

A blurred image of a high-speed train in motion, viewed from a low angle. The train is white and grey, and the background consists of horizontal motion blur lines. A thick red curved border frames the bottom and right sides of the image.

# **APTA Rail Conference**

## **A Car Builder's perspective to a Standard LRV RFP**

June 13, 2011

**BOMBARDIER**

# Bombardier's participation in Standards Group

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- Good opportunity to discuss with Agencies freely, without any specific constraints related to a potential contract within a defined timeframe
- Hope that a standardized approach to bids may reduce costs of bid preparation and negotiation for car builders in upcoming years, as well as total costs of project for Authorities
- This has allowed to explain Bombardier's approach regarding RFPs terms and conditions, and how they may increase the total price of the Contract

# Balance of Risks

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- Bombardier believes that it is important that there be the appropriate balance of risks between the car builders and the Agencies.
- An over-burdened contract proposed to car builders may result in:
  - a) Less Competition (Some Car Builders not willing to Bid)
  - b) Many exceptions taken (more difficult for Agency to compare bids)
  - c) Higher prices to the Agencies

# Challenges of Car Builders due to the Increasingly Difficult Terms in Recent Years

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Such challenges are due, among others, to:

- Lack of Overall Liability Cap and Consequential and Indirect Damages that are not excluded
- Uncapped Liquidated Damages, Liquidated Damages which are not sole and exclusive and Liquidated Damages that do not necessarily correspond to the true damage sustained by the Agencies
- Warranty Obligations which have become increasingly greater (Evergreen Warranties and Implied Warranties)
- Demands on Intellectual Property Rights are more broad

# Items addressed within the current Standards

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- Balanced and Objective Milestone Payments
- Cap on Liquidated Damages and Guide as to how to establish Liquidated Damages
- Intellectual Property Rights that allow Agencies to use the LRVs as desired without impacting competitiveness of Car Builders or their Suppliers
- Notes discussing various issues which are important to Car Builders and may impact price, such as the Indemnity Provision and Bonding

# Standards will allow Car Builders to:

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- Standardize their bid approach
- Potentially allow Car Builders to develop a standardized product, decreasing risks in design and improving reliability of deliverables
- Over time, reduce the price of the LRVs
- The T&Cs standard developed could also be used on other rail procurements (metros, commuter cars, intercity)