a separate document that is an Excel Spreadsheet. Each Proposer is to complete the appropriate spreadsheet tabs, print and return an original with a “wet signature” with the required proposal forms. Proposers are to also provide the other copies as required in NR 3, Proposal Date and Submittal Requirements.

**Prices entered in the Price Worksheet should be exclusive of applicable credits available under state or federal law (e.g., California’s Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP)) and a brief summary of currently available credits noted separately on the Price Worksheet.  The Contractor shall promptly notify the Agency when any such credit is no longer available and when any such credit subsequently becomes available.  All such credits will inure to the benefit of purchasing agencies.  Individual quotes provided to purchasing agencies must clearly and unambiguously disclose all applicable and available such credits**.



1. Pre-Award Evaluation Data Form

**Instructions:** This form is to be completed and included in the Qualification Package. Attach additional pages if required.

Morongo Basin Transit Authority RFP No. 19-01 for Procurement for Electric Shuttles.

|  |
| --- |
| **1. Name of firm:** |
| **2. Address:** |
| **3. □ Individual □ Partnership □ Corporation □ Joint Venture** |
| **4. Date organized:**  **State in which incorporated:** |
| **5. Names of officers or partners:**  a.  b.  c.  d. |
| **6. How long has your firm been in business under its present name?** |
| **7.** Have you been terminated or defaulted in the past five years, on any Contract you were awarded? Have you been barred by Federal process or any Western State?  □ Yes □ No  If yes, then attach as **SCHEDULE ONE** the full particulars regarding each occurrence. |
| **8.** Attach as **SCHEDULE TWO** Proposer’s last three (3) financial statements prepared in accordance with generally accepted accounting principles of the jurisdiction in which the Proposer is located, and audited by an independent certified public accountant. [This may require execution of an acceptable non-disclosure agreement between the Agency and the Proposer.] |
| **9.** Attach as **SCHEDULE THREE** a list of all principal Subcontractors (if applicable) and the percentage and character of Work (Contract amount) that each shall perform on this Contract. Note: A subcontractor is one that physically works on manufacturing the bus. |
| **10.** If the Contractor or Subcontractor is a joint venture, submit **PRE-AWARD EVALUATION DATA** forms for each member of the joint venture. |
| **The above information is confidential and shall not be divulged to any unauthorized personnel.** |
| The undersigned certifies to the accuracy of all information:  **Name and title:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **Company:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized signature Date |

1. Federal Certifications and Other Certifications
   1. Buy America Certification

This form is to be submitted with an offer exceeding the small purchase threshold for federal assistance programs. To be completed and executed by manufacturer. **Although there is no federal participation with the project, MBTA has elected to ensure that awarded vehicles comply with Federal Buy America standards and will follow the procedures in place to confirm PreAward Buy America Act compliance**

**MBTA's BUY AMERICA CERTIFICATE**

Certificate for Compliance with MBTA's Buy America requirements

The Offeror hereby certifies that it will comply with the requirements of MBTA's Buy America requirements as described in Request for Proposals 19-01.

Date

Signature

Title

Company Name

-OR-

The Offeror hereby certifies that it cannot comply with the requirements of MBTA’s Buy America requirements but may qualify for an exception pursuant to the terms expressed in Request for Proposals 19-01.

Date

Signature

Title

Company Name

CER 1.2 Debarment and Suspension Certification for Prospective Contractor

Primary covered transactions must be completed by proposer for contract value over $25,000. To be completed by manufacturer (and dealer if applicable).

|  |  |
| --- | --- |
| Choose one alternative: | |
| □ | * The Proposer, [insert name], certifies to the best of its knowledge and belief that it and its principals:   1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;  2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and  4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.  **OR** |
| □ | * The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)   The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto. |
| * **Executed in** [insert city and state]**.**   **Name:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized signature Date | |

* 1. Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding $25,000.

|  |
| --- |
| The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its “principals” as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.  If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an “X” in the following space: \_\_\_\_\_\_  **THE PROPOSER, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 *ET SEQ*. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.** |
| **Name and title of the proposer’s authorized official:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorized signature Date |

CER 1.4 Non-Collusion Affidavit

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the Proposal, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked “Name of Affiant.” The affiant’s capacity, when a partner or officer of a corporation, should be inserted on the line marked “Capacity.” The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal. To be completed by manufacturer (and dealer if applicable).

|  |  |
| --- | --- |
| State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being first duly sworn, do hereby state that  (Name of Affiant)  I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Capacity) (Name of Firm, Partnership or Corporation)  whose business is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  and who resides at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  and that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Give names of all persons, firms, or corporations interested in the Proposal)  is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of Affiant Date | |
| Sworn to before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_\_\_\_.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Notary public My commission expires | Seal |

CER 1.5 Federal Motor Vehicle Safety Standards

The Proposer and (if selected) Contractor shall submit (1) manufacturer’s FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer’s certified statement that the contracted buses shall not be subject to FMVSS regulations.

**Company name:**

**Name of signer:**

**Title:**

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

Authorized signature Date

* 1. Proposal Form

**NOTE:** The following is an example of a Proposal form to be modified as appropriate by the Agency and included in the RFP.

Proposer shall complete the following form and include it in the price Proposal.

**PROPOSAL**

By execution below by a duly authorized representative(s) of the Proposer, the Proposer hereby offers to furnish equipment and services as specified in its Proposal submitted to MBTA in response to Request for Proposal No. 19-01: Joint Procurement for Heavy Duty Transit Vehicles in its entirety.

Proposer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Street address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City, state, ZIP: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and title of Authorized Signer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and title of Authorized Signer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Authorized signature Date

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

Authorized signature Date

* 1. Notice of Award

By execution below, Morongo Basin Transit Authority accepts Proposal as indicated above.

(The Authority reserves the right to issue a Notice of Award and resulting contract that is separate from this document).

Contracting officer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Authorized signature Date

1. Vehicle Questionnaire and Instructions (Attached)

The Vehicle Questionnaire is embedded here as an Excel Spreadsheet. Each Proposer is to complete the appropriate spreadsheet tabs, print and return an original with a “wet signature” with the required proposal forms. Proposers shall also provide the required Warranty Provisions. Proposers are to also provide the other copies as required in NR 3, Proposal Date and Submittal Requirements. This form must be completed and included in the Technical Proposal.



SECTION 10: CONTRACT

**1. Contract Documents and Order of Precedence**

The Contract consists of the documents listed below. In case of any conflict among these documents, the order of precedence shall be:

1. Form of Contract
2. “Section 4: Special Conditions”
3. “Section 3: General Conditions,” and “Section 5: Federal Requirements”
4. “Section 6: Technical Specifications,” “Section 7: Warranty Requirements,” and “Section 8: Quality Assurance”
5. Contractor’s Best and Final Offer (including Contractor Proposal)
6. Addenda
7. RFP No. 19-01

A modification or change to any Contract document shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

**2. Compensation**

The Price Worksheet is Attachment 1 to this Contract. Each ordering Agency shall pay the Contractor the amount shown on the Ordering Confirmation Form as full compensation for all costs and expenses of completing the Work in accordance with the Contract, including but not limited to all labor and material required, overhead, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

**3. Contract Term and Period of Performance**

The effective date of this Contract shall be the effective date set forth in the Notice to Proceed (NTP). The Contractor shall provide vehicles under the Schedule for a period of two (2) years after the effective date of the Contract, upon receipt of the NTP.

1. **Contract Type**

This is an Indefinite Delivery/Indefinite Quantity (ID/IQ) contract.

**5. Notices**

Any Notice legally required to be given by one party to another under the Contract shall be in writing, dated and signed by the party giving such Notice or by a duly authorized representative of such party.

Notices shall not be effective unless transmitted by any method that provides confirmation of transmission and delivery, such as fax, certified mail or registered mail and addressed to:

To Agency:

Mr. Joe Meer, Director of Cooperative Purchasing Programs

Morongo Basin Transit Authority

62405 Verbena Road

Joshua Tree, CA 92252

[Insert Contractor name, address and point of contact]

**6. Entire Agreement**

This Contract constitutes the complete and entire agreement between the Agency and Contractor and supersedes any prior representations, understandings, and communications, commitments, agreements or Proposals, oral or written that are not incorporated as a part of the Contract.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Contractor name | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Agency name |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorized official | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorized official |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print or type name and title) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print or type name and title) |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Tax ID number | Approved as to form by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Insert name and title |

Attachment 1 – Pricing Form

[INSERT COMPLETED AND EXECUTED PRICING FORM]

SECTION 11: APPENDIXES

**Appendix -A-1**

Appendix B: Visual Inspection and Road Test Forms

|  |
| --- |
|  |

|  |  |
| --- | --- |
| Guide for Inspection: | Coach Manufacturer\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| The Following Items Should Be Inspected | Coach Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| on Every Coach of Each Order | Test Location\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item** | **Requirement** | **Inspection Instruction** | **Result** | **Inspector/ Date** | **Remarks/Notes** |
| Curb Weight | Maximum curb weight of lb. | Measure on certified scale, front and rear axles | Weight |  |  |
| FMVSS Stickers | Affixed to vehicle | Locate sticker | Pass/Fail |  |  |
| Finish and Color | Smooth body surfaces and paint | Visually inspect all surfaces for flaws | Pass/Fail |  |  |
| Interior Panel Fastening | Absence of rough edges or surfaces | Visually inspect for proper installation | Pass/Fail |  |  |
| Towing Devices | Provision of towing eyes (front/rear) | Verify presence of towing eyes | Pass/Fail |  |  |
| Door Control | Opening time of sec. | Verify door opening time frame | Pass/Fail |  |  |
| Interior Lighting | Lighting operable without engine | Switch on all interior lights | Pass/Fail |  |  |
| Exterior Lighting | All vehicle lights operable | Switch on and verify lamps are on | Pass/Fail |  |  |
|  |  |  |  |  |  |
| Chassis | Welds, axles, suspension, steering, wheels, and brakes | Inspect for leaks, and interference. Check fluid levels, welds, undercoating, air lines, brake slack, and lug nuts | Pass/Fail |  |  |
| Electrical | Wiring and junction boxes | Inspect for loose or stretched wires | Pass/Fail |  |  |
| Batteries | Secured and polarized wiring access for jump start | Inspect compartment and jumper cable access | Pass/Fail |  |  |
| HVAC | Capacity and performance | Operate AC, check compressor, condenser, flow, and temperature | Pass/Fail |  |  |
| Wheelchair Access | Clear lift or ramp access, and securement area | Operate lift or ramp, inspect operation, measure areas | Pass/Fail |  |  |
| Power Plant | Mounting and arrangement | Check for loose lines, leaks, and noises. Check fluid levels, belt alignment, and cap fit | Pass/Fail |  |  |

**SAMPLE ROAD TEST SHEET**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Guide for Inspection: | | | | Coach Manufacturer\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | |
| The Following Items Should Be Inspected | | | | Coach Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | |
| on Every Coach of Each Order | | | | Test Location\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | | |
|  | | | |  | | | |
| **Item** | | **Requirement** | **Inspection Instruction** | **Result** | | **Inspector**  **/Date** | **Remarks/**  **Notes** |
| Motor | | N/A | Inspect for proper function | Pass/Fail | |  |  |
| Service Brakes | | Stopping distance | Verify function and indicator, check for pulling to either side | Pass/Fail | |  |  |
| Parking Brake | | N/A | Verify indicator, and no movement | Pass/Fail | |  |  |
| Turning Effort | | Steering wheel torque | Check effort with coach stopped | Pass/Fail | |  |  |
| Turning Radius | | Not to exceed at corner of body | Verify turning radius in both directions | Pass/Fail | |  |  |
| Acceleration | | rate from 0 to mph | Verify acceleration on smooth road | Pass/Fail | |  |  |
| Resonance | | Absence of audible and/or visible vibrations | Operate coach at various speeds, check for vibrations and rattles | Pass/Fail | |  |  |
| Windshield Wipers | | Evenly deposited wash fluid | Operate coach at safe speed over 40 mph, check coverage, parking position, and wiper frequency | Pass/Fail | |  |  |
| Power Plant | | N/A | Check for leaks under coach and in Motor, comment, check for abnormal noises | Pass/Fail | |  |  |
| HVAC | | Interior temperature | Operate system, check internal and ambient temp. | Int.   Amb. | |  |  |
| Door Control | | Accelerator and brake interlocks | At speeds less than 10 mph, verify accelerator and brake interlocks with door open | Pass/Fail | |  |  |
| General | | N/A | During testing, observe any abnormalities in ride and handling of coach | Pass/Fail | |  |  |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature of Inspector Date**

**Appendix C** Participants

Appendix D, References

|  |  |  |
| --- | --- | --- |
| **SAE #** | **Title** | **Date Published** |
| J10 | * Methods of Test for Paints - Part J10: Determination of Deposition Efficiency of Coating Powders | * Sep 15, 1998 |
| * J211 | * Instrumentation for Impact Test—Part 2: Photographic Instrumentation | * May 1, 2001 |
| * J287 | * Driver Hand Control Reach | * Feb 1, 2007 |
| * J366 | * Exterior Sound Level for Heavy Trucks and Buses | * Feb 1, 1987 |
| * J382 | * Windshield Defrosting Systems Performance Requirements - Trucks, Buses, and Multipurpose Vehicles. | * Jan 1, 1994 |
| * J534 | * Lubrication Fittings | * May 1, 2008 |
| * J537 | * Storage Batteries | * Sep 1, 2000 |
| * J541 | * Voltage Drop for Starting Motor Circuits | * Oct 1, 1996 |
| * J587 | * License Plate Illumination Devices (Rear Registration Plate Illumination Devices) | * Sep 1, 2003 |
| * J593 | * Backup Lamps (Reversing Lamps) | * Sep 1, 2005 |
| * J673 | * Automotive Safety Glasses | * Oct 1, 2005 |
| * J680 | * Location and Operation of Instruments and Controls in Motor Truck Cabs, Recommended Practice | * Sep 1, 1988 |
| * J686 | * Motor Vehicle License Plates | * Oct 1, 1999 |
| * J689 | * Curbstone Clearance, Approach, Departure, and Ramp Breakover Angles—Passenger Car and Light Truck | * Aug 1, 2009 |
| * J833 | * Human Physical Dimensions | * May 1, 2003 |
| * J844 | * Nonmetallic Air Brake System Tubing | * Nov 1, 2004 |
| * J941 | * Motor Vehicle Drivers’ Eye Locations | * Mar 1, 2010 |
| * J994 | * Alarm—Backup—Electric Laboratory Performance Testing | * Mar 1, 2009 |
| * J1050 | * Describing and Measuring the Driver's Field of View | * Jan 1, 2003 |
| * J1113 | * Electromagnetic Compatibility Component Test Procedure Part 42, Conducted Transient Emissions | * Oct 1, 2006 |
| * J1127 | * Low Voltage Battery Cable | * Mar 1, 2010 |
| * J1128 | * Low Voltage Primary Cable | * Dec 1, 2005 |
| * J1149 | * Metallic Air Brake System Tubing and Pipe | * Aug 1, 2007 |
| * J1292 | * Automobile and Motor Coach Wiring | * Jan 1, 2008 |
| * J1455 | * Recommended Environmental Practices for Electronic Equipment Design in Heavy-Duty Vehicle Applications | * Jun 1, 2006 |
| * J1587 | * Joint SAE/TMC Electronic Data Interchange between Microcomputer Systems in Heavy-Duty Vehicle Applications, Recommended Practice | * Jan 1, 1996 |
| * J1708 | * Serial Data Communications Between Microcomputer Systems in Heavy-Duty Vehicle Applications | * Oct 1, 2008 |
| * J1986 | * Balance Weight and Rim Flange Design Specifications, Test Procedures, and Performance Recommendations | * Jan 1, 2006 |
| * J1939 | * Data Link Layer | * Dec 1, 2006 |
| * J1995 | * Engine Power Test Code - Spark Ignition and Compression Ignition - Gross Power Rating, Standard; | * Jun 1, 1990 |
| * J2402 | * Road Vehicles—Symbols for Controls, Indicators, and Tell-tales | * Jan 1, 2010 |
| * J2711 | * Recommended Practice for Measuring Fuel Economy and Emissions of Hybrid-Electric and Conventional Heavy-Duty Vehicles | * Sept 1, 2002 |

Appendix E, Abbreviation and Acronyms

**A/C** air conditioning

**ABS** anti-lock braking system

**AC** alternating current

**ACQ** alkaline copper quaternary

**ADA** Americans with Disabilities Act

**Ah** amp hour

**ALR** auto-locking retractor

**APA** The Engineered Wood Association, formerly the American Plywood Association

**APC** automatic passenger counter

**APTA** American Public Transportation Association

**ASTM** ASTM International, formerly the American Society for Testing and Materials

**ATC** automatic traction control

**AVL** automatic vehicle location

**AWG** American Wire Gauge

**BAFO** Best and Final Offer

**BEB** Battery Electric Vehicle

**BMS** Battery Management System

**CalACT California Association for Coordinated Transportation**

**Caltrans California Department of Transportation**

**CARB** California Air Resources Board

**CCS** climate control system

**CCTV** closed-circuit television

**cfm** cubic feet per minute

**CGA** Compressed Gas Association

**CNG** compressed natural gas

**dB** decibel

**DBE** disadvantaged business enterprise

**DC** direct current

**DDU** driver display unit

**DEF** diesel exhaust fluid

**DOT** Department of Transportation

**DPF** diesel particulate filter

**ECM** Engine Control and Monitoring

**ECS** emission control system

**ELR** emergency locking retractor

**EMI** electromagnetic interference

**EPA** Environmental Protection Agency

**ESS** energy storage system

**FEA** Finite Element Analysis

**FEMA** failure mode effects analysis

**FMCSA** Federal Motor Carrier Safety Administration

**FMCSR** Federal Motor Carrier Safety Regulations

**FMVSS** Federal Motor Vehicle Safety Standards

**FTA** Federal Transit Administration

**GAWR** gross axle weight rated

**GPS** global positioning system

**GVW** gross vehicle weight

**GVWR** gross vehicle weight rated

**H-point** hip-point

**HDS** hybrid drive system

**HMI** human-machine interface

**HSC** hybrid system controller

**HV** high voltage

**HVAC** heating, ventilation and air conditioning

**I/O** input/output

**IEEE** Institute of Electrical and Electronics Engineers

**ISO** International Standards Organization

**LEL** LED emergency light

**LV** low voltage

**mA** milliamp ere

**MBTA** Morongo Basin Transit Authority

**MDT** mobile data terminal

**MPa** mega-Pascal

**NC** normally closed

**NFPA** National Fire Protection Association

**NGV** natural gas vehicle

**NOx** nitrogen oxide

**NO** normally open

**NTP** notice to proceed

**NVLAP** National Volunteer Laboratory Accreditation Program

**OEM** original equipment manufacturer

**OSI** Open Systems Interconnect

**PA** public address

**PMO** project management oversight

**PPU** primary propulsion unit

**PPU** prime power init

**PPV** price per vehicle

**PRD** pressure relief device

**psi** pounds per square inch

**RF** radio frequency

**RFI** radio frequency interference

**RTC** real-time clock

**SAE** SAE International, formerly the Society of Automotive Engineers

**scf** standard cubic feet

**SLW** seated load weight

**SOC** state of change

**UL** Underwriters Laboratories

**UNECE** United Nations Economic Commission for Europe

**VDC** volts of direct current

**Wh** watt-hours

**VIN** vehicle information number

**ZEB** Zero Emissions Bus

Appendix F, CA ADA SALES TAX

The following is a listing of items which are exempt from California Sales Tax. Contractor shall review these items and determine the gross value of the items which will be installed on the proposed Bus. In calculating the Sales or Use Tax, the Contractor shall indicate the gross value of the items including material, labor, overhead and profit. When the Vehicle is registered and the Use or Sales Tax is paid, the Contractor shall pay the Sales or Use Tax on the adjusted value of the Bus.

Wheelchair System

* Wheelchair lift and lift control panel.
* Brake‑accelerator‑wheelchair lift interlock.
* Rear/Front door wheelchair lift disarming switch/key at driver’s position.
* Lights above wheelchair boarding position (floodlight).
* External/internal public address system.
* Fold‑up seats.
* Seat belts with storage box for wheelchair patron.
* Wheelchair securement devices.
* Wheelchair securement straps.
* Kneeling System
* Kneeling mechanism.
* Brake‑throttle‑kneeling interlock.
* Illuminated indicator on driver’s panel.
* Control switch on driver’s panel.
* Warning system (lights and audible alarm).

Miscellaneous

* Modifications to doorways, loading area, aisle, and passenger’s assist design.
* Signs and Decals
* Non‑Skid Flooring

**Gross Value of Items Exempt from California Sales Taxes $\_\_\_\_\_\_\_\_\_\_**