

## **RFP Bus Contract Outline**

### **Introduction**

This document outlines a Request for Proposals (RFP) for a negotiated Bus procurement contract. The document was developed by the APTA Procurement Terms and Conditions Working Group as a recommended practice for use by transit agencies.

An RFP is generally used when the scope of work or specification is less well defined. In addition, this type of procurement may be used in cases where the vehicle involves “emerging” technology or there is a requirement to discuss warranty provisions or design considerations.

The outline has been created to facilitate the development of a Bus package that is consistent throughout the industry, providing a uniform format for numbering and organizing such documents. The use of standard formats for commonly used procurement contracts will improve the ability of industry participants to prepare contracts that contain all necessary provisions and that facilitate the incorporation of best available practices.

Many industries have standard forms of contracts for the acquisition of goods and services. Buyers and sellers in those industries become familiar and comfortable with those forms. The goal of creating a common method of contracting enables participants to focus, when necessary, on negotiating only those issues for which a departure from the accepted norm is necessary or desirable. This approach will save considerable time and effort for the parties to a particular transaction. It also permits new provisions or evolving best practices to be incorporated into the standard contract for that industry efficiently and in a manner designed to benefit the entire industry. Finally, standardization leads to a consistency of interpretation which presumably should reduce the number of contract disputes and result in better prices for both the public and private sectors.

It is understood that transit agencies will need to modify this document to reflect local and state rules, regulations and laws, and that they will insert the standard contract language that they have developed in the appropriate places in the document. However, modifications to the standard format should be made in a manner that will maintain the structural integrity of the outline: the numbering of unused articles should be maintained and accompanied by the notation that they are “Not Used” or are “Reserved”.

The outline for a Bus contract RFP is organized as follows:

The **Request for Proposals** (Section 1) contains general information to prospective proposers regarding the RFP package and can also be used as notification of the RFP to the public or an advertisement of the procurement opportunity.

The **Instructions to Proposers** (Section 2) provide detailed requirements that proposers must follow in submitting their proposal. This section also includes evaluation criteria and information of interest to the proposer regarding Agency contract award procedures.

The **General Conditions** (Section 3), once customized by each Agency, should contain the standard terms and conditions and should only be modified by language added in the Special Provisions section.

The **Special Provisions** (Section 4) should be customized to meet the Agency's specific requirements for each individual project or contract, as well as local and state requirements. They are intended to amend and supplement the General Conditions to meet the individual requirements of each project.

The **Federal Requirements** (Section 5) should be removed when the project is not funded with Federal funds.

The **Technical Specifications** would be attached as Section 6.

The **Warranty Requirements** (Section 7) include requirements to warrant the operation of the Bus.

The **Quality Assurance** (Section 8) covers manufacturing, inspection and acceptance procedures.

Under normal practice, the **Forms and Certifications** (Section 9) are submitted with the proposal or the proposal may be considered non-responsive.

**Sample Contract and Sample Bond Forms** (Section 10) are included in the document. The Contract will incorporate that surviving terms of the RFP as well as the Contractors proposal in a binding document to be executed by the Agency and successful proposer within a designated time period following award.

**Appendices** (Section 11) detail the requirements of import files.

## OUTLINE

### **SECTION 1 – REQUEST FOR PROPOSALS**

#### **Date, time and location of proposal receipt (SBPG 1.1.3.1)**

Sealed proposals in original and (number) copies must be received at the address shown in “Procuring Agency and Contracting Officer” (Section 1.1.1.1) until (date/time) for the provision of (number of buses, spare parts, options, etc.). All labor, equipment, and materials shall be furnished in strict accordance with the delivery schedule and conditions of the Contract Documents. Proposals and subsequent offers shall be valid for a period of (Procuring Agency to specify, not less than 90 and not more than 180 days) days.

#### **Alternate: (BART and SBPG 1.1.3.1)**

#### **Proposal Due Date and Submittal Requirements**

Proposals must be received by 2:00 p.m., local time, on Tuesday, \_\_\_\_\_, 20\_\_.

1. Proposals shall be submitted to either of the following addresses:

For Special Delivery or Hand Delivery:      or      By U.S. Mail

2. Envelopes or boxes containing proposals shall be clearly labeled in the manner as specified (immediately above), and shall also be labeled: “Proposal No. \_\_\_\_\_, \_\_\_\_\_ (Title of RFP).”

3. The number of copies of the proposal to be furnished shall be as follows:

a. (e.g. Ten (10)) complete copies, one marked "ORIGINAL."

b. One (1) complete copy, excluding COST INFORMATION and any STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES. This copy shall be clearly marked on the front page with "PUBLIC RECORDS COPY" in conspicuous letters

Proposals and subsequent offers shall be valid for a period of (Procuring Agency to specify, not less than 90 and not more than 180 days) days.

#### **Pre-proposal meeting information (SBPG 1.1.1.3 AND 1.1.2.1)**

A pre-proposal conference will be held by the Procuring Agency at \_\_\_\_\_ (address) and at the time specified in “Solicitation Schedule.”

Prospective Offerors are requested to submit written questions to the Contracting Officer in advance of the pre-proposal conference. Prospective Offerors are reminded that any changes to the RFP will be by written addenda only and nothing stated at the pre-proposal conference shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Procuring Agency.

**Alternative: (BART and SBPG 1.1.2.1)**

A pre-proposal meeting will be held on day, date. The meeting will convene at (time) in the Procuring Agency's \_\_\_\_\_ Room, located at \_\_\_\_\_. Prospective proposers are urged to make every effort to attend this only scheduled pre-proposal meeting.

Prospective Offerors are requested to submit written questions to the Contract Administrator, identified below, in advance of the pre-proposal conference. Prospective Offerors are reminded that any changes to the RFP will be by written addenda only and nothing stated at the pre-proposal conference shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Procuring Agency.

**Title/Description of the work to be done (SBPG 1.1.1.2)**

Procuring Agency requests proposals for the manufacture and delivery of transit buses/spare parts in accordance with the terms and conditions set forth below. The Contract shall be a firm-fixed price Contract.

**Alternative: (Agency Sample)**

Procuring Agency requests proposals for the manufacture and delivery of transit buses/spare parts in accordance with the terms and conditions set forth below. The Contract shall be a firm-fixed price Contract.

Specifically, the Agency is requesting the following types of buses: \_\_\_\_\_

**Contact person, address, phone and email**

Name:

Address:

Phone Number:

Email:

**Alternative: (BART)**

Please direct all questions concerning the technical aspects of this RFP to Mr./Ms. (enter department manager's name or his/her designated representative) (*optional: phone* \_\_\_\_\_) (fax: \_\_\_\_\_) and all questions concerning Disadvantaged Business Enterprise (DBE) participation to Mr./Ms. (Enter Office of Civil Right's Manager's name or his/her designated representative), (*optional: phone* \_\_\_\_\_) (fax: \_\_\_\_\_). All other questions concerning this RFP should be directed to Mr./Ms. (name), Contract Administrator (*optional: phone* \_\_\_\_\_) (fax: \_\_\_\_\_).

**Identification of source of funding (Metro Akron)**

Financial support of this project is provided through financial assistance grants from the Federal Transit Administration (FTA), State of \_\_\_\_\_ (\_\_\_\_DOT) and *name of Procuring Agency*. Any obligations of Procuring Agency and other Transit Authorities are contingent upon receipt of adequate funding.

**Other locally required notice provisions**

**Dated and signed for posting**

**SECTION 2 – INSTRUCTION TO PROPOSERS**

**IP 1 Quantities (Agency Sample)**

DESCRIPTION OF WORK

The work under these Contract Documents consists of the manufacture and delivery of a base order of Xxx Bus Types. In addition to the base order request of Xxx Bus Types, the Proposer shall also provide a quote for three options. The base order and options are defined in *Section IP 11.3.2 – Price Proposal Requirements*.

**IP 2 Proposed Schedule for the Procurement (SBPG 1.1.1.3)**

The following is the solicitation schedule for Offerors:

|                                     |   |
|-------------------------------------|---|
| Pre-proposal Conference             | <u>  </u> <i>(insert date and time)</i>                               |
| Offeror Communications and Requests | due at least <u>  </u> <i>(fifteen days)</i> before proposal due date |
| Proposal Due Date                   | <u>  </u> <i>(insert date and time)</i>                               |

**IP 3 Obtaining Proposal Documents (BART)**

Proposal Documents may be obtained from the *(Procuring Agency to insert name)*, in person on the *XX<sup>rd</sup>* Floor at *(location)*, or by mail at *(insert address)*. Documents requested by mail will be packaged and sent postage paid. Requests must be accompanied by either cash, check, or postal money order drawn in favor of the *Procuring Agency* in the following amount, which includes any applicable sales tax, and is not refundable: ***(Delete if no charge)***

RFP Book and Technical Specifications (Includes forms for submittal of Bids)..... \$**[Insert price]**  
.....\$ 2.50

Bidders are informed that all of these documents will be required in the preparation of Bids. Each Bid shall be on a prescribed Bid Form and shall be for the entire Contract including all Bid Items.

**IP 4 Proposal Security requirements (AC Transit)**

Each offer shall be accompanied by a certified or cashier’s check, cash, or a bond, from a surety licensed to do business in the State of *(Specify)*, in the sum of not less than 20% of the Total Base Price. Said checks or bond shall be made payable to the order of the *(Specify name of Procuring Agency or other appropriate designation)*. Offeror shall complete Form ***(Insert Agency Standard Bond Form)***. If the offer is not accepted by the District within 120 calendar days after the date set for the opening of the offer, or if the Offeror to whom the contract is awarded executes and delivers to the District the required Contract Forms, then the amount of the cash or the certified or cashier’s check shall be returned to the Offeror.

## **IP 5 Pre-Proposal Meeting/Information for Proposers (SBPG 1.1.1.3 and 1.1.2.1)**

A pre-proposal conference will be held by the Procuring Agency at \_\_\_\_\_ (*address*) and at the time specified in “Solicitation Schedule.”

Prospective Offerors are requested to submit written questions to the Contracting Officer in advance of the pre-proposal conference. Prospective Offerors are reminded that any changes to the RFP will be by written addenda only and nothing stated at the pre-proposal conference shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Procuring Agency.

### **Alternative: ( BART)**

A pre-proposal meeting will be held on day, date. The meeting will convene at (time) in the Procuring Agency’s \_\_\_\_\_ Room, located at \_\_\_\_\_. Prospective proposers are urged to make every effort to attend this only scheduled pre-proposal meeting.

Prospective Offerors are requested to submit written questions to the Contract Administrator, identified in *Section 1 – Request for Proposals* above, in advance of the pre-proposal conference. Prospective Offerors are reminded that any changes to the RFP will be by written addenda only and nothing stated at the pre-proposal conference shall change or qualify in any way any of the provisions in the RFP and shall not be binding on the Procuring Agency.

## **IP 6 Questions and Clarifications (SBPG 1.1.2.2 edited)**

All correspondence, communication and/or contact in regard to any aspect of this solicitation or offers shall be with the Contract Specialist identified in “*Contact Person, Address, Phone and Email*” (*Section 1 – Request for Proposals*) above, or his/her designated representative. Offerors and their representatives shall not make any contact with or communicate with any members of the Procuring Agency, or its employees and consultants, other than the Contract Specialist in regard to any aspect of this solicitation or offers.

At any time during this procurement up to the time specified in *IP2 - “Proposed Schedule for the Procurement*, above, Offerors may request, in writing, a clarification or interpretation of any aspect, or 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 Contract Specialist and may be transmitted by facsimile. The Offeror making the request shall be responsible for its proper delivery to the Procuring Agency per “*Contact Person, Address, Phone and Email*” (*Section 1 – Request for Proposals*) on the form “*Request for Pre-Offer Change or Approved Equal*” provided as *Attachment 1 following this Section 2 – Instructions to Proposers..* The Procuring Agency will not respond to oral requests except those made at the pre-proposal conference, which shall be tentative responses. Any oral response at a pre-proposal conference which is not confirmed by an addendum shall not be official or binding on the Procuring Agency. 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 evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be

provided by the Procuring Agency in the form of addenda only. Only written responses provided as addenda shall be official and all other forms of communication with any officer, employee or agent of the Procuring Agency shall not be binding on the Procuring Agency.

If it should appear to a prospective Offeror 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 thereof or with any federal, state, local or Procuring Agency law, ordinance, rule, regulation, or other standard or requirement, then the Offeror shall submit a written request for clarification to the Procuring Agency within the time period specified above.

**IP 7 Addenda to RFP (SBPG 1.1.2.3 edited)**

The Procuring Agency reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. The Procuring Agency shall provide copies of Addenda to all prospective Offerors officially known to have received the RFP. Prospective Offerors, or their agents, shall be responsible to collect the addendum at the address provided in ***“Contact Person, Address, Phone and Email” (Section 1 – Request for Proposals*** or receive same otherwise. Notification of or the addendum will also be mailed or delivered to all such prospective Offerors officially known to have received the RFP and to the address provided by each prospective Offeror . Failure of any prospective Offeror to receive the notification or addendum shall not relieve the Offeror from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Prospective Offerors shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals. Failure to acknowledge in their proposals receipt of addenda may at the Procuring Agency's sole option disqualify the proposal.

If the Procuring Agency determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that the Procuring Agency determines will allow Offerors sufficient time to revise their proposals. Any new Due Date shall be included in the addenda.

**IP 8 EEO/DBE Requirements for Transit Vehicle Manufacturers (SBPG 1.1.3.5)**

Pursuant to Title 49, Code of Federal Regulations, part 23.67, an Offeror, as a condition of being authorized to respond to this solicitation, must certify by completing “DBE APPROVAL CERTIFICATION” (Section 1.1.6.7), that it has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual Disadvantaged Business Enterprise (DBE) subcontracting participation goal.

**Alternative (NYCT edited)**

*(Here is sample language about DBE Regulations. This sample language may be supplemented by local program requirements.)*

*DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION*

*The Supplier or any Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 CFR Part 26.49, Transit Vehicle Manufacturer's (TVM) Certification of Compliance with Disadvantaged Business Enterprise (DBE) Regulations, are incorporated in this Contract by reference. Failure by the Supplier to carry out these requirements is a material breach of the Contract which may result in the termination of this Contract or such other remedy, as the Procuring Agency deems appropriate.*

#### **IP 9 Conditions, Exceptions, Reservations or Understandings (SBPG 1.1.2.4 edited)**

Proposals stating conditions, exceptions, reservations or understandings (hereinafter "deviations") relating to the RFP may be rejected. Offerors may submit an alternate proposal that states deviations so long as a basic proposal not containing deviations is submitted. Offerors may propose alternates either within one overall proposal or by submitting more than one proposal. Any alternate proposal shall include a price proposal in accordance with **Section IP 11.3.2 - "Price Proposal Requirements"**.

Any and all deviations must be explicitly, fully and separately stated in the proposal by completing form(s) provided in the form "**Form for Proposal Deviation**" provided as **Attachment 2 following this Section 2 – Instructions to Proposers**, setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and, if appropriate, evaluated by the Procuring Agency. All deviations not found by the Procuring Agency to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the Offeror receiving a less favorable evaluation than without the deviation.

#### **IP 10 Protest Procedures (SBPG 1.1.5.5)**

Any protests by an interested party regarding this procurement shall be made in accordance with (*reference state or local law, ordinance and/or regulation*). After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) of the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1D. Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 (Section 661.15) and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23 (Section 23.73).

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

#### **Alternate (BART and SBPG 1.1.5.5)**

##### **PROTESTS:**

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

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:



*Insert Proper Address*

For U.S. Mail:

*Insert Proper Address*

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

Copies of the Procuring Agency's Protest Procedures and the protest provisions of Federal Transit Administration (FTA) Circular 4220.1E may be obtained from the Procuring **Agency's *Insert Appropriate Contact Name and Address***, Telephone (xxx) [**Insert Contract Specialist's phone number**]. Proposals will be opened and a Notice of Award will be issued by the Procuring Agency in accordance with the Procuring Agency's Protest Procedures and the protest provisions of FTA Circular 4220.1E.

B. Pre-Proposal Protests: Pre-Proposal Protests are protests based upon the content of the solicitation documents. XXX (x) copies of pre-Proposal protests must be received by the Procuring Agency's Office no later than \_\_\_\_\_ \*(xxx) calendar days prior to Proposal opening. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the opening of Proposals in a manner than provides verification of receipt prior to the opening of Proposals. If the protest is sustained, the Proposal opening date may be postponed and an Addendum issued to the solicitation documents or, at the sole discretion of the Procuring Agency, the advertisement may be canceled. If the protest is denied, Proposals will be received and opened on the scheduled date unless a protest is filed with FTA. See Paragraph D below.

C. Protests on the Recommended Award: All Offerors will be notified of the recommended Award. This notice will be transmitted to the Offeror 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 Paragraph B above. Xxx (xx) 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 Procuring Agency at the appropriate address in Paragraph A above no later than Xxx (xx) calendar days after the date such notification is received. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Proposer recommended for Award in a manner that provides verification of receipt, prior to issuing the Notice of Award. Such decision shall be final.

D. FTA Review: A Proposer or prospective Proposer who submits a protest may request FTA review of Procuring Agency action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the Procuring Agency to have written protest procedures, the alleged failure of the Procuring Agency to follow those procedures, the alleged failure of the Procuring Agency to review a protest, or the alleged violation of Federal law or regulation; an appeal to FTA must be received by FTA's Regional Administrator for Region (**Insert number**) in (**Indicate City**), within Xxx (xx) working days after the Procuring Agency's final Decision is received by the Proposer or prospective Proposer or Xxx (xx) working days after the Proposer or prospective Proposer learned or should have learned of the Procuring Agency's final Decision or other basis of appeal to FTA; a copy of the appeal filed with the FTA shall be submitted to the Procuring Agency at the address shown above.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

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\* The number of days specified may vary between 7 and 21, depending upon the length of time between advertisement and Bid opening. Note that a short period will require quick staff response to avoid postponement of Bid opening.

## **IP 11 Preparation of Proposals**

### **IP 11.1. Use of Proposal Forms (LACMTA IP-6)**

- a. The proposal shall be formatted in accordance with the requirements specified herein. Proposals shall include the forms provided with the solicitation documents, or on legible photocopies of the forms. Proposers shall complete the forms in accordance with the directions specified in these Instructions and the forms. All required explanatory narratives and the supplementary data are to be included with the proposal forms as indicated.
- b. Pencil or erasable ink shall not be accepted. Initial all modifications made to the proposer's entries and identify the proposer's name on the top right of each page. Liquid or dry correction materials shall not be used.
- c. Failure to comply with the requirements outlined in these solicitation documents may render the proposal(s) incomplete and may cause proposal rejection. This RFP does not commit Metro to enter into a contract nor does it obligate Metro to pay for any costs incurred in the preparation and submission of proposals.

**Alternate: (Language created by Dick)**

#### **Submittal of Proposals**

Offerors are advised that the forms contained in this RFP are the forms required to be used for submission of a proposal. Each Proposal shall be on the prescribed Proposal Form(s) and shall be for the entire Contract including all Proposal Items.

### **IP 11.2. Alternate and Multiple Proposals (LACMTA IP-7)**

Proposers are cautioned to limit exceptions, conditions, 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.

Proposers submitting conforming proposals may submit alternate proposals to this RFP as complete separate offers, if the alternate proposals offer technical improvements or modifications that are to the overall benefit of the Metro. Metro reserves the right to accept or reject any alternate proposal. Oral or telephonic proposals and/or modifications shall not be considered.

### **IP 11.3. Proposal Format Requirements (SBPG 1.1.3.4 edited)**

Proposals shall be submitted in two (2) separately sealed packages. 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 no other documents. These same requirements shall apply to any Best and Final Offers which may be requested.

PACKAGE NO. 1

TECHNICAL PROPOSAL

*(Name of Procurement)*

1. Letter of Transmittal
2. Technical Proposal
3. References and Non-priced Information (if provided by Offeror)

SUBMITTED BY:

*(Offeror's name and address)*

PACKAGE NO. 2

PRICE PROPOSAL

*(Name of Procurement)*

1. Price and Proposal
2. Pricing Schedule
3. Supporting Data

SUBMITTED BY:

*(Offeror's name and address)*

No cost, price or financial information of any kind shall be included in Package No. 1 or in any of the proposal documents that it will contain.

Proposal packages shall be addressed and delivered to the address specified in ***“Contact Person, Address, Phone and Email” (Section 1 – Request for Proposals)***

**IP 11.3.1. Technical Proposal Requirements (SBPG 1.1.3.2.1, 1.1.3.2.2 and 1.1.3.2.3 edited)**

*(NOTE: Procuring Agency to develop and insert instructions to Offerors specifying the format and content of the technical proposal.)*

**Offeror Qualifications Statement**

The Offeror shall state on the form “Offeror Service and Parts Support Data” provided as Attachment 3 following this Section 2 – Instructions to Proposers the representatives responsible for assisting the Procuring Agency, as well as the location 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 Offeror shall also state below, or by

separate attachment, its policy on transportation charges for parts other than those covered by warranty.

In addition, the Offeror shall provide the following information: *(NOTE: Procuring Agency to specify the information necessary to evaluate against the qualifications requirements of Section IP 12.4 – Proposal Selection Process.*

**Technical Proposal**

*(NOTE: Procuring Agency to specify two types of information that Offerors shall include in the technical proposal: (1) the specific information needed to evaluate against the evaluation criteria of Section IP 12.4 – Proposal Selection Process and (2) the information that qualifies and quantifies the features of the bus offered that contractually commits the Offeror to deliver a specific bus design.)*

**Management Plan**

*(NOTE: Procuring Agency to specify the information required for any Management Plan required to be included in the proposal consistent with any specific management requirements and any evaluation criteria of Section IP 12.4 – Proposal Selection Process.)*

**IP 11.3.2. Price Proposal Requirements (SBPG 1.1.3.3 edited)**

*(NOTE: Procuring Agency to specify the specific pricing data required and include the appropriate forms which prices are to be proposed.)*

The Offeror is required to complete and execute the Procuring Agency’s Pricing Schedule contained as part of the bid 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 Offer price. The Procuring Agency shall furnish to all prospective Offerors a list of applicable state and local taxes imposed by the Procuring Agency’s state or local governments. The Procuring Agency shall be liable for any such state and local taxes applicable to the complete bus as delivered that are promulgated and become effective between the Due Date and the delivery date.

**IP 11.3.3. Contact Administration Package Requirements (SBPG 2.10.1.1)**

The Offeror and (if selected) Contractor shall submit evidence that it will be capable of meeting the bid specifications.

**IP 11.3.4. Proprietary/Confidential Information Package (Language created by Dick)**

Offeror is directed to collect and submit any information it deems to be proprietary or confidential in nature in a separated marked and sealed package. Subject package shall be submitted in accordance with the terms and conditions governing the submittal of Proposer’s offer to this RFP.

Offeror is advised that the Procuring Agency is a public agency and as such is subject to certain local Public Records Act provisions regarding the release of information concerning this RFP. If a request is received by the Procuring Agency for the release of Proposer's proprietary/confidential information, subject request will 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 defend and hold harmless the Procuring Agency from any action arising in Court from such a declaration.

**IP 11.4. Agency Treatment of Proprietary/Confidential Information (SBPG 1.1.4.5)**

*NOTE: The following provision should be considered as a guideline for drafting a clause which is consistent with local laws.*

Access to government records is governed by the *(city state or local law)*. Except as otherwise required by the *(city state or local law)*, the Procuring Agency will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial and financial information which an Offeror 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 will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

*(a) (If it is possible under the local law to separate the confidential information from the proposal, the following may be included:)*

The Offeror may (or shall) submit proprietary information, trade secrets or confidential commercial and financial information, which an Offeror believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.

The following information is not required to be included in the Proposal, but the Offeror shall make it available for review by the Procuring Agency:

***Procuring Agency to insert requirements***

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

The Procuring Agency shall employ sound business practices no less diligent than those used for the Procuring 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 Offerors and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the (city state or local 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 Procuring Agency in its sole discretion, bears appropriate notices relating to its confidential character.

**IP 11.5. Signing of proposal forms (LACMTA IP-8)**

- A. Proposer or its authorized representative (Proposer's Representative) shall execute the Proposal and all required solicitation documents. Proposers shall submit evidence of the Proposer's Representative's authority.
- B. If the proposer is a joint venture or partnership, it shall submit with its proposal a duly notarized Venturer or Partner-executed Irrevocable Power of Attorney that designates the Proposer's Representative along with a copy of the signed Joint Venture or Partnership Agreement. The Proposer's Representative shall be empowered to execute the proposal on behalf of the proposer and to act for and bind the proposer in all matters relating to the proposal. The Irrevocable Power of Attorney shall specifically state that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the proposer that are assumed under the proposal and under any contract arising therefrom. The Proposer's Representative shall execute the proposal on behalf of the joint venture or partnership in its legal name.

**Alternative: (Agency Sample)**

Proposals shall include firm name (and, in the event 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) representing the joint venture principals, with their telephone and facsimile (fax) numbers, who may be contacted during the proposal evaluation period for scheduling oral presentations as well as for receiving notices from the Procuring Agency.

Proposals shall be signed by an official authorized to bind the Proposer.

**IP 11.6. Modification or Withdrawal of Proposals (SBPG 1.1.3.6 edited)**

A modification of a proposal already received will be accepted by the Procuring Agency only if the modification is received prior to the Proposal Due Date, or is specifically requested by the Procuring 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 Offeror may withdraw a proposal already received prior to the Proposal Due Date by submitting, in the same manner as the original proposal, to the Procuring Agency a written request for withdrawal executed by the Offeror's authorized representative. After the proposal Due Date, a proposal may be withdrawn only if the Procuring Agency fails to award the

Contract within the proposal validity period prescribed in *Section 1 – Request for Proposals* or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of an offeror to submit another proposal within the time set for receipt of proposals.

This provision for modification and withdrawal of proposals may not be utilized by an Offeror as a means to submit a late proposal and, as such, will not alter the Procuring Agency's right to reject a proposal.

#### **IP 11.7. Cost of Proposal Development (BART)**

This RFP does not commit the Procuring Agency to enter into a contract, to pay any costs incurred in the preparation or presentation of a proposal, or to procure or contract for the equipment.

1. The Procuring Agency reserves, at its sole discretion, the right to reject any and all proposals solicited by this RFP and to waive informalities and minor irregularities in any proposals received.
2. The Procuring Agency also reserves, at its sole discretion, the right to negotiate with all qualified Proposers, or to cancel this RFP in whole or in part.
3. The Procuring Agency may require selected Proposers to participate in negotiations and to submit additional cost or technical data or other revisions of its proposals as may result from such negotiations.
4. The Procuring Agency may request Proposer(s) to extend the validity period of its proposal beyond the requirements set forth in *IP 12.2 – Duration of the Validity of Proposals* by written agreement between the Procuring Agency and the Proposer(s)

#### **IP 12 Proposal Evaluation, Negotiation and Selection (SBPG 1.1.4.3 edited)**

Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those which 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 Offerors within the competitive range, after which Best and Final Offers (BAFOs) may be requested. However, the Procuring Agency may select a proposal for award without any discussions or negotiations or request for any BAFO(s). Subject to the Procuring Agency's right to reject any or all proposals, the Offeror will be selected whose proposal is found to be most advantageous to the Procuring Agency, based upon consideration of the criteria of *Section IP 12.4 – Proposal Selection Process* below.

##### **IP 12.1. Opening of Proposals (SBPG 1.1.4.1)**

Proposals will not be publicly opened. All proposals and evaluations will be kept strictly confidential throughout the evaluation, negotiation and selection process. Only the members

of the Selection Committee and Evaluation Team and other Procuring Agency officials, employees and agents having a legitimate interest will be provided access to the proposals and evaluation results during this period.

**IP 12.2. Duration of the validity of proposals (SBPG 1.1.3.1)**

Proposals and subsequent offers shall be valid for a period of (Procuring Agency to specify, not less than 90 and not more than 180 days) days .

**Alternative (BART)**

Proposals submitted shall constitute a firm offer for at least one hundred and eighty (180) calendar days from the last date for submission of proposals set forth herein. The Procuring Agency may request Proposer(s) to extend the period of time specified herein by written agreement between the Procuring Agency and the Proposer(s) concerned.

**IP 12.3. Selection and Evaluation Committee(s) (SBPG 1.1.4.2)**

*(NOTE: Procuring Agency to specify how it will organize the evaluation and appropriately title this section. The following is provided as an example.)*

A Selection Committee will be established. The Committee will make all decisions regarding the evaluations, determination of responsible Offerors and the competitive range, negotiations and the selection of the Offeror, if any, that may be awarded the Contract. The Selection Committee will be assisted by an Evaluation Team which will include officers, employees and agents of the Procuring Agency. The Evaluation Team will carry out the detailed evaluations and report all of its findings to the Selection Committee. .

**IP 12.4. Proposal Selection Process (SBPG 1.1.4.3, 1.1.4.3.1 and 1.1.4.3.2 edited)**

The following describes the process by which proposals will be evaluated and a selection made for a potential award. Any such selection of a proposal by a responsible Offeror shall be made by consideration of only the criteria set forth below in “Qualification Requirements” and “Proposal Evaluation Criteria”. The Qualification Requirements section specifies the requirements for determining responsible Offerors, all of which must be met by an Offeror to be found qualified. Final determination of an Offeror’s qualification will be made based upon all information received during the evaluation process and as a condition for award. The Proposal Evaluation Criteria section contains all of the evaluation criteria, and their relative order of importance, by which a proposal from a qualified Offeror will be considered for selection. An award, if made, will be to a responsible Offeror for a proposal which is found to be in the Procuring Agency’s best interest, price and other evaluation criteria considered.

The procedures to be followed for these evaluations are provided in “**Section IP 12.5 - Evaluation Procedures**” below.

**Qualification Requirements**



The following are the requirements for qualifying responsible Offerors. All of these requirements must be met; therefore, they are not listed by any particular order of importance. The Offeror of any proposal that the Selection Committee finds not to meet these requirements, and cannot be made to meet these requirements, may be determined by the Selection Committee not to be responsible and its proposal rejected. The requirements are as follows:

*(NOTE: Requirements shown in italics are examples to serve as guidelines. The Procuring Agency is to choose and specify the appropriate requirements.)*

- I. 1. Sufficient financial strength and resources and capability to finance the work to be performed and complete the Contract in a satisfactory manner as measured by:
  - A. Offeror's financial statements prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either the Procuring Agency or the Offeror. *(NOTE: Procuring Agency to determine any minimum requirements for equity, working capital, debt, etc. For example where it would be possible to establish some minimum numerical values for equity, debt to assets ratio, etc. as a screening mechanism, this should be done on an approximate basis to avoid having to rule out an otherwise viable Offeror which is just below a rigid minimum. Whatever measures are established should be consistent with what the financial strength needs are for the project. Here it is only important to determine if the Offeror will have sufficient financial strength to pay its bills on time, fund the cash flow, and meet obligations to subcontractors. The evaluation of financial strength should take into account the Offeror's other contractual commitments)*
  - B. *(NOTE: If performance bonding is specified as an alternative to or together with other financial qualifications and assurances)* Ability to secure required bond(s) as evidenced by a letter of commitment from an underwriter confirming that the Offeror can be bonded for the required amount.
  - C. Willingness of any parent company to provide the required financial guaranty evidenced by a letter of commitment signed by an officer of the parent company having the authority to execute the parent company guaranty. *(NOTE: If the Offeror is a subsidiary(ies) of another company(ies) or is a joint venture, guaranties from the parents and/or corporate members of the joint venture should be required. Language can be stipulated by the Procuring Agency to assure that the guaranty is effective.)*
  - D. Ability to obtain required insurance with coverage values that meet minimum requirements evidenced by a letter from an underwriter confirming that the Offeror can be insured for the required amount.

- II. Evidence that the human and physical resources are sufficient to perform the contract as specified and assure delivery of all equipment within the time specified in the Contract, to include:
  - A. Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment to complete the Contract as required and satisfy any engineering or service problems that may arise during the warranty period.
  - B. Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.
  - C. 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.
- III. Evidence that Offeror is qualified in accordance with Part 3: Quality Assurance Provisions.
- IV. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability, and steps Offeror took to resolve any judgments, liens, fleet defects history, and warranty claims. Evidence shall be by client references.

### **Proposal Evaluation Criteria**

The following are the complete criteria, listed by their relative degree of importance, by which proposals from responsible Offerors will be evaluated and ranked for the purposes of determining any competitive range and to make any selection of a proposal for a potential award. Any exceptions, conditions, reservations or understandings explicitly, fully and separately stated on the "Form for Proposal Deviation (Section 1.1.6.9) which do not cause the Procuring Agency to consider a proposal to be outside the competitive range, will be evaluated according to the respective evaluation criteria and/or sub-criteria which they affect.

The criteria are listed numerically by their relative order of importance. However, certain criteria may have sub-criteria that are listed by their relative order of importance within the specific criterion they comprise. Also, certain sub-criteria may have sub-criteria that are listed by their relative degree of importance within the specific sub-criterion they comprise.

*(NOTE: Procuring Agency to define and insert the evaluation criteria. At the option of the Procuring Agency weights should be assigned to each criterion and sub-criterion and shown in the document. The criteria are to be listed by their order of importance in the evaluation. The following are suggested categories of criteria for Procuring Agency consideration, but not listed in suggested order of importance:*

- *Technical*
- *Qualifications and Resources*

- *Management*
- *Price*
- *Other Financial Impacts*

*(Example evaluation criteria are presented in an Appendix at the end of this document)*

#### **IP 12.5. Evaluation Procedures (SBPG 1.1.4.4 and 1.1.4.4.1 edited)**

All aspects of the evaluations of the proposals and any discussions/negotiations, including documentation, correspondence and meetings, will be kept confidential during the evaluation and negotiation process.

Proposals will 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. Procuring Agency reserves the right to request an Offeror to provide any missing information and to make corrections. Offerors are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in ***Section IP 11 – Preparation of Proposals***. Therefore, Offerors shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Offeror has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully and separately stated on the forms and according to the instructions of ***Attachment 2 - Form for Proposal Deviation contained at the end of this Section 2 – Instructions to Proposers***. Any such conditions, exceptions, reservations or understandings which do not result in the rejection of the proposal are subject to evaluation under the criteria of ***Section IP 12.4 – Proposal Selection Process***.

Evaluations will be made in strict accordance with all of the evaluation criteria and procedures specified in ***Section IP 12.4 - Proposal Selection Process*** above. The Procuring Agency will select for any award the highest ranked proposal from a responsible Offeror, qualified under ***Section IP 12.4 – Proposal Selection Process*** which does not render this procurement financially infeasible and is judged to be most advantageous to the Procuring Agency based on consideration of the evaluation ***Section IP 12.4 – Proposal Selection Process***.

#### **Evaluations of Competitive Proposals**

- I. **Qualification of Responsible Offerors.** Proposals will be evaluated in accordance with requirements of ***Section IP 12.4 – Proposal Selection Process*** to determine the responsibility of Offerors. Any proposals from Offerors whom the Procuring Agency finds not to be responsible and finds cannot be made to be responsible may not be considered for the competitive range. Final determination of an Offeror's responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by the Procuring Agency, information submitted in a BAFO and information resulting from Procuring Agency inquiry of Offeror's references and its own knowledge of the Offeror.

II. **Detailed Evaluation of Proposals and Determination of Competitive Range.** Each proposal will be evaluated in accordance with the requirements and criteria specified in *Section IP 12.4 – Proposal Selection Process*.

The following are the minimum requirements that must be met for a proposal to be considered for the competitive range. All of these requirements must be met; therefore, they are not listed by any particular order of importance. Any proposal that the Procuring Agency finds not to meet these requirements, and may not be made to meet these requirements, may be determined by the Procuring Agency to not be considered for the competitive range. The requirements are as follows:

- A. Offeror is initially evaluated as responsible in accordance with the requirements of *Section IP 12.4 – Proposal Selection Process*, or that the Procuring Agency finds it is reasonable that said proposal can be modified to meet said requirements. Final determination of responsibility will be made with final evaluations.
- B. Offeror has followed the instructions of the RFP and included sufficient detail information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by the Procuring Agency to be either a defect that the Procuring Agency will waive in accordance with *Section IP 13.4 – Agency Rights* or that the proposal can be sufficiently modified to meet these requirements.
- C. Proposal price would not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible.  
The Procuring Agency will carry out and document its evaluations in accordance with the criteria and procedures of *Section IP 12.4 – Proposal Selection Process*. Any extreme proposal deficiencies which may render a proposal unacceptable will be documented. The Procuring Agency will make specific note of questions, issues, concerns and areas requiring clarification by Offerors and to be discussed in any meetings with Offerors which the Procuring Agency finds to be within the competitive range.

Rankings and spreads of the proposals against the evaluation criteria will then be made by the Procuring Agency as a means of judging the overall relative spread between proposals and of determining which proposals are within the competitive range, or may be reasonably made to be within the competitive range.

III. **Proposals not within the Competitive Range.** Offerors of any proposals that have been determined by the Procuring Agency as not in the competitive range, and cannot be reasonably made to be within the competitive range, will be notified in writing, including the shortcomings of their proposals.

- IV. **Discussions with Offerors in the Competitive Range.** The Offerors whose proposals are found by the Procuring Agency to be within the competitive range, or may be reasonably made to be within the competitive range, will be notified and any questions and/or requests for clarifications provided to them in writing. Each such Offeror may be invited for a private interview(s) and discussions with the Procuring Agency to discuss answers to written or oral questions, clarifications, and any facet of its proposal.

In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in *Attachment 2 - Form for Proposal Deviation contained at the end of this Section 2 – Instructions to Proposers*, said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, the Procuring Agency shall have the right to reject any and all such conditions and/or exceptions, and instruct the Offeror to amend its proposal and remove said conditions and/or exceptions; and any Offeror failing to do so may cause the Procuring Agency to find such proposal to be outside the competitive range.

No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors. Offerors will 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. Offerors will not be told of their rankings among the other Offerors.

- V. **Factory and Site Visits.** The Procuring Agency reserves the right to conduct factory visits to inspect the Offeror's facilities and/or other transit systems which the Offeror has supplied the same or similar equipment.

- VI. **Best and Final Offers (BAFO).** After all interviews have been completed, each of the Offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFOs shall include:

- A. Notice that discussions/negotiations are concluded;
- B. Notice that this is the opportunity for submission of a BAFO;
- C. A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs;
- D. 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 and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal;
- E. Notice that if Offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Offer will be construed as their BAFO.

Any modifications to the initial proposals made by an Offeror in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by the Procuring Agency according to the same requirements and criteria as the initial proposals ***Section IP 12.4 – Proposal Selection Process***. The Procuring Agency will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFOs. These final scores and rankings within each criteria will again be arrayed by the Procuring Agency and considered according to the relative degrees of importance of the criteria defined in ***Section IP 12.4 – Proposal Selection Process***.

The Procuring Agency will then choose that proposal which it finds to be most advantageous to the Procuring Agency based upon the evaluation criteria. The results of the evaluations and the selection of a proposal for any award will be documented in a report.

The Procuring Agency reserves the right to make an award to an Offeror whose proposal it judges to be most advantageous to the Procuring Agency based upon the evaluation criteria, without conducting any written or oral discussions with any Offerors or solicitation of any BAFOs.

## **IP 13 Response to Proposals**

### **IP 13.1. Single Proposal Response (SBPG 1.1.5.2)**

If only one proposal is received in response to this RFP and it is found by the Procuring Agency to be acceptable, a detailed price/cost proposal may be requested of the single Offeror. A price or cost analysis, or both, possibly including an audit, may be performed by or for the Procuring Agency of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Offeror has agreed to such analysis by submitting a proposal in response to this RFP. A price analysis is an evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise an Offeror's price proposal. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar time frame. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Offeror's Offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Offeror's performance should cost. A cost analysis is generally conducted to determine whether the Offeror is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate the Procuring Agency to accept such a single proposal; and the Procuring Agency may reject such proposal at its sole discretion.

### **IP 13.2. Availability of Funds (SBPG 1.1.5.4)**

This procurement is subject to the availability of funding. *(Procuring Agency to insert a description of the funding for this procurement, including any conditions upon which funding is dependent)* The Procuring Agency's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the Contract purposes can be made. No legal liability on the part of the Procuring Agency for any payment shall arise until funds are made available to the Contracting Officer for this Contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer. Any award of Contract hereunder will be conditioned upon said availability of funds for the Contract.

### **IP 13.3. Agency Contract Approval Process (Language created by Dick)**

*(Procuring Agency should insert a provision outlining its internal approval and award process advising Offerors on the steps to be taken after completion of any evaluation process).*

### **IP 13.4. Agency Rights (SBPG 1.1.5.3 and 1.1.5.1 edited)**

The Procuring Agency reserves the right to cancel the procurement, for sound business reasons, at any time before the Contract is fully executed and approved on behalf of the Procuring Agency.

The Procuring Agency reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Offerors, and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to the Procuring Agency, price and other evaluation criteria considered. The Procuring Agency reserves the right to consider any specific proposal which is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. The Procuring 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 Offerors.

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

The Procuring Agency may reject a proposal that includes unacceptable deviations as provided in *Section IP 9 – “Conditions, Exceptions, Reservations or Understandings”*.

### **IP 13.5. Execution of Contract (SBPG 2.2.1 and 2.7.3 edited)**

The acceptance of an Offer for award, if made, shall be evidenced by a notice of award of Contract in writing delivered in person or by registered mail to the Offeror whose Offer is accepted. No other act by the Procuring Agency shall evidence acceptance of an Offer. Such notice shall obligate said Offeror to commence performance under the Contract. Upon award of the Contract to an Offeror, such Offeror shall commence performance under the

Contract by executing all Contract Guaranty Agreements provided with the Offer, by furnishing any required bonds, and by furnishing copies of the certificates of insurance required to be procured by the Contractor pursuant to the Contract documents within (Procuring Agency to complete) calendar days after the date of receipt of the notice of award or within such further time as the Procuring Agency may allow. Failure to fulfill these requirements within the specified time is cause for termination of the Contract under ***Section GC 12.4 – Termination for Convenience, Default.***

**IP 14 Omissions (SBPG 1.1.2.2)**

If it should appear to a prospective Offeror 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 thereof or with any federal, state, local or Procuring Agency law, ordinance, rule, regulation, or other standard or requirement, then the Offeror shall submit a written request for clarification to the Procuring Agency within the time period specified above.

**IP 15 Conflicts of interest; gratuities (Language created by Dick)**

Offerors are prohibited from engaging in any practice that may be considered as a Conflict of Interest under existing State law of the Procuring Agency 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 laws.

**IP 16 Agency Specific Provisions**



**REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUAL**

*(Procuring agency to insert RFP number)*

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 and Clarifications” (Section IP 6).

|  |                |
|--|----------------|
| Request #: _____                                 | Offeror: _____ |
| Solicitation Ref: _____                          | Page: _____    |
| Section: _____                                   |                |
| Questions/Clarification or Approved Equal: _____ |                |
|  |                |
|  |                |
|  |                |
|  |                |
|  |                |
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|  |                |
|  |                |
|  |                |
|  |                |
| Procurring Agency: _____                         |                |
|  |                |

**FORM FOR PROPOSAL DEVIATION**

*(Procuring Agency to Insert RFP Number)*

The following form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal according to “Conditions, Exceptions, Reservations and Understandings” (Section IP 9). One copy without any price/cost information is to be placed in the technical proposal as specified in “Technical Proposal Requirements” (Section 1.1.3.2) and a separate copy with any price/cost information placed in the price proposal as specified in “Price Proposal Requirements” (Section 1.1.3.3).

|   |                            |
|---|----------------------------|
| Deviation #: _____                      | Offeror: _____             |
| Solicitation Ref: _____                 | Page: _____ Section: _____ |
| Complete Description of Deviation _____ |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |
| Rationale (Pros & Cons): _____          |                            |
|   |                            |
|   |                            |
|   |                            |

**Attachment 2**

**OFFEROR SERVICE AND PARTS SUPPORT DATA**

**Location of nearest Technical Service Representative to Procuring Agency**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Offeror to describe technical services readily available from said representative.

**Location of nearest Parts Distribution Center to Procuring Agency**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Offeror shall 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 Procuring Agency \_\_\_\_\_

**SECTION 3 - GENERAL CONDITIONS**

**GC 1 GENERAL (SBPG 2.1)**

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

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

|   |  |
|---|--|
| <p><i>(a) (for use in negotiated procurements)</i><br/> <u>Best and Final Offer (BAFO).</u> The last Offer made by a proposer. If a BAFO is not specifically requested by the Procuring Agency, or if the proposer does not timely respond to a request for BAFO, the most recent, current Offer is the BAFO.</p> | <p><i>(b) (for use in competitive bidding)</i></p> |
|---|--|

Procuring Agency. \_\_\_\_\_ *(insert name)*

Contract. The Offer and its acceptance by the Procuring Agency as manifested by the contract documents specified in "Contract Documents" (Section 2.2.2).

Contracting Officer. The person who is executing this Contract on behalf of the Procuring Agency and who has complete and final authority except as limited herein.

Contractor. The successful Offeror who is awarded a Contract for providing all buses and equipment described in the contract documents.

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

Due Date. The date and time by which Offers (proposals or bids) must be received by the Procuring Agency as specified in "Instructions to Offerors" (Section 1.1.3 of Procuring Agency's solicitation).

Offer. A promise, if accepted, to deliver equipment and services according to the underlying solicitation of the Procuring Agency documented using the prescribed form in the solicitation, including any bid or proposal or Best and Final Offer.

Offeror. A legal entity which makes an Offer, including a bidder or proposer.

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

|   |                               |
|---|-------------------------------|
| <p><i>(a) Competitive Negotiation</i></p> | <p><i>(b) Sealed Bids</i></p> |
|---|-------------------------------|

|  |  |
|--|--|
| <u>Solicitation</u> . Procuring Agency's Request for Proposals | <u>Solicitation</u> . Procuring Agency's Invitation for Bids |
|--|--|

Supplier or Subcontractor. Any manufacturer, company, or agency providing units, components, or subassemblies for inclusion in the bus. Supplier items shall require qualification by type and acceptance tests in accordance with requirements defined in Part 3: Quality Assurance Provisions.

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.

**GC 2 MATERIALS AND WORKMANSHIP (SBPG 2.7.5)**

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 supplier. This provision excludes tires, fare boxes, radios, and any equipment leased or supplied by the Procuring 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. Risk of damage to or loss of the buses is the subject of "Assumption of Risk of Loss" (Section 2.3.1.4). *(NOTE: Procuring Agency may wish to provide a procedure for claims by Contractor against the Procuring Agency.)*

**GC 2.2. Hazardous Material Identification and Material Safety Data (UTAH – I don’t have this document so I don’t know the clause number!)**

As used in this provision: (a) “hazardous materials” shall mean any substances present in quantities and in forms which require investigation, removal, cleanup, transportation, disposal, response or remedial action (as the terms “response” and “remedial action” are defined in Section 101 of the Comprehensive Environmental Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 (23) and (24)) under any applicable federal, state or local environmental law, regulation, ordinance, rule or bylaw, as such are amended from time to time, whether existing as of the date hereof, previously enforced or subsequently amended; and (b) “release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping. The Contractor shall comply with all relevant federal, state, and local statutes, rules, regulations and ordinances pertaining to such work. The Contractor shall take all necessary precautions to protect the Contractor’s personnel, the Authority’s personnel, and the public from exposure to hazardous materials. The Authority has obtained an International Standards Organization (“ISO”) 14001 Environmental Management Systems (EMS) certification. The Contractor hereby acknowledges that its Work may affect the Authority’s ability to meet the obligations of the EMS. A partial list of these activities, products, or services is available at the Authority’s website, [www.rideuta.com](http://www.rideuta.com). If the Contractor has the potential to impact the environment, the Contractor must submit additional environmental documents addressing specific measure.

### **GC 3 CONFORMANCE WITH SPECIFICATIONS AND DRAWINGS (UTAH – I don't have this document so I don't know the clause number!)**

Materials furnished and Work performed by the Contractor shall conform to the requirements of the Technical Specifications and other Contract Documents. Materials furnished or Work performed which does not comply with such requirements will be considered non-conforming. Non-conformance includes, but is not limited to: (a) Work performed or Materials furnished contrary to the Authority's instructions; (b) Work added, deleted or changed to or from the requirements of the Contract Documents without the written authorization of the Authority; (c) Work which includes the incorporation of unapproved substitutions or unapproved Materials; or (d) Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties.

#### **(SBPG 2.2.5)**

Notwithstanding the provision of drawings, technical specifications, or other data by the Procuring 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. Fare collection equipment, communication equipment, and other items that are installed by the Procuring Agency shall not be the responsibility of the Contractor unless they are included in this Contract.

#### **GC 3.1 Correction of Defective Work (UTAH – I don't have this document so I don't know the clause number!)**

When non-conforming work is discovered, the Authority may:

- Reject the Materials or workmanship or require correction, in which case the Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at the Contractor's own expense; and/or
- Accept the Materials or workmanship as suitable for the intended purpose, document the basis of such acceptance and deduct an agreed upon amount from the Total Contract Price for the uncorrected Work.

### **GC 4 INSPECTION, TESTING AND ACCEPTANCE**

#### **GC 4.1 – General (SBPG 2.3.1.3 and 2.3.1.5)**

The pre-delivery tests and inspections shall be performed at or near the Contractor's plant; they shall be performed in accordance with the procedures defined in Part 3: Quality Assurance Provisions, and they may be witnessed by the resident inspector. When the bus passes these tests and inspections, the resident inspector shall authorize release of the bus.

Within 15 (fifteen) calendar days after arrival at the designated point of delivery, the bus shall undergo the Procuring Agency tests defined in Part 4: Quality Assurance Provisions. If the bus passes these tests or if the Procuring Agency does not notify Contractor of non-acceptance within 15 (fifteen) calendar days after delivery, acceptance of the bus by the

Procuring Agency occurs on the fifteenth day after delivery. Acceptance may occur earlier if the Procuring Agency notifies the Contractor of early acceptance or places the bus in revenue service. If the bus fails these tests, it shall not be accepted until the repair procedures defined in "Repairs After Non-acceptance" (Section 2.3.2) have been carried out and the bus retested until it passes.

**GC 4.2. Risk of Loss (SBPG 2.3.1.4.)**

The Procuring Agency shall assume risk of loss of the bus on delivery, as defined in "Bus Delivery Procedure" (Section 2.3.1.1), if delivered by common carrier or driveway, or on release to the Procuring Agency's drivers at the Contractor's plant. Prior to this delivery or release, the Contractor shall have risk of loss of the bus, including any damages sustained during the common carrier or driveway operation regardless of the status of title or any payments related to the bus. Drivers shall keep a maintenance log enroute and it shall be delivered to the Procuring Agency with the bus.

**(LACMTA SP-21)**

If the Vehicle is released back to Contractor for any reason, Contractor has the risk of loss upon such release.

**GC 5 TITLE; WARRANTY OF TITLE (SPBG 2.3.5 edited)**

Adequate documents for registering the bus in (*Agency to insert its jurisdiction*) shall be provided to the Agency no more than 10 working days after release of payment by the Agency. Upon acceptance of each bus, the Contractor warrants that the title shall pass to the Agency free and clear of all encumbrances.

**GC 6 INTELLECTUAL PROPERTY WARRANTY (SBPG 2.8.10)**

The Procuring Agency shall advise the Contractor of any impending patent suit related to this Contract against the Procuring Agency and provide all information available. The Contractor shall defend any suit or proceeding brought against the Procuring 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 Procuring 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 Procuring Agency the right to continue using said equipment or part, or replace same with noninfringing equipment, or modify it so it becomes noninfringing.

Contractor's obligations under this section are discharged and Procuring Agency shall hold Contractor harmless with respect to the equipment or part if it was specified by the Procuring Agency and all requests for substitutes were rejected, and the Contractor advised the Procuring Agency under "Offeror Communications and Requests" (Section 1.1.2.2) of a potential infringement, in which case the Contractor shall be held harmless.

## **GC 7 DATA RIGHTS**

### **GC 7.1 Proprietary Rights/Rights in Data (SBPG 2.8.11)**

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:

- Shop Drawings and Working Drawings;
- Technical data including manuals or instruction materials, computer or microprocessor software;
- Patented materials, equipment, devices or processes; and
- License requirements.

#### **I have no idea whose document this came from!**

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 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.

#### **I have no idea whose document this came from!**

Optional Clause – A Software Escrow Account details an agency's rights to access confidential data of the contractor, subcontractor and supplies under situations such as bankruptcy of the contractor or material breach of the contract.

### **GC 7.2. Access to Onboard Operational Data**

**JOHN OBERT TO PROVIDE.**

## **GC 8 CHANGES (SBPG 2.2.3.1, 2.2.3.2 and 2.2.3.3)**

### **CONTRACTOR CHANGES**

Any proposed change in this Contract shall be submitted to the appropriate Procuring Agency for its prior approval.

### **WRITTEN CHANGE ORDERS**

Oral change orders are not permitted. No change in this Contract shall be made unless the Contracting Officer gives prior written approval therefore. 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.



## **CHANGE ORDER PROCEDURE**

As soon as reasonably possible but no later than 30 (thirty) 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 the Contract disputes clause. Regardless of any disputes, the Contractor shall proceed with the work ordered.

## **GC 12 LEGAL CLAUSES**

### **GC 12.1. Indemnification (SBPG 2.7.4)**

The Contractor shall, to the extent permitted by law (1) protect, indemnify and save the Procuring 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 Procuring 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 negligent acts, errors or omissions of the Contractor, including 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 Procuring 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 any 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 Procuring Agency shall not make any admission which 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 Procuring 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 Procuring Agency shall have the right to be represented therein by advisory counsel of its own selection at its own expense.

The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the Procuring Agency, its officers, employees, agents or consultants, including 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, or death, or damages is 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 as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

**Alternative (SBPG 2.7.4 edited by Isabelle)**

GC 12.1.1 The 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, caused solely by the negligent acts, errors or omissions of the Contractor, including 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 which 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 counsel of its own selection at its own expense.

GC 12.1.2 The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, or death, or damages is 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, or death, or damages is 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 as provided in the next sentence below.

GC 12.1.3 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.

**GC 12.2. Suspension of work – Nothing in the White Book (LACMTA GC23)**

GC 12.2.1 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.

GC 12.2.2 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 at normal full strength 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.

GC 12.2.3 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 to the extent that the Contractor's performance would have been so suspended, delayed or interrupted by any other cause, including 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.

### **GC 12.3. Excusable Delays/ Force Majeure (SPBG 2.3.3.1 and 2.3.3.2)**

If the Contractor is delayed at any time during the progress of the Work by the neglect or failure of the Procuring Agency or by a cause described below, then the time for completion and/or affected delivery date(s) shall be extended by the Procuring Agency subject to the following 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;
2. The Contractor demonstrates that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
3. The effect of such cause cannot be avoided or mitigated 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 Procuring Agency as described in "Notification of Contractor Delay" (Section 2.3.3.2 below).

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

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" (Section 2.3.4) for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

The Procuring Agency reserves the right to rescind or shorten any extension previously granted, if subsequently the Procuring 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 Procuring Agency will 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.

Notwithstanding "Contractor's Delay" (Section 2.3.3.1), no extension or adjustment of time shall be granted unless (1) written notice of the delay is filed with the Procuring Agency

within 14 (fourteen) calendar days after the commencement of the delay and (2) a written application therefor, 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 Procuring Agency within 30 (thirty) 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 Procuring Agency shall make its determination within 30 (thirty) ( or insert time specified by regulation or law) calendar days after receipt of the application.

**Alternative (SBPG 2.3.3 edited by Isabelle)**

*GC 12.3.1* A delay shall be deemed excusable of caused by the act or omission of the Agency or by an event of Force Majeure which shall be 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 or adverse climatic or sea conditions; riot, commotion or disorder, strikes and industrial and labor disputes; fires and explosions; non-availability or shortage of fuel and/or water; action or failure to act of public services or government authorities; war and other hostilities, invasion, act of foreign enemies, mobilization of armed forces, requisition or embargo; insurrection, terrorism, revolution, rebellion, military or usurped power, or civil war. ;

*GC12.3.2* In case of excusable delay, the time for completion and/or affected delivery date(s) shall be extended by the Agency subject to the following 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;
2. The Contractor demonstrates that the completion of the Work and/or affected delivery(s) will 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 "Notification of Contractor Delay" ([Section 2.3.3.2 below](#)).

Any concurrent delay which does not constitute an excusable delay shall not be the sole basis for denying a request hereunder.

*GC12.3.3* 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" ([Section 2.3.4](#)) for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

*GC12.3.4* 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 will 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.

*GC12.3.5* No extension or adjustment of time shall be granted unless (1) written notice of the delay is filed with the Agency within 14 (fourteen) calendar days after the commencement of the delay and (2) a written application therefor, 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 30 (thirty) 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 30 (thirty) (or insert time specified by regulation or law) calendar days after receipt of the application.

#### **GC 12.4. Termination for Convenience, Default (SBPG 2.2.6.1 and 2.2.6.2)**

The performance of work under this Contract may be terminated by the Procuring 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 Procuring 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: 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 Procuring 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 Procuring Agency shall have the right, in its discretion, to settle or pay and 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 may require, which approval or ratification shall be final for all the purposes of this clause; transfer title to the Procuring Agency and deliver in the manner, at the times, and to the extent, if any, directed by 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 Procuring 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 Procuring 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; and 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 which is in the possession of the Contractor and in which the Procuring 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 Procuring 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 "Procuring Agency" shall be substituted in lieu thereof.

The Procuring 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 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 10 (ten) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

In the event that Procuring Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Procuring Agency shall not limit Procuring Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

If the Contract is terminated in whole or in part for default, the Procuring 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 Procuring 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 causes 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 in sufficient time to permit the Contractor to meet the required delivery schedule.

Payment for completed supplies delivered to and accepted by the Procuring Agency shall be at the Contract price. The Procuring 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 Procuring 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 Procurement Agency.

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

**Alternate: (SBPG 12.4 edited by Isabelle)**

*GC 12.4.1 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: 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 and 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 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 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; and 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 which 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.

*GC 12.4.2 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

10 (ten) 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 Force Majeure event, as defined under Section GC12.3.1 herein 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 at similar cost 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 Procurement Agency.

#### **GC 12.5. Compliance with Laws and Regulations (SBPG 2.8.4)**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between Procuring Agency and FTA that funds 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.

##### **Alternate: (SBPG 2.8.4 edited by Isabelle based on LACMTA RR06)**

Contractor shall at all times comply with all applicable laws, regulations, policies, procedures and directives (together the "Law"), including without limitation, FTA regulations, policies, procedures and directives, including those listed directly or by reference in the agreement between Agency and FTA that funds 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.

#### **GC 12.6. Changes of law – Nothing in the White Book**

##### **Alternate: (Alstom)**

If any change shall occur after the date of this Contract in any Law or in the application or interpretation thereof, other than a change in existence at the date of this Contract, or there is an enactment or making of a new Law after the date of this Contract, which by its terms becomes effective and applicable to the Agency, Contractor and/or Contract after such date (a "Change in Law") and the Contractor believes that such occurrence has resulted or will result in an increase in the Work and/or an additional cost to the Contractor, then the Contractor shall promptly deliver to the Agency a notice identifying such Change in Law and requesting an equitable adjustment of the Contract Price and/or Contract Time, subject in any event to an obligation of the Contractor to take reasonable steps to minimize the impact of such Change in Law. If necessary the Contract shall be amended to reflect such Change in Law.



**GC 12.7. Governing law and choice of forum (AC Transit 2.9.4 and BART 7.18)**

This Contract shall be governed by the laws of the State of \_\_\_\_ without regard to conflict of law rules.

**(Hartline 2.30§7)**

This Contract has been negotiated and shall be subject to the laws of the State without regard to conflict of laws rules. The Contractor consents to the jurisdiction of the identified State, County of \_\_\_\_\_.

**GC 12.8. Disputes (SBPG 2.2.7)**

*NOTE: The following deals with disputes arising after Contract award and not during the procurement process. The latter are "protests" which should be dealt with under the procurement procedures.*

*Outlined below are example provisions and recommendations for drafting a disputes resolution clause to be included in the Contract. Included are stepped negotiations, submission for Procuring Agency executive decision and alternatives dispute resolution. However, by mutual agreement the matter may be taken immediately to any higher step in the resolution process, or mutually agreed to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration), or litigation.*

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which 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) days of the determination of the dispute.
2. Negotiation Between Executives. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Contract. 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) 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 will represent that party and of any other person(s) who will accompany the executive in negotiations. Within 28 (twenty-eight) days after delivery of the dispute notice, the executives 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.

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| <p>(a)<br/>If the matter has not been resolved by these persons within forty-two (42) 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.</p> | <p>(b)<br/>(Guideline option omitted)</p> |
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3. Contracting Officer's or Chief Executive Officer's Decision. (a) Should the dispute not be resolved by negotiation between executives, as provided in (2) above, the Procuring Agency's executive representative from (2) above shall submit a written request for decision to the contracting officer along with all documentation and minutes from the negotiations. The Contracting Officer shall issue a written decision within 14 (fourteen) days of receipt of a request.
  - A. For disputes involving \$50,000 or less, the decision of the Contracting Officer shall be administratively final and conclusive. For disputes involving \$50,000 or less, it is the intent of the parties that such administratively final and conclusive decision pursuant to either this paragraph or paragraph 4 shall only be overturned if determined by a court of competent jurisdiction to be fraudulent, arbitrary, capricious, unsupported by the evidence or so grossly erroneous as to imply bad faith. For disputes greater than \$50,000, the decision of the Contracting Officer shall be administratively final and conclusive unless, within 30 (thirty) days from the date of delivery of the written decision, the Contractor appeals the decision in writing to the Procuring Agency's chief executive officer or designee who shall render a written decision within 14 (fourteen) days of delivery of such written appeal. Such decision by the chief executive officer or his/her designee shall be administratively final and conclusive.
  - B. Within 30 (thirty) days of the issuance of any administratively final and conclusive decision under this paragraph 3, the Contractor shall notify the Procuring Agency in writing of the Contractor's agreement with the final decision. Failure to provide such written notice of agreement shall indicate an intent by the Contractor to litigate the claim..
  - C. Any dispute which is not resolved by the Parties through the operation of the provisions of this paragraph, or any mutually agreed upon alternative disputes

resolution process pursuant to paragraph 4 may be submitted to any court in the state of *(Procuring Agency to insert its state)*.

D. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of the Procuring Agency.

- 4. Alternatives Disputes Resolution. If agreed to by both parties disputes may be resolved by a mutually agreed to alternative dispute resolution process which may include structured negotiations different from (2) above, mediation or arbitration.
- 5. Arbitration. *NOTE: If arbitration is not to be included this clause is to be deleted. The following is only an example arbitration clause that may be included, it is not intended as a recommendation but is provided for purposes of illustration.*

Disputes appealed to arbitration involving over \$50,000 but less than \$250,000 shall be decided by one (1) qualified and disinterested arbitrator, selected through the American Arbitration Association and mutually agreed to by both parties. The arbitrator shall conduct all proceedings in accordance with the rules of the American Arbitration Association, and shall consider the Contract, equity, the prevailing law and established commercial practice in rendering a decision.

Disputes appealed to arbitration involving \$250,000 or more shall be decided by three (3) qualified and disinterested arbitrators, selected through the American Arbitration Association. One (1) arbitrator shall be selected by each of the parties and the two selected arbitrators shall select a third arbitrator within 10 (ten) days of their selection. The arbitrators shall conduct all proceedings in accordance with the rules of the American Arbitration Association, and shall consider the Contract, equity, the prevailing law and established commercial practice in rendering a decision.

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| <p>(a)<br/>The decision by the arbitrators shall be final and enforceable in any court having jurisdiction over the parties.</p> | <p>(b)<br/>The decision of the arbitrators shall not be binding and either party shall have the right to remedies provided by law.</p> |
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Alternative (SBPG 2.2.7 edited by Isabelle)

*NOTE: The following deals with disputes arising after Contract award and not during the procurement process. The latter are "protests" which should be dealt with under the procurement procedures.*

*Outlined below are example provisions and recommendations for drafting a disputes resolution clause to be included in the Contract. Included are stepped negotiations, submission for Agency executive decision and alternatives dispute resolution. However, by mutual agreement the matter may be taken immediately to any higher step in the resolution process, or mutually agreed to alternative dispute resolution process (which may include structured negotiations, mediation or arbitration), or litigation.*

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under or related to this Contract which 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.

**GC12.8.1. Notice of Dispute**

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

**GC12.8.2 Negotiation Between Executives**

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Contract. 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) 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 will represent that party and of any other person(s) who will accompany the executive in negotiations. Within 28 (twenty-eight) days after delivery of the dispute notice, the executives 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.

**GC12.8.3 Arbitration (LANGUAGE PROPOSED BY ALSTOM)**

Should the dispute not be resolved by negotiation between executives within thirty (30) days of the first meeting of the executives of both parties, as provided in GC12.8.2 above, any dispute shall be finally settled by a board of three (3) arbitrators (the "Board"), pursuant to the commercial arbitration rules of the American Arbitration Association ("AAA") which are in force at that time. The arbitration proceedings shall be conducted in the County of (NAME OF COUNTY), State of (NAME OF STATE). Each party shall be responsible for its respective costs incurred in arbitration, except that costs and fees imposed by the Board for its fees and expenses shall be borne equally by the parties, unless otherwise determined by the Board. The finding of the Board shall be final and binding. Judgment upon the award may be entered in any court of competent jurisdiction.

**GC 12.9. Maintenance of records; access by Agency; right to audit of records (AC Transit 2.6)**

The Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for services under this Contract. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges and sufficient to allow a proper audit of the services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services shall be clearly identified and readily accessible.

For the duration of the Agreement including the Warranty period, and for a period of three years thereafter, the Agency or any of its duly authorized representatives, shall have the right to examine and audit, during the Contractor's normal business hours, these books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder, where such costs are the basis for billings under this Agreement.

**GC 12.10. Confidential information (SBPG 1.1.4.5. SHOULD BE EDITED AS THIS IDENTICAL CLAUSE IS ALREADY IN IP 11.4)**

Access to government records is governed by the *(city state or local law)*. Except as otherwise required by the *(city state or local law)*, the Procuring Agency will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial and financial information which an Offeror 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 will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

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| <p>(a)<br/><i>(If it is possible under the local law to separate the confidential information from the proposal)</i></p> <p>The Offeror may (or shall) submit proprietary information, trade secrets or confidential commercial and financial information, which an Offeror believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.</p> | <p>(b) (Guideline option omitted)</p> |
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The following information is not required to be included in the Proposal, but the Offeror shall make it available for review by the Procuring Agency:

*(Procuring Agency to insert requirements)*

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

The Procuring Agency shall employ sound business practices no less diligent than those used for the Procuring 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 Offerors and the Contractor pursuant to the Contract

which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the (city state or local 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 Procuring Agency in its sole discretion, bears appropriate notices relating to its confidential character.

**Alternate (BART GC 4.11 edited by Isabelle)**

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 the 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.

**GC 12.11. Conflicts of interest, gratuities (SBPG 2.8.13)**

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

**Alternate (SAMTRAN GP 7.26)**

The Contractor shall not offer or provide gratuities in the form of gifts, entertainment, loans, meals, rewards, or services to representatives of the Agency, including the Contracting Officer, other employees, agents, consulting engineers and architects, inspectors or testing agencies retained by the Agency. If it is found that the Contractor has violated this provision, the Contract may be subject to termination for default as defined in Section GP12.4.2 herein.

During the term of the Contract and until the final payment has been made to the Contractor, the Contractor shall not employ or compensate in any manner whatsoever, the Agency’s Board members, Contracting Officer, agents, representatives nor employees. Any exceptions to the employment or compensation to any of the above named parties must be made in writing by the Agency. If the Contractor offers or provides employment or compensation to those named above during the term of the Contract, the Contract may be subject to termination for cause.

**GC 12.12. General non-discrimination clause – Nothing in White Book (LACMTA RR-02)**

In connection with the performance of Work provided for under this Contract, Contractor agrees that it will 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 persons in any manner prohibited by Federal, State or local laws.

**GC 12.13. Modification of contract; waiver (Isabelle – Note: We may want to rename this Section “Amendment; Waiver”)**

**GC12.13.1 Modification of Contract (BART GC 7.20 minus second sentence)**

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

**GC12.13.2 Waiver (AC TRANSIT 2.9.3)**

Failure of any party to exercise any right or option arising out of a breach of this Contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

**GC 12.14. Default; Damages and other remedies – Nothing in White Book (AC TRANSIT 2.9.9)**

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.

**GC 12.15. Counterparts – Nothing in White Book - AC TRANSIT GC 2.9.11 included such wording and LA METRO simply included it before the signature. We may want to consider eliminating this clause.)**

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.

**GC 12.16. Severability – Nothing in White Book (BART GC7.21)**

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 Cont

**GC 12.17. Third party beneficiaries – Nothing in White Book (We may want to consider deleting this clause the concept of third party beneficiaries only appears in CTA AND SAMTRAM GP7.28 – SEE BELOW)**

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.

**GC 12.18. Assignment of contract (SBPG 2.2.4.3)**

Neither party will assign or subcontract its rights or obligations under the Contract without prior written permission of the other party, and no such assignment or subcontract will be effective until approved in writing by the other party.

**GC 12.19. Independent parties - Nothing in White Book (BART GC7.16)**

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, partner, fiduciary or trustee of the Agency.

**GC 12.20. Survival (SBPG 2.5.6)**

Contractor's obligations under this section 2.5 shall survive the nominal expiration or discharge of other Contract obligations and Procuring Agency may obtain any remedy under law, Contract or equity to enforce the obligations of contractor that survive the manufacturing, warranty, and final payment periods.

**Alternate (edited by Isabelle)**

(WE SHOULD APPLY THIS CLAUSE TO SPECIFIC SECTIONS OF THE RFP: INDEMNIFICATION, DISPUTE, CONFIDENTIALITY, IPR)

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

- GC 8 Intellectual Property Warranty
- GC 9 Data Right
- GC 12.1 Indemnification
- GC 12.7 Governing laws and choice of forum
- GC 12.8 Disputes
- GC12.10 Confidential information

**GC 13 AGENCY SPECIFIC PROVISIONS**



## **SECTION 4 - SPECIAL PROVISIONS**

### **SP 1 Inspection and Acceptance**

#### **SP 1.1. Pilot Bus (LACMTA SP-4 and SP-5)**

The Contractor shall produce one **Pilot Vehicle** with respect to the Base Order. This Vehicle shall be one of the ultimate quantity of the Base Vehicle Order. The Pilot Vehicle shall demonstrate that the Vehicles fully meet all requirements of the Contract. **The Pilot Vehicle shall be produced and delivered to Metro for a minimum of sixty (60) days prior to initiation of any production activities for the remaining Vehicles unless otherwise authorized in writing by Metro.** In the event that non-compliance is identified, Metro shall to the extent practicable notify the Contractor of said non-compliance. No later than the end of the ninety-day period, Metro shall issue a written report to the Contractor that advises the Contractor of any non-compliance issues and/or any proposed Modifications or changes required on the remaining Vehicles.

In the event that the Pilot Vehicle does not initially comply with all performance criteria contained in the Technical Specifications, Metro shall have the right to retain a portion of any Progress Payment that may have been established for the Pilot Vehicle. The amount to be withheld shall be based on the lack of compliance and may equal up to the entire Progress Payment amount for the Pilot Vehicle. This amount shall be withheld until compliance is demonstrated. In the event that the compliance is subsequently determined to be impossible to achieve, Metro may require all or a portion of the Progress Payment for the Pilot Vehicle to be forfeited as a penalty for the non-compliance. The amount of the penalty shall be negotiated by the parties.

#### **Configuration And Performance Approval**

In order to assess the Contractor's compliance with the Technical Specifications, Metro and the Contractor shall jointly conduct a configuration and performance review of the Pilot Vehicle.

Metro, as a part of the Configuration and Performance Approval process, may permit certifications to be submitted in lieu of performance based on physical testing. (See Part B, Technical Specification, Technical Contract Deliverables.)

At a minimum, the following dimensional/performance tests shall be included in the Configuration and Performance Approval:

- Complete electrical system audit.
- Dimensional requirements audit
- Seating capacity
- Water Test
- Water runoff test
- Function test of systems/subsystems and components

Sound / noise level tests  
Vehicle top speed  
Acceleration tests  
Brake stop tests  
Airflow tests  
PA function tests  
Air/brake system audit  
Individual axle weight  
Stande capacity  
Body deflection tests  
Silent alarm function test  
Interior lighting  
Exterior lighting  
Gradability test  
Kneeling system function  
HVAC pull down/heat  
Speedometer  
Outside air infiltration (smoke)  
Wheelchair Ramps

Engine performance qualification – this test shall be jointly conducted by Contractor and engine manufacturer (including but not limited to: charge air cooler performance, air to boil test, loss of coolant, fuel system electrical inputs, engine protection system).

Transmission performance qualifications- this test shall be jointly conducted by Contractor and transmission manufacturer (including, but not limited to: retarded operation, heat exchanger, interface with ABS, electrical inputs).

**SP 1.2. Production buses (UTAH – clause number not known)**

Where required by the Contract Documents or requested by the Engineer, the Contractor shall cause First Article Inspections to be conducted. The purpose of a First Article Inspection is to confirm that any components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatuses, articles and other Materials comply with the Technical Specifications and other Contract Documents. A First Article Inspection may include both a physical configuration inspection and a functional demonstration. First Article Inspections shall be conducted at a location agreed between the Authority and the Contractor. The Contractor shall furnish to the Engineer prior to each First Article Inspection a written inspection and demonstration plan for each item for review. The Engineer or the Authority's inspectors will attend each First Article Inspection unless the Engineer provides a written waiver of his right to attend any such inspection. The results of each First Article Inspection shall be documented by the Contractor in a format deemed acceptable by the Engineer and all documents relating to the inspection shall be forwarded to the Engineer.

**SP 1.3. Conditional Acceptance of Bus (SBPG 3.3.3)**

The Procuring Agency may conduct acceptance tests on each delivered bus. These tests shall be completed within 15 (fifteen) days after bus delivery and shall be conducted in accordance with written test plans. The purpose of these tests is to identify Defects that have become apparent between the time of bus release and delivery to the Procuring Agency. The post-delivery tests shall include visual inspection and bus operations. No post-delivery test shall apply criteria that are different from the criteria applied in an analogous pre-delivery test (if any).

Buses that fail to pass the post-delivery tests are subject to nonacceptance. The Procuring Agency shall record details of all Defects on the appropriate test forms and shall notify the Contractor of acceptance, conditional acceptance, or nonacceptance of each bus within five days according to "Acceptance of Bus" (Section 2.3.1.5) after completion of the tests. The Defects detected during these tests shall be repaired according to procedures defined in "Contractual Provisions" (Part 2, "Repairs After Nonacceptance" (Section 2.3.2).

#### **SP 1.4. Repairs After Non-acceptance (SBPG 2.3.2)**

The Contractor, or its designated representative shall perform the repairs after nonacceptance. If the Contractor fails or refuses to make the repairs within 5 (five) days, then the work may be done by the Procuring Agency's personnel with reimbursement by the Contractor.

#### **SP 1.5. Repair Performance**

##### **SP 1.5.1. Repairs by Contractor (SBPG 2.3.3.1)**

After nonacceptance of the bus, the Contractor must begin work within 5 (five) working days after receiving notification from the Procuring Agency of failure of acceptance tests. The Procuring Agency shall make the bus available to complete repairs timely with the Contractor repair schedule.

The Contractor shall provide, at its own expense, all spare parts, tools, and space required to complete the repairs. At the Procuring Agency's option, the Contractor may be required to remove the bus from the Procuring Agency's property while repairs are being effected. If the bus is removed from the Procuring Agency's property, repair procedures must be diligently pursued by the Contractor's representatives, and the Contractor shall assume risk of loss while the bus is under its control.

##### **SP 1.5.2. Repairs by the Agency (SBPG 2.3.3.2)**

1. Parts Used. If the Procuring Agency performs the repairs after nonacceptance of the bus, it shall correct or repair the defect and any related defects using Contractor-specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the Procuring Agency to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

2. Contractor Supplied Parts. If the Contractor supplies parts for repairs being performed by the Procuring Agency after nonacceptance of the bus, these parts shall be shipped prepaid to the Procuring Agency from any source selected by the Contractor within 10 (ten) working days after receipt of the request for said parts.
3. Return of Defective Components. The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total costs for this action shall be paid by the Contractor.
4. Reimbursement for Labor. The Procuring Agency shall be reimbursed by the Contractor for labor. The amount shall be determined by multiplying the number of man-hours actually required to correct the defect by a per hour, 5M mechanic, straight wage rate, plus (insert same percentage as in Warranty Provisions, Part 3) percent fringe benefits, plus the cost of towing in the bus if such action was necessary. These wage and fringe benefits rates shall not exceed the rates in effect in the Procuring Agency's service garage at the time the defect correction is made.
5. Reimbursement for Parts. The Procuring Agency shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes where applicable and (insert percentage) percent handling costs.

**SP 1.6. Final Acceptance (SBPG 2.3.1.5. This clause is a duplicate to GC 4.1)**

Within 15 (fifteen) calendar days after arrival at the designated point of delivery, the bus shall undergo the Procuring Agency tests defined in Part 4: Quality Assurance Provisions. If the bus passes these tests or if the Procuring Agency does not notify Contractor of nonacceptance within 15 (fifteen) calendar days after delivery, acceptance of the bus by the Procuring Agency occurs on the fifteenth day after delivery. Acceptance may occur earlier if the Procuring Agency notifies the Contractor of early acceptance or places the bus in revenue service. If the bus fails these tests, it shall not be accepted until the repair procedures defined in "Repairs After Nonacceptance" (Section 2.3.2) have been carried out and the bus retested until it passes.

**SP 2 Deliveries**

**SP 2.1. Bus Delivery Procedure (SBPG 2.3.1.1)**

Delivery of buses shall be determined by signed receipt of the Procuring Agency's designated agent(s) (name and address) , at the following point of delivery and may be preceded by a cursory inspection of the bus..

(address)

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**SP 2.2. Delivery Schedule (SBPG 2.3.1.2)**

The buses shall be delivered at a rate not to exceed (insert maximum) buses per week. Delivery shall be completed within (insert) weeks after delivery of the executed contract documents. Hours of delivery shall be (opening time) through (closing time) the following days of the week: *(Procuring Agency to insert receiving periods)*.

**SP 2.3. Pre-Delivery Tests and Inspections (SBPG 2.3.1.3. This clause is a duplicate to GC 4.1)**

The pre-delivery tests and inspections shall be performed at or near the Contractor's plant; they shall be performed in accordance with the procedures defined in Part 3: Quality Assurance Provisions, and they may be witnessed by the resident inspector. When the bus passes these tests and inspections, the resident inspector shall authorize release of the bus.

**SP 2.4. Assumption of Risk of Loss (SBPG 2.3.1.4 This clause is a duplicate to GC 4.2)**

The Procuring Agency shall assume risk of loss of the bus on delivery, as defined in "Bus Delivery Procedure" (Section 2.3.1.1), if delivered by common carrier or driveway, or on release to the Procuring Agency's drivers at the Contractor's plant. Prior to this delivery or release, the Contractor shall have risk of loss of the bus, including any damages sustained during the common carrier or driveway operation regardless of the status of title or any payments related to the bus. Drivers shall keep a maintenance log enroute and it shall be delivered to the Procuring Agency with the bus.

**SP 2.5. Deliverables (SBPG 2.5.3)**

The Contractor shall provide (Procuring Agent to insert number and specify any additional documentation requirements) current maintenance manual(s), (number) current parts manual(s), and (number) standard operator's manual(s) as part of this Contract. The Contractor shall keep maintenance manuals available for a period of three years after the date of acceptance of the buses procured under this Contract. The Contractor shall also exert its best efforts to keep maintenance manuals, operator manuals, and keep parts books up-to-date for a period of 15 (fifteen) years. The supplied maintenance and operator's manuals shall incorporate all equipment ordered on the buses covered by this procurement

**SP 3 Options and Potentially Assignable Quantities (LACMTA SP-27)**

Contractor hereby grants Metro and any permissible assignee pursuant to Subsection B hereof, options ("Options") to purchase up to 740 additional Vehicles ("Option Vehicles"). The Options shall be valid for a period of five (5) years from the effective date of the Contract. Options that are exercised shall have a minimum quantity of 50 Vehicles. There shall be no minimum order quantity for any permissible assignee pursuant to Subsection B. Subject to Metro's right to order Modifications pursuant to the Article entitled Modifications in the General Conditions of this Contract, the Option Vehicles shall have the same specifications of the Vehicles purchased under this Contract. Metro may exercise the Options by written Notice to the Contractor ("Notice of Exercise of Option") at any time on or before five years following the Effective Date of Contract ("Option Date").

The Price of the Option Vehicles shall be the Unit Price of the base order Vehicles, (“Base Order Price”) adjusted by multiplying the Base Order Price by the following fraction:

$$\frac{\text{Preliminary Index Number on Month Prior to Notice of Exercise of Option}}{\text{Index Number on Effective Date of the Contract}}$$

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. However in no case shall the annual increase in the cost of a Vehicle created by the application of the above referenced Index exceed four percent (4%) unless the Contractor provides written evidence, such as Invoices from its Suppliers that its cost of any Major Subsystem has increased at a rate exceeding four percent (4%) per annum. In that event, in addition to paying an increase in the cost of Vehicle up to a four percent (4%) per annum, Metro will pay one half of that portion of the increase in the cost of the Major Subsystem that exceeds four percent (4%) per annum. In the event that the decision to exercise an Option occurs mid year, the maximum allowable increase of four percent shall be prorated.

The calculated increase shall be established by the above formula and shall not increase unless Metro does not issue the Notice to Proceed for the Option Vehicles within 60 days of the Board’s formal approval to purchase the Option Vehicles. In such instance, the PPI increase may continue to accrue subject to the limitation stated. At the time Metro chooses to execute the required Contract Modification, the PPI shall be recalculated and incorporated into the Contract Modification.

Within thirty (30) days after delivery of Metro’s Notice of Exercise of Option to Contractor, Contractor shall submit a proposed delivery schedule. Along with the proposed delivery schedule, Contractor will provide Metro with access to its production schedule for the purpose of the parties verifying available production capacity. The production schedule shall include a reasonable time for mobilization and for coordinating with other Vehicle orders, and shall be based upon a production rate at least equal to the production rate actually realized with respect to the Base Order Vehicles. If the parties are unable to agree on a production schedule, the maximum term for the production of the Option Vehicles shall not exceed a total of 36 months after the date of Notice to Proceed with Option Vehicle production. Metro or any permissible assignee pursuant to Subsection B hereof may issue a Notice to Proceed at any time after the Contractor submits its proposed delivery schedule. Contractor shall not commence production of the Option Vehicles prior to issuance of the Notice to Proceed by Metro or any permissible assignee of Metro for the Option Vehicles incorporating the agreed production delivery schedule or the 36 month maximum term.

Except an otherwise specially provided in this Contract, all other terms of the Contract shall apply to the Option Vehicles.

#### SP 4 Payment (SBPG 2.4)

The Procuring Agency shall pay and the Contractor shall accept the amounts set forth in the price schedule 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, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

*NOTE: The advanced payment option may be used to advance funds to the contractor whether payment is otherwise due on progress completed or on delivery (see options below).*

*ADVANCE PAYMENT OPTION (The following optional provision is a guideline for drafting any advance payment option that might be included.)* The Procuring Agency shall pay to the Contractor twenty percent (20%) of the total amount of the price schedule within 30 (thirty) calendar days after the issuance of the notice of award and upon receipt of Contractor's invoice and provision by the Contractor the evidences of insurance required by "Insurance" (Section 2.7.1) and Performance Bond specified by "Performance Bond" (Section 2.7.2). The Advance Payment shall be refunded to the Procuring Agency as prorata credits against future invoices, whereas each prorata credit is calculated as the same percentage that the invoice amount (not discounted for any liquidated damages) is of the total amount of the price schedule, or, in the event that the Contract is terminated for any reason, as a direct payment.

##### ***(a) Delivery Payment***

All payments shall be made as provided herein, less any additional moneys withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make payments for buses at the unit prices itemized in the Price Schedule within 30 (thirty) calendar days after the delivery and acceptance of each bus and receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the Procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

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

The Procuring Agency shall make a final payment for all withholding within 30 (thirty) 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. Rectification of any deficiencies found during the acceptance of buses.
3. Contractor provision of any certifications as required by law and/or regulations.
4. Completion of post delivery audits required under the Contract

***(b) Delivery Payment with Retention***

All payments shall be made as provided herein, less a withholding of two percent (2%) plus any additional moneys withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make payments for buses at the unit prices itemized in the Price Schedule within 30 (thirty) calendar days after the delivery and acceptance of each bus and receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the Procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

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

The Procuring Agency shall make a final payment for all withholding within 30 (thirty) 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. Rectification of any deficiencies found during the acceptance of buses.
3. Contractor provision of any certifications as required by law and/or regulations.
4. Completion of post delivery audits required under the Contract.

(Include the following provision if there is no applicable prompt payment law or regulation.)

- The Procuring Agency shall pay to the Contractor interest daily on the balance of any payments due, as specified above, at the prime rate of interest published by the Wall Street Journal, beginning 30 (thirty) days after payments are due.

**SP 4.1. Progress Payments (SBPG 2.4 continued)**

*(c) Progress Payments (Include the following provision if progress payments are to be made.)*

*NOTE: The following is a model clause that the Procuring Agency can use as a guideline in preparing any progress payment provision. If progress payments are to be included, security*



*for the progress payments of Milestone No. 1 to the Contractor should be required of the Contractor through a Performance Bond. The bond amount should not be less than the Procuring Agency's financial exposure for cumulative payments for Milestone No. 1 and any advance payment.*

All payments shall be made as provided herein, less any moneys to be withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make progress payments to the Contractor for buses in accordance with the performance milestones set forth below.

Title to material included in any progress payment request shall pass to the Procuring Agency upon payment by the Procuring Agency. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of buses procured in accordance with the requirements of the Contract.

The (*suggested*) performance milestones and payment limits shall be as follows:

1. The Procuring Agency shall make payments for buses at forty percent (40%) of the unit price(s) for each bus(es) itemized in the price schedule upon verification by the Procuring Agency's Inspector that said bus(es) have had the front and rear axles installed in the manufacturing cycle at the Contractor's plant and within 30 (thirty) calendar days of receipt of a proper invoice. Invoices submitted under this milestone shall include a listing of all major components and component serial numbers that shall be the same as in the final bus record.

2. The Procuring Agency shall make payments for buses at twenty percent (20%) of the unit price(s) for each bus(es) itemized in the price schedule when the Procuring Agency's Inspector has approved shipment of said bus(es) from the Contractor's plant and within 30 (thirty) calendar days of receipt of a proper invoice.

3. The Procuring Agency shall make payments for buses at thirty-eight percent (38%) of the unit price(s) for each bus(es) itemized in the price schedule upon the delivery and acceptance of each bus and within 30 (thirty) calendar days of receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

4. The Procuring Agency shall make payments for spare parts and/or equipment at the unit prices itemized in the price schedule upon the delivery and acceptance of said spare parts and/or equipment and within 30 (thirty) calendar days of receipt of a proper invoice.

Title for spare parts and/or equipment shall transfer to the Procuring Agency upon payment. Said title shall be free of all encumbrances.

5. The Procuring Agency shall make a final payment of two percent (2%) of the total Contract price plus any moneys withheld, within 30 (thirty) calendar days of receipt of a proper invoice and the following:

- (a) Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract, excluding training.
- (b) Rectification of any deficiencies found during the acceptance of buses.
- (c) Contractor provision of any certifications as required by law and/or regulations.
- (d) Completion of post delivery audits required under the Contract.

Progress payments requests shall be accompanied by a certification, or affidavit, signed by the Contractor's officer certifying that the work covered by the progress payment requested has been completed. The Procuring Agency reserves the rights of inspection and audit to verify said progress as provided in "Audit and Inspection of Records" (Section 2.6) and Part 3.

(Include the following provision if there is no applicable prompt payment law or regulation.)  
- The Procuring Agency shall pay to the Contractor interest daily on the balance of any payments due, as specified above, at the prime rate of interest published by the Wall Street Journal, beginning 30 (thirty) days after payments are due.

#### **SP 4.2. Performance Surety (SBPG 2.7.2)**

The Contractor shall furnish at its own expense performance security in the form of a cashier's check, or letter of credit in a form approved by the Procuring Agency before offer submission, or a performance bond, from a surety duly licensed to do business in the state of (Procuring Agency to insert its state) having a financial rating from A. M. Best Company of "A VIII" or better, in the amount of (maximum of 25 % where there are no progress payments and payment is made upon delivery and acceptance; or in the case of progress payments set at the Procuring Agency's financial exposure for cumulative payments) percent of the full amount of the Contract. The bond shall cover all of Contractor's obligations under the Contract except for the warranty and shall remain in force until said obligations have been fulfilled. The bond amount may be reduced as follows: (1) to 65 (sixty-five) percent of the original amount when 50 (fifty) percent of the required number of buses are delivered and accepted, (2) to 30 (thirty) percent of the original amount when 75 (seventy-five) percent of the required number of buses are delivered and accepted, and (3) to zero percent of the original amount when 100 (one hundred) percent of the required number of buses are delivered and accepted.

In the case that a surety shall become insolvent, its license is revoked or suspended, or in the case of a surety approved on the basis that it is listed as an approved federal surety, that such federal approval is revoked or suspended, the Contractor, within five days after notice by the Procuring Agency, shall substitute other and sufficient surety or sureties. If the Contractor fails to do so, such failure shall be an event of default. *(NOTE: In such event as described above the Procuring Agency may negotiate, in lieu of declaring the Contractor in default, deduct money for the risk or the purchase of a replacement bond.)*

**SP 4.3. Payment of Taxes (PHOENIX – NOTE: I had this clause that we had intended to put “somewhere”. While “marked” as Phoenix, I cannot find the source document.)**

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 date the Contractor’s bid was opened. The Contractor will maintain auditable records, subject to the Agency reviews, confirming that tax payments are current at all times.

**SP 5 Liquidated Damages for Late Delivery of the Bus (SBPG 2.3.4)**

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 complete the Work within the time specified in "Delivery Schedule" (Section 2.3.1.2), except for any excusable delays as provided in "Unavoidable Delays" (Section 2.3.3), or any extension thereof, the Procuring Agency will 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 the Procuring Agency shall be fixed at \$ *(see Appendix for LD Calculation Guideline)* per calendar day per bus not delivered in substantially as good condition as inspected by the Procuring Agency at the time released for shipment.

The Contractor hereby agrees to pay the aforesaid amounts as fixed, agreed and liquidated damages, and not by way of penalty, to the Procuring Agency and further authorizes the Procuring Agency to deduct the amount of the damages from money due the Contractor under the Contract, computed as aforesaid. If the monies due the Contractor are insufficient or no monies are due the Contractor, the Contractor shall pay the Procuring Agency the difference or the entire amount, whichever may be the case, within 30 (thirty) calendar 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 Procuring Agency arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

The Procuring Agency specifically reserves the right, without limitation of any other rights, to terminate the Contract in accordance with "Termination of Contract" (Section 2.2.6).

|  |                                       |
|--|---------------------------------------|
| <p>(a)<br/> <i>May be considered by the Procuring Agency for inclusion if early delivery will create a savings to the Procuring Agency. Procuring Agency may wish to modify "Contractor's Delay" (Section 2.3.3.1) to determine delivery date for purposes of this incentive option) - In the event that the Contractor completes Work earlier than required by "Delivery Schedule" (Section 2.3.1.2), the Contractor shall be paid an incentive of \$ <u>(see Appendix for Incentive Calculation Guideline)</u> per calendar day per bus that is delivered and accepted early. The total amount of such incentive payments shall not exceed <u>(insert maximum percent)</u> percent (___ %) of the total Contract amount.</i></p> | <p>(b) (Guideline option omitted)</p> |
|--|---------------------------------------|

**SP 6 Service and Parts**

**SP 6.1. Training (SBPG 2.5.1)**

*(The following is illustrative; the Procuring Agency should carefully specify its requirements)*

The Contractor shall have at least one qualified instructor who shall be available at the Procuring Agency's property for (number of days per month) calendar days between the hours of (starting time) and (closing time) per month for (number) months prior to, and (number) months after, acceptance of the first bus. Instructor(s) shall conduct schools and advise the personnel of the Procuring Agency on the proper operation and maintenance of the equipment. The Contractor shall also provide visual and other teaching aids for use by the Procuring Agency's own training staff.

**SP 6.2. Engineer/Service Representatives (SBPG 2.5.2)**

The Contractor shall, at its own expense, have a competent engineering service representative(s) available on request to assist the Procuring Agency's staff in the solution of engineering or design problems within the scope of the specifications that may arise during the warranty period. This does not relieve the Contractor of responsibilities under Part 4: Warranty Provisions.

**SP 6.3. Contractor Service and Parts Support (SBPG 1.1.3.2.1)**

The Offeror shall state on the form provided in "Service and Parts Support" (Section 1.1.6.3) the representatives responsible for assisting the Procuring Agency, as well as the location 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 Offeror shall also state below, or by separate attachment, its policy on transportation charges for parts other than those covered by warranty.

**SP 6.4. Documentation (SBPG 2.5.3)**

The Contractor shall provide (*Procuring Agent to insert number and specify any additional documentation requirements*) current maintenance manual(s), (*number*) current parts manual(s), and (*number*) standard operator's manual(s) as part of this Contract. The Contractor shall keep maintenance manuals available for a period of three years after the date of acceptance of the buses procured under this Contract. The Contractor shall also exert its best efforts to keep maintenance manuals, operator manuals, and keep parts books up-to-date for a period of 15 (fifteen) years. The supplied maintenance and operator's manuals shall incorporate all equipment ordered on the buses covered by this procurement.

**SP 6.5. Parts Availability Guaranty (SBPG 2.5.4)**

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 15 (fifteen) years after the date of acceptance. Parts shall be interchangeable with the original equipment and 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 Procuring Agency are not received within two working days of the agreed upon time/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 Procuring Agency, within eight hours of the Procuring 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 Procuring Agency.

Where the Contractor fails to honor this parts guaranty or parts ordered by the Procuring Agency are not received within 30 (thirty) days of the agreed upon delivery date, then the Contractor shall provide to Procuring Agency, within 7 (seven) days of the Procuring 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 Procuring Agency. Contractor's design and manufacturing documentation provided to the Procuring Agency shall be for its sole use in regard to the buses procured under this Contract and for no other purpose.

**SP 6.6. Interchangeability (SBPG 2.5.5)**

Unless otherwise agreed, all units and components procured under this Contract, whether provided by suppliers or manufactured by the Contractor, shall be duplicates in design, manufacture, and installation to assure interchangeability among buses in this procurement.

This interchangeability shall extend to the individual components as well as to their locations in the buses.

**SP 7 Owner Furnished Equipment**

**SP 8 Federal Motor Vehicle Safety Standards (SBPG 2.10.1.4)**

The Offeror 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 will not be subject to FMVSS regulations.

**SP 9 Insurance (MARTA SC 11)**

The Supplier shall maintain in effect during the term of this Contract, including any warranty period, at his own expense, at least the following coverage, and limits of insurance:

1. Statutory Workers Compensation and Employers Liability insurance and/ or qualified self-insurance program covering Supplier's employees while on Agency property.
2. Commercial General Liability Insurance
  - (a) Bodily Injury and Property Damage, including Contractual Liability covering the indemnification contained herein - \$1,000,000 combined single limits per occurrence, \$1,000,000 aggregate, where applicable.
  - (b) Product Liability- \$10,000,000 per occurrence, \$10,000,000 annual aggregate for a period of five (5) years after acceptance of the last bus delivered under this Contract.
3. Automobile Liability Insurance  
Bodily Injury and Property Damage - \$1,000,000 combined single limits per occurrence.

Supplier shall deliver to the Agency, within ten (10) days after receiving Notice of Award of this Contract, evidence of the above. Such evidence shall be in the form and format acceptable to the Agency. Prior to the expiration of any insurance during the time required, the Supplier shall furnish evidence of renewal to the Agency's Contract Administrator.

All Supplier's policies shall contain an endorsement providing that written notice shall be given to Agency location at least sixty (60) days prior to termination, cancellation, or reduction of coverage in the policy.

**SP 10 Agency specific provisions**

**SECTION 5 – FEDERAL REQUIREMENTS**

**FR 1 Access to Records**

**In accordance with 49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17 the Contractor agrees to provide Access to Records and Reports**

The following access to records requirements apply to this Contract:

- (a) The Contractor agrees to provide the Agency, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor access, to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (b) Where the Agency enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Agency, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (c) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (d) 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 the Contractor agrees to maintain same until the Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (e) FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

| <b>Contract Characteristics</b>    | <b>Operational Service Contract</b> | <b>Turnkey</b>                                 | <b>Construction</b> | <b>Architectural Engineering</b> | <b>Acquisition of Rolling Stock</b> | <b>Professional Services</b> |
|------------------------------------|-------------------------------------|--|---------------------|----------------------------------|-------------------------------------|------------------------------|
| <b>I State Grantees</b>            |                                     |  |                     |                                  |                                     |                              |
| a. Contracts below SAT (\$100,000) | None                                | Those imposed on state pass thru to Contractor | None                | None                             | None                                | None                         |
| b. Contracts above                 | None unless <sup>1</sup>            |  | Yes, if non-        | None unless                      | None unless                         | None unless                  |

|   |  |                       |  |   |                       |                       |                       |
|---|--|-----------------------|--|---|-----------------------|-----------------------|-----------------------|
| \$100,000/Capital Projects                    |  | non-competitive award |  | competitive award or if funded thru <sup>2</sup> 5307/5309/5311 | non-competitive award | non-competitive award | non-competitive award |
| <u>II Non State Grantees</u>                  |  |                       | Those imposed on non-state Grantee pass thru to Contractor |   |                       |                       |                       |
| a. Contracts below SAT (\$100,000)            |  | Yes <sup>3</sup>      |  | Yes   | Yes                   | Yes                   | Yes                   |
| b. Contracts above \$100,000/Capital Projects |  | Yes <sup>3</sup>      |  | Yes   | Yes                   | Yes                   | Yes                   |
|   |  |                       |  |   |                       |                       |                       |

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

**FR 2 Federal Funding, Incorporation Of Federal Transit Administration (FTA) Terms, And Federal Changes (SBPG 2.8.3 and 2.8.4)**

"General Contract Provisions," (this Section 2), includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Procuring Agency requests which would cause Procuring Agency to be in violation of the FTA terms and conditions.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between Procuring Agency and FTA that funds 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.

**FR 3 Federal Energy Conservation Requirements (SBPG 2.8.4)**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. (42 U.S.C. 6321 et seq.)



## FR 4 Civil Rights Requirements (SBPG 2.8.8)

### NONDISCRIMINATION

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

### EQUAL EMPLOYMENT OPPORTUNITY

The following equal employment opportunity requirements apply to the underlying Contract:

1. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue;
2. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In

addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**FR 5 No Government Obligation to Third Parties (SBPG 2.8.1)**

The Procuring Agency and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Procuring Agency, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

**FR 6 Program Fraud and False or Fraudulent Statements Or Related Acts (SBPG 2.8.2)**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance awarded by FTA under the authority of 49 U.S.C. § 5301 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5301 et seq. on the Contractor, to the extent the Federal Government deems appropriate.

**FR 7 Suspension And Debarment (SBPG 2.9.4)**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out in "Debarment and Suspension Certification" (Section 1.1 of the Procuring Agency's solicitation).
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in

addition to other remedies available to the Federal Government, Procuring Agency may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to Procuring Agency if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Procuring Agency for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Procuring Agency.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Debarment and Suspension Certification Requirements" and the certificate form, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal

Government, Procuring Agency may pursue available remedies including suspension and/or debarment.

**FR 8 Disadvantaged Business Enterprise (DBE) (SBPG 2.8.9)**

**POLICY**

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of Contracts financed in whole or in part with Federal Funds under this agreement. Consequently the DBE requirements of 49 CFR Part 23 apply to this agreement.

**DBE OBLIGATION**

Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

**REMEDY**

Failure of the Contractor to comply with this section or to include it in any subcontract of any tier will constitute a breach of Contract and, after notification of DOT, may result in termination of the Contract by the Procuring Agency or such remedy as the Procuring Agency deems appropriate.

**FR 9 Clean Water Requirements (SBPG 2.9.3)**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor shall report each violation to the Procuring Agency and understands and agrees that the Procuring Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

**FR 10 Clean Air Requirements (SBPG 2.9.2)**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall report each violation to the Procuring Agency and understands and agrees that the Procuring Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

**FR 11 Compliance With Federal Lobbying Policy (SBPG 2.9.5)**

In accordance with 31 U.S.C. ( 1352, and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, the Contractor must have provided a certification to the Procuring Agency that the Contractor has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any Federal department or agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. See "Lobbying Certification," in Section 1.1 of Procuring Agency's solicitation.

**FR 12 Buy America (SBPG 2.10.1)**

**CERTIFICATIONS REQUIRED**

The Offeror and (if selected) Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications with its Offer and (if selected) after acceptance of the last bus:

**BUY AMERICA REQUIREMENTS**

The Offeror and (if selected) Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Offeror/Contractor certifies compliance with Buy America, it shall submit documentation which 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 will take place at the final assembly point and the cost of final assembly.

**SOLICITATION SPECIFICATION REQUIREMENTS**

The Offeror and (if selected) Contractor shall submit evidence that it will be capable of meeting the bid specifications.

**FR 13 Testing of New Bus Models (SBPG 2.10.2)**

The Contractor agrees to comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Procuring Agency prior to the recipient's final acceptance of the first bus.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in

the test report, which must be provided to the Procuring Agency prior to Procuring Agency's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**FR 14 Pre-Award and Post-Delivery Audits (SBPG 2.10.1 NOTE: This is identical to FR12)**

**CERTIFICATIONS REQUIRED**

The Offeror and (if selected) Contractor agrees to comply with 49 U.S.C. § 5323(1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications with its Offer and (if selected) after acceptance of the last bus:

**BUY AMERICA REQUIREMENTS**

The Offeror and (if selected) Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Offeror/Contractor certifies compliance with Buy America, it shall submit documentation which 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 will take place at the final assembly point and the cost of final assembly.

**SOLICITATION SPECIFICATION REQUIREMENTS**

The Offeror and (if selected) Contractor shall submit evidence that it will be capable of meeting the bid specifications.

**FR 15 ADA Access (ADA website)**

Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the established accessibility standards.

For information:

Department of Justice  
Phone: 800-514-0301  
TDD: 800-514-0383

Filing complaints:

U.S. Department of Justice  
Disability Rights Section  
Civil Rights Division  
P.O. Box 66738  
Washington, DC 20035-6738

Title II/Section 504 complaint form (available in printable HTML format)  
[www.ada.gov/t2cmpfrm.htm](http://www.ada.gov/t2cmpfrm.htm)

How to File a Title III Complaint  
[www.ada.gov/t3compfm.htm](http://www.ada.gov/t3compfm.htm)

ADA home page  
[www.ada.gov](http://www.ada.gov)

ADA Regulations and Technical Assistance Material (available in print, accessible formats, and by fax back)  
[www.ada.gov/publicat.htm](http://www.ada.gov/publicat.htm)

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## **ADAAG (Americans with Disabilities Accessibility Guidelines)**

Making facilities accessible (e.g., braille signage) is covered by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). ADAAG sets requirements for accessibility to buildings and facilities by individuals with disabilities under the Americans with Disabilities Act (ADA) of 1990. ADAAG contains requirements for accessibility features such as detectable warnings, braille and large print signage, and accessible elevator controls.

For technical assistance or complaints:

Architectural and Transportation Barriers Compliance Board (Access Board)  
1331 F Street, N.W., Suite 1000  
Washington, DC 20004  
Phone: 202-272-5434  
TTY: 202-272-5449  
800-872-2253  
TTY: 800-993-2822  
Fax: 202-272-5447  
E-mail: [info@access-board.gov](mailto:info@access-board.gov)  
10:00 am - 5:30 pm EST  
Wednesday 10:00 am - 2:00 pm EST

ADA Accessibility Guidelines for Buildings and Facilities  
<http://www.access-board.gov/adaag/html/adaag.htm>

**FR 16 Cargo Preference (SBPG 2.8.5)**

The Contractor agrees:

To utilize privately owned United States-flag commercial vessels to ship at least 50 (fifty) 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 this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

To furnish within 20 (twenty) working days following the date of loading for shipments originating within the United States, or within 30 (thirty) working days following the date of loading 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 Procuring Agency (through the Contractor in the case of a subcontractor's bill-of-lading.)

**FR 17 Fly America (Appendix A, FTA Best Practices Procurement Manual)**

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

**FR 18 Drug and Alcohol Policy (Appendix A, FTA Best Practices Procurement Manual)**

**Drug and Alcohol Testing  
Option 1**

The Contractor agrees to:

- (a) participate in the Agency's drug and alcohol program established in compliance with 49 CFR 653 and 654.

**Drug and Alcohol Testing  
Option 2**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the



United States Department of Transportation or its operating administrations, the State Oversight Agency of Michigan, or the DTC, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

### **Drug and Alcohol Testing Option 3**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Michigan, or the DTC, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the Contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

## **SECTION 6 – TECHNICAL SPECIFICATION**

### **SECTION 7 – WARRANTY REQUIREMENTS**

- W 1 Basic Warranty Provisions**
- W 1.1. Warranty Requirements**
- W 1.1.1. Contractor Warranty**
- W 1.1.2. Complete Bus**
- W 1.1.3. Body and Chassis Structure**
- W 1.1.4. Propulsion System**
- W 1.1.5. Major Subsystems**
- W 1.1.6. Extension of Warranty**
- W 1.2. Voiding of Warranty**
- W 1.3. Exceptions and Additions to Warranty**
- W 1.4. Detection of Defects**
- W 1.4.1. Serialized Components Under Warranty**
- W 1.5. Scope of Warranty Repairs**
- W 1.6. Warranty after Replacement Repairs**
- W 1.7. Fleet Defects**
- W 1.7.1. Occurrence and Remedy**
- W 1.7.2. Exceptions to Fleet Defect Provisions**
- W 2 Updates to Serialized Components**
- W 3 Agency Specific Requirements**
- W 3.1. Training**
- W 3.2. Engineer/Service Representatives**
- W 3.3. Contractor Service and Parts Support**
- W 3.4. Documentation**
- W 3.5. Part Availability Guaranty**
- W 3.6. Interchangeability**

### **SECTION 8 – QUALITY ASSURANCE**

- Q 1 Contractor's In-Plant Quality Assurance Requirements**
- Q 1.1. Quality Assurance Requirements (SBPG 3.1)**

The Contractor, the Contractor's manufacturing plant and organization shall be certified to the appropriate QS-9000/ISO 9000 series of standards.
- Q 1.2. Quality Assurance Organization (SBPG 3.1.2)**
  - Q 1.2.1. Organization Establishment (SBPG 3.1.2.1)**

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.
  - Q 1.2.2. Control (SBPG 3.1.2.2)**

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.

**Q 1.2.3. Authority And Responsibility (SBPG 3.1.2.3)**

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.

**Q 1.3. Quality Assurance Organization Functions (SBPG 3.1.3)**

**Q 1.3.1. Minimum Functions (SBPG 3.1.3.1)**

The quality assurance organization shall include the following minimum functions.

**Q 1.3.2. Work Instructions (SBPG 3.1.3.2)**

The quality assurance organization shall verify inspection operation instructions to ascertain that the manufactured product meets all prescribed requirements.

**Q 1.3.3. Records Maintenance (SBPG 3.1.3.3)**

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 1 year after inspections and tests are completed.

**Q 1.3.4. Corrective Action (SBPG 3.1.3.4)**

The quality assurance organization shall detect and promptly assure 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.

**Q 1.4. Standards and Facilities (SBPG 3.1.4)**

**Q 1.4.1. Basic Standards And Facilities (SBPG 3.1.4.1)**

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

**Q 1.4.2. Configuration Control (SBPG 3.1.4.2)**

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.

**Q 1.4.3. Measuring And Testing Facilities (SBPG 3.1.4.3)**

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.

**Q 1.4.4. Production Tooling As Media Of Inspection (SBPG 3.1.4.4)**

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.

**Q 1.4.5. Equipment Use By Resident Inspectors (SBPG 3.1.4.5)**

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.

**Q 1.5. Control of Purchases (SBPG 3.1.5)**

**Q 1.5.1. Maintenance Of Control (SBPG 3.1.5.1)**

The Contractor shall maintain quality control of purchases.

**Q 1.5.2. Supplier Control (SBPG 3.1.5.2)**

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.

**Q 1.5.3. Purchasing Data (SBPG 3.1.5.3)**

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.

**Q 1.6. Manufacturing Control (SBPG 3.1.6)**

**Q 1.6.1. Controlled Conditions (SBPG 3.1.6.1)**

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.

**Q 1.6.2. Completed Items (SBPG 3.1.6.2)**

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.

**Q 1.6.3. Nonconforming Materials (SBPG 3.1.6.3)**

The quality assurance organization shall monitor the Contractor's system for controlling nonconforming materials. The system shall include procedures for identification, segregation, and disposition.

**Q 1.6.4. Statistical Techniques (SBPG 3.1.6.4)**

Statistical analysis, tests, and other quality control procedures may be used when appropriate in the quality assurance processes.

**Q 1.6.5. Inspection Status (SBPG 3.1.6.5)**

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.

**Q 1.7. Inspection System (SBPG 3.1.7)**

**Q 1.7.1. Inspection System Scope (SBPG 3.1.7.1)**

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.

**Q 1.7.2. Inspection Personnel (SBPG 3.1.7.2)**

Sufficient trained inspectors shall be used to ensure that all materials, components, and assemblies are inspected for conformance with the qualified bus design.

**Q 1.7.3. Inspection Records (SBPG 3.1.7.3)**

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 noted 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, the Procuring Agency shall approve the modification, repair, or method of correction to the extent that the contract specifications are affected.

**Alternate (SBPG 3.1.73 edited by John Andrews)**

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 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 noted 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, the Procuring Agency shall approve the modification, repair, or method of correction to the extent that the contract specifications are affected.

**Q 1.7.4. Quality Assurance Audits (SBPG 3.1.7.4)**

The quality assurance organization shall establish and maintain a quality control audit program. Records of this program shall be subject to review by the Procuring Agency.

**Q 2 Inspections (SBPG 3.2)**

**Q 2.1. Inspection Stations (SBGP 3.2.1)**

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 before interior trim and insulation installation, engine installation completion, underbody dress-up and completion, bus prior to final paint touchup, bus prior to road test, and bus final road test completion

**Q 2.2. Resident Inspector (SBPG 3.2.2)**

**Q 2.2.1. Resident Inspector Role (SBPG 3.2.2.1)**

The Procuring Agency shall be represented at the Contractor's plant by resident inspectors. 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 Procuring Agency shall designate a primary resident inspector, whose duties and responsibilities are delineated in "Pre-Production Meetings" (Section 4.2.2.2); "Authority" (Section 4.2.2.3); and "Pre-Delivery Tests" (Section 4.3.2). Contractor and resident inspector relations shall be governed by the guidelines included as Attachment A to this Part 4. "Quality Assurance" Provisions.

**Alternative (AC Transit)**

The Procuring Agency shall be represented at the Contractor's plant by resident inspectors, as required by FTA. 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 Procuring Agency shall designate a primary resident inspector, whose duties and responsibilities are delineated in "Pre-Production Meetings" (Section 4.2.2.2); "Authority" (Section 4.2.2.3); and "Pre-Delivery Tests" (Section 4.3.2). Contractor and resident inspector relations shall be governed by the guidelines included as Attachment A to this Part 4. "Quality Assurance" Provisions.

**Q 2.2.2. Pre-Production Meetings (SBPG 3.2.2.2)**

The primary resident inspector shall participate in design review and pre-production meetings with the Procuring 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 30 (thirty) days prior to the beginning of bus manufacture, the primary resident inspector shall meet with the Contractor's quality assurance manager and shall 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.

**Q 2.2.3. Authority (SBPG 3.2.2.3)**

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 Procuring Agency shall approve the modification, repair, or method of correction to the extent that the contract specifications are affected.

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.

**Alternative: (SBPG 3.2.2.3 edited by John Andrews)**

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.

**Q 2.2.4. Support Provisions (SBPG 3.2.2.4)**

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, file cabinet, chairs, and clothing lockers sufficient to accommodate the resident staff.

**Q 3 Acceptance Tests (SBPG 3.3)**

**Q 3.1. Responsibility (SBPG 3.3.1)**

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

**Q 3.2. Pre-Delivery Tests (SBPG 3.3.2)**

The Contractor shall conduct acceptance tests at its plant on each bus following completion of manufacture and before delivery to the Procuring 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 Procuring Agency.

Additional tests may be conducted at the Contractor's discretion to ensure that the completed buses have attained the desired quality and have met the requirements in "Technical Specifications" (Part 5). The Procuring Agency may, prior to commencement of production, demand that the Contractor demonstrate compliance with any requirement in "Technical Specifications" (Part 5), if there is evidence that prior tests have been invalidated by 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 30 (thirty) 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. 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.

**Q 3.2.1. Inspection - Visual And Measured (SBPG 3.3.2.1)**

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

**Q 3.2.2. Total Bus Operation (SBPG 3.3.2.2)**

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 15 (fifteen) miles during the road tests. 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. Results shall be pass/fail for these bus operation tests.

**Q 3.3. Post-Delivery Tests (SBPG 3.3.3)**

The Procuring Agency may conduct acceptance tests on each delivered bus. These tests shall be completed within 15 (fifteen) days after bus delivery and shall be conducted in accordance with written test plans. The purpose of these tests is to identify Defects that have become apparent between the time of bus release and delivery to the Procuring Agency. The post-delivery tests shall include visual inspection and bus operations. No post-delivery test shall apply criteria that are different from the criteria applied in an analogous pre-delivery test (if any).

Buses that fail to pass the post-delivery tests are subject to nonacceptance. The Procuring Agency shall record details of all Defects on the appropriate test forms and shall notify the Contractor of acceptance, conditional acceptance, or nonacceptance of each bus within five days according to "Acceptance of Bus" (Section 2.3.1.5) after completion of the tests. The Defects detected during these tests shall be repaired according to procedures defined in "Contractual Provisions" (Part 2, "Repairs After Nonacceptance" (Section 2.3.2).

**Q 3.3.1. Visual Inspection (SBPG 3.3.3.1)**

The post-delivery inspection is similar to the inspection at the Contractor's plant and shall be conducted with the bus in a static condition. Any visual delivery damage shall be identified and recorded during the visual inspection of each bus.

**Q 3.3.2. Bus Operation (SBPG 3.3.3.2)**

Road tests will be used for total bus operation similar to those conducted at the Contractor's plant. In addition, the Procuring Agency may elect to perform chassis dynamometer tests. Operational deficiencies of each bus shall be identified and recorded.

**Q 4 Agency Specific Requirements**



**SECTION 9 – FORMS AND CERTIFICATIONS**

**CER 1 Proposer's check list – Not found**

**CER 2.1      ACKNOWLEDGMENT OF ADDENDA (SBPG 1.1.5.2)**

The following form shall be completed and included in the bid.

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

**ACKNOWLEDGMENT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

|                                      |
|--------------------------------------|
| Offeror: _____<br>Name               |
| _____ Street Address                 |
| _____ City, State, Zip               |
| _____ Signature of Authorized Signer |
| _____ Title                          |
| _____ Phone                          |

**CER 2.2 OFFEROR SERVICE AND PARTS SUPPORT DATA (SBPG 1.1.5.3)**

**Location of nearest Technical Service Representative to Procuring Agency**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Offeror to describe technical services readily available from said representative.

**Location of nearest Parts Distribution Center to Procuring Agency**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Offeror shall 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 Procuring Agency \_\_\_\_\_

**CER 2.3 FORM FOR PROPOSAL DEVIATION (SBPG 1.1.6.9)**

*(Procuring Agency to Insert RFP Number)*

The following form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal according to “Conditions, Exceptions, Reservations and Understandings” (Section 1.1.2.4). One copy without any price/cost information is to be placed in the technical proposal as specified in “Technical Proposal Requirements” (Section 1.1.3.2) and a separate copy with any price/cost information placed in the price proposal as specified in “Price Proposal Requirements” (Section 1.1.3.3).

|   |                            |
|---|----------------------------|
| Deviation #: _____                      | Offeror: _____             |
| Solicitation Ref: _____                 | Page: _____ Section: _____ |
| Complete Description of Deviation _____ |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |
| Rationale (Pros & Cons): _____          |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |
|   |                            |

**CER 2.4 PRICING SCHEDULE (SBPG 1.1.5.9)**

RFP 2001-763 Low Floor 40- & 60-Foot Buses (AC Transit)

This form is to be completed and included in the Price Proposal Package.

NOTE: All prices are to be in United States dollars.

| EXTENSION  | UNIT PRICE |
|--|------------|
| One hundred thirty-five (135) 40-Foot Low Floor Buses<br>_____ | _____      |
| Sixty (60) 60-Foot Low Floor Buses<br>_____                    | _____      |
| Manuals<br>_____   | _____      |
| Training<br>_____  | _____      |
| Spare Parts Package<br>_____                                   | _____      |
| Test Equipment and Special Tools<br>_____                      | _____      |
| Pollution equipment (included in above unit prices)<br>_____   | _____      |
| ADA Equipment (included in above unit prices)<br>_____         | _____      |
| <b>FREIGHT (NOT INCLUDED IN ABOVE PRICES)</b><br>_____         | _____      |

**CER 3 STATEMENT OF QUALIFICATIONS AND BUSINESS REFERENCES  
(Not in SBPG)**

**PRE-AWARD EVALUATION FORM (AC TRANSIT)**

RFP 2001-763 Low Floor 40- & 60-Foot Buses

This following form is to be completed and included in the Contracts Administration Package.

**PRE-AWARD EVALUATION DATA FORM**

---

Project Description: 40- & 60-Foot Low Floor Buses

---

1. Name of Firm:

\_\_\_\_\_

2. Address:

\_\_\_\_\_

\_\_\_\_\_

3.  Individual     Partnership     Corporation     Joint Venture

4. Date Organized

\_\_\_\_\_

State in which incorporated \_\_\_\_\_

5. Name of Officers or Partners:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

e. \_\_\_\_\_

f. \_\_\_\_\_

g. \_\_\_\_\_

6. How long has your firm been in business under its present name?

- 
7. Attach as **SCHEDULE ONE** a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.
  8. Attach as **SCHEDULE TWO** a list of similar contracts, each with contract amount, name of contracting party and character or type of work for similar contracts completed in the last 5 years.
  9. In the last five years have you ever been denied an award where you were selected
  10. If the answer is YES, attach as **SCHEDULE THREE** the full particulars regarding each occurrence.
  11. Have you ever failed to complete, in the last five years, any contract on which you were selected?

If the answer is YES, attach as **SCHEDULE FOUR**, the full particulars regarding each occurrence.

12. Financial resources available as working capital for the Contract:
  - a. Cash on hand: \$ \_\_\_\_\_
  - b. Sources of credit: \_\_\_\_\_
13. Attach as **SCHEDULE FIVE** financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operation (Income Statement), Statement of Changes in Financial Position (Change in Resources) and Statement of Current and Retained Earnings.
14. Attach as **SCHEDULE SIX** a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each number of the joint venture.

The above information is confidential and will not be divulged to any unauthorized personnel.

The undersigned certifies to the accuracy of all information.

**COMPANY:**

\_\_\_\_\_

**SIGNATURE:**

\_\_\_\_\_

**NAME:**

\_\_\_\_\_

**TITLE:**

---

**DATE:**

---



**CER 4.1 BUY AMERICA CERTIFICATION (SBPG 1.1.5.4)**

*(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)*

**Certificate of Compliance**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**Certificate of Non-Compliance**

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

**CER 4.2 DEBARMENT AND SUSPENSION CERTIFICATION  
(PROSPECTIVE CONTRACTOR) (Not in SBPG – LAMTA)**

**GC 9 CERTIFICATION OF PROSPECTIVE CONTRACTOR REGARDING DEBARMENT,  
SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**PRIMARY COVERED TRANSACTIONS MUST BE COMPLETED BY BIDDER  
FOR CONTRACT VALUE OVER \$100,000**

[See Instructions for Completion in Instructions to Bidders in the section entitled  
CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY  
EXCLUSION]

Choose one alternative with “X” in the box:

The Bidder, \_\_\_\_\_ 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 Bid had one or more public transactions (Federal, State or local) terminated for cause or default.

**OR**

The Bidder 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 Bidder 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 on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_,  
(Date) (City) (State)

---

Typewritten or Printed Name

Signature of Authorized  
Official

Title

## **CONTRACTOR DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

Pursuant to 49 CFR Part 29, to confirm the eligibility of the Bidder/Proposer or any covered Subcontractor to contract with Metro, Bidder/Proposer shall complete and submit with the bid/proposal the Certificate entitled "Certification of Prospective Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion", and comply with subsection B below related to each Lower Tier covered transaction.

1. Instructions for Bidder/Proposers Certification - Primary Covered Transactions
  - A. In addition to signing and submitting this bid/proposal, the Bidder (also referred to as "prospective primary participant") shall also provide the Certificate entitled Certification of Potential Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Primary Covered Transaction.
  - B. The inability of a person to provide the subject certification will not necessarily result in denial of participation in this Contract (also referred to as "primary covered transaction" or "covered transaction). The Bidder/Proposer shall submit an explanation of why it cannot provide the subject certification. The certification or explanation will be considered in whether or not to enter into this Contract. Failure of the Bidder/Proposer to furnish a certification or an explanation shall disqualify the Bidder/Proposer from participation of this Contract.
  - C. This certification is a material representation of fact upon which Metro will rely when the Metro determines whether to enter into this Contract. If it is later determined that the Bidder/Proposer knowingly rendered an erroneous certification, the Metro may terminate this Contract for cause or default in addition to other remedies available to the Metro.
  - D. The Bidder/Proposer shall provide immediate written notice to the Metro if at any time the Bidder/Proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - E. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract" including a subcontract with a supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal (or as used

herein “Bidder/Proposer”) and voluntarily excluded, as used in this Section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The Bidder/Proposer may contact the Metro for assistance in obtaining a copy of those regulations.

- F. The Bidder/Proposer agrees by submitting this bid/proposal that, should the Contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Metro.
  - G. The Bidder/Proposer further agrees by submitting this bid/proposal that it will include subsection B of this section and the certification titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” provided by the Metro in the Bid/Proposal Forms without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  - H. The Bidder/Proposer may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Bidder/Proposer may decide the methods and frequency by which it determines the eligibility of its principals. The Bidder/Proposer may, but is not required to, check the “List of Parties Excluded from Federal Procurement and Non-procurement Programs”.
  - I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section. The knowledge and information of the Bidder/Proposer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - J. Except for transactions authorized under paragraph 6 of this subsection, if a Bidder/Proposer knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Metro, the Metro may terminate this transaction for cause or default.
2. Instructions for Prime tor Require of Sub-contractors Certification - Lower Tier Covered Transactions
- A. By signing and submitting its lower tier bid/proposal, the prospective lower tier participant shall provide the certification in the Bid/Proposal Form entitled

Certification of Prospective Lower Tier Participant Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

- B. The certification in this subsection is a material representation of fact upon which Metro will rely when Metro enters into the Contract. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Metro, the Metro may pursue available remedies, including suspension and/or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the Bidder/Proposer if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- D. The terms covered transaction (or as used herein "Contract"), debarred, suspended, ineligible, lower tier covered transaction (or as used herein "Subcontract," including a subcontract with a Supplier), participant (or as used herein "Bidder/Proposer"), person, primary covered transaction (or as used herein "Contract" or "Prime Contract"), principal, bid/proposal, and voluntarily excluded, as used in this section, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The prospective lower tier participant may contact the Bidder/Proposer for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Contract, unless authorized by the Metro.
- F. The prospective lower tier participant further agrees by submitting its bid/proposal that it will include this subsection B and the Certification (in the Bid/Proposal Forms) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its

principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 5 of this subsection, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Metro, the Metro may pursue available remedies, including suspension and/or debarment.

**CER 4.3 DEBARMENT AND SUSPENSION CERTIFICATION (LOWER TIER COVERED TRANSACTION) (SBPG 1.1.6.5)**

*(To be submitted with a bid or Offer exceeding the small purchase threshold for Federal assistance programs, currently \$100,000.)*

The prospective lower tier participant (Offeror) certifies, by submission of this Offer, that neither it nor its “principals” as defined at 49 C.F.R. § 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 lower tier participant (Offeror) 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 BIDDER OR OFFEROR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.**

\_\_\_\_\_ Signature of the Bidder or Offeror’s Authorized  
Official

\_\_\_\_\_ Name and Title of the Bidder or Offeror’s Authorized  
Official

\_\_\_\_\_ Date

**CER 4.4 NON-COLLUSION AFFIDAVIT (Not in SBPG METRO RTA, Akron OH)**

**NON-COLLUSION AFFIDAVIT**

This affidavit is to be filled out and executed by the bidder; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should always appear on the line marked "Name of Affidavit." The affidavit's capacity, when a partner or officer of a corporation, should be inserted on lines marked "Capacity." The affidavit should sign individual name at end not partnership or corporation name, and swear to said affidavit before a notary public, who must attach his/her seal.

State of \_\_\_\_\_, County of \_\_\_\_\_,

I, \_\_\_\_\_ being first duly sworn, do  
hereby state that (Name of Affidavit)

I am \_\_\_\_\_ of  
(Name of Firm, Partnership, Corporation) (Capacity)

whose business is \_\_\_\_\_

and who resides at \_\_\_\_\_

and that

\_\_\_\_\_  
\_\_\_\_\_  
(Give names of all persons, firms,  
or corporation interested in the bid)

is/are the only person(s) with me/us 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/our 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 AFFIDAVIT

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

\_\_\_\_\_  
MY COMMISSION EXPIRES



**CER 4.5 LOBBYING CERTIFICATION (SBPG 1.1.6.6)**

*(To be submitted with a bid or Offer exceeding \$100,000)*

The Bidder or Offeror certifies, to the best its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**THE BIDDER OR OFFEROR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.**

\_\_\_\_\_ Signature of the Bidder or Offeror’s Authorized  
Official

\_\_\_\_\_ Name and Title of the Bidder or Offeror’s Authorized  
Official

\_\_\_\_\_ Date

**CER 4.6 CERTIFICATE OF COMPLIANCE WITH BUS TESTING REQUIREMENT (SBPG 1.1.6.8)**

The undersigned certifies that the vehicle offered in this procurement complies and will, when delivered, comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the indicated one of the following three alternatives.

(mark one and only one of the three blank spaces with an "x")

1. \_\_\_\_ The buses offered herewith have been tested in accordance with 49 CFR Part 665 on \_\_\_\_\_(date). The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Offer. If the configuration or components are not identical, the manufacturer shall provide with its Offer a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
2. \_\_\_\_ The manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Offer the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
3. \_\_\_\_ The vehicle is a new model and will be tested and the results will be submitted to Procuring Agency prior to acceptance of the first bus.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CER 4.7 DBE APPROVAL CERTIFICATION (SBPG 1.1.6.7)**

I hereby certify that the Offeror has complied with the requirements of 49 CFR 23.67, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

\_\_\_\_\_ Signature of the Offeror's Authorized Official

\_\_\_\_\_ Name and Title of the Offeror's Authorized Official

\_\_\_\_\_ Date

**CER 5 OTHER CERTIFICATIONS**

**CER 5.1 OFFER (SBPG 2.1)**

*(The following is an example Offer/Award form to be modified as appropriate by the Procuring Agency and included in the RFP.)*

Offeror shall complete the following form and include same in the price proposal.

|  |
|--|
| <p><b>OFFER</b></p> <p>By execution below Offeror hereby offers to furnish equipment and services as specified in <i>(Procuring Agency insert name)</i> Request for Proposals No. <i>(Procuring Agency insert RFP Number)</i> including the General Provisions (Section 2), Quality Assurance Provisions (Section 3), Warranty Provisions (Section 4) and Technical Specifications (Section 5), therein.</p> |
|--|

|                                      |
|--------------------------------------|
| Offeror: _____<br>Name               |
| _____ Street Address                 |
| _____ City, State, Zip               |
| _____ Signature of Authorized Signer |
| _____ Title                          |
| _____ Phone                          |

**1.3 AWARD**

**NOTICE OF AWARD**

By execution below, Procuring Agency accepts Offer as indicated above.

Contracting Officer:

\_\_\_\_\_

Signature

Date of Award:

\_\_\_\_\_

**CER 6 VEHICLE QUESTIONNAIRE (Not in SBPG)**

**GENERAL COACH DATA SHEET – LOW FLOOR 40-FOOT BUSES (AC TRANSIT)**

RFP 2001-763 Low Floor 40- & 60-Foot Buses

This form must be completed and included in the Technical Proposal.

Bus Manufacturer: \_\_\_\_\_

Bus Model Number: \_\_\_\_\_

**Section 0**

**General**

**Dimensions**

Overall Length

Over Bumpers \_\_\_\_\_ Feet \_\_\_\_\_ Inches

Over Body \_\_\_\_\_ Feet \_\_\_\_\_ Inches

Overall Width

Over Body excluding mirrors and lights \_\_\_\_\_ Inches

Over body including mirrors \_\_\_\_\_ Inches

Over tires \_\_\_\_\_ Inches

Angle of Approach \_\_\_\_\_ Degrees

Angle of Departure \_\_\_\_\_ Degrees

Breakover Angle \_\_\_\_\_ Degrees

Doorway Clear Opening

With Grab Handles No Grab Handles Height

Front Width \_\_\_\_\_ In. \_\_\_\_\_ In. \_\_\_\_\_ In.

Center Width \_\_\_\_\_ In. \_\_\_\_\_ In. \_\_\_\_\_ In.

Rear Width \_\_\_\_\_ In. \_\_\_\_\_ In. In.

Floor Height above ground - Front Door \_\_\_\_\_ Inches

Floor Height above ground – Center Door \_\_\_\_\_ Inches

Floor height above ground-Rear Door \_\_\_\_\_ Inches

Interior Head Room (center of aisle)

First Axle Location \_\_\_\_\_ Inches

Second Axle Location \_\_\_\_\_ Inches

Aisle Width

Minimum Width on Floor Between First Axle Wheel Housings \_\_\_\_\_ Inches

Minimum Width on Floor Between Drive Axle Wheel Housings \_\_\_\_\_ Inches

Minimum Aisle Width Between Longitudinal Seats \_\_\_\_\_ Inches

Minimum Aisle Width Between Transverse Seats \_\_\_\_\_ Inches

Minimum Ground Clearance

Excluding Axles \_\_\_\_\_ Inches

At Axles \_\_\_\_\_ Inches

Turning Envelope

Outside Body Corner Turning Radius Including Bumper \_\_\_\_\_ Inches

Wheel Base

First axle to second axle \_\_\_\_\_ Inches

Track  
 First axle measured center of tire to center of tire \_\_\_\_\_ Inches  
 Second axle measured center of dual tires to center of dual wheels \_\_\_\_\_ Inches

Overhang, Centerline of Axle Over Bumper  
 Front \_\_\_\_\_ Inches  
 Rear \_\_\_\_\_ Inches

Floor  
 Interior Length \_\_\_\_\_ Feet \_\_\_\_\_ Inches  
 Interior Width \_\_\_\_\_ Feet \_\_\_\_\_ Inches

Capacity  
 Total Number of Passenger Seats \_\_\_\_\_

Total Number of Standing Passengers \_\_\_\_\_  
 Curb Weight                      Curb Weight plus                      GVWR  
    Seated Load

Bus Weight  
 First Axle \_\_\_\_\_  
 Second Axle \_\_\_\_\_  
 Total \_\_\_\_\_

**Section 1**

**Steering Axles**

Manufacturer \_\_\_\_\_  
 Type and Weight Rating \_\_\_\_\_  
 Model Number \_\_\_\_\_

**Section 2**

**Drive Axles**

Manufacturer \_\_\_\_\_  
 Type and Weight Rating \_\_\_\_\_  
 Model Number \_\_\_\_\_

**Drive Axle Ratio**

Differential Ratio \_\_\_\_\_  
 Hub Reduction Ratio (if used) \_\_\_\_\_  
 Final Axle Ratio (if hub reduction is used) \_\_\_\_\_

**Section 5**

**Not Used**

**Section 4**

**Brake System**

Make of Fundamental System \_\_\_\_\_  
 First Axle Brake Chamber Model  
 and Part Number \_\_\_\_\_  
 Drive Axle Brake Chamber Model  
 and Part Number \_\_\_\_\_  
 First Axle Slack Adjuster  
 Manufacturer \_\_\_\_\_  
 Model Number \_\_\_\_\_  
 Part Number \_\_\_\_\_  
 Drive Axle Slack Adjuster  
 Manufacturer \_\_\_\_\_  
 Model Number \_\_\_\_\_





Type \_\_\_\_\_  
Model Number \_\_\_\_\_  
Number of Fixtures \_\_\_\_\_  
Size of Fixtures \_\_\_\_\_  
Power Supplies (Ballasts) \_\_\_\_\_

**Alternator (Battery Charging)**

Manufacturer \_\_\_\_\_  
Type \_\_\_\_\_  
Model Number \_\_\_\_\_  
Output at Idle \_\_\_\_\_ Amps  
Output at Maximum Speed \_\_\_\_\_ Amps  
Maximum Warranted Speed \_\_\_\_\_ rpm  
Speed at Idle \_\_\_\_\_ rpm  
Drive Type \_\_\_\_\_

**Starter Motor**

Manufacturer \_\_\_\_\_  
Voltage \_\_\_\_\_  
Model Number \_\_\_\_\_

**Section 8**

**Engine**

Manufacturer \_\_\_\_\_  
Type \_\_\_\_\_  
Model Number/Version \_\_\_\_\_  
Horsepower/Torque Rating \_\_\_\_\_

**Air Compressor**

Manufacturer \_\_\_\_\_  
Type \_\_\_\_\_  
Model Number \_\_\_\_\_  
Capacity at Idle \_\_\_\_\_ cfm  
Capacity at Maximum Speed \_\_\_\_\_ cfm  
Maximum Warranted Speed \_\_\_\_\_ rpm  
Idle Speed \_\_\_\_\_ rpm  
Drive Type \_\_\_\_\_

**Section 9**

**Fire Suppression System**

Manufacturer \_\_\_\_\_  
Type \_\_\_\_\_  
Operation Description \_\_\_\_\_  
Maintenance Documentation \_\_\_\_\_  
Replacement Parts/Costs \_\_\_\_\_

**Section 10**

**Bumpers**

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

**Section 11**

Not Used

**Section 12**

Not Used

**Section 13**

Not Used

**Section 14**

**Fuel & Exhaust System**

Tanks

Manufacturer \_\_\_\_\_

Capacity in Gallons (Total and Usable) \_\_\_\_\_

Construction Material \_\_\_\_\_

**Section 15**

**Air Suspension**

**Air Reservoir Capacity**

Supply Reservoir \_\_\_\_\_ Cu. In.

Primary Reservoir \_\_\_\_\_ Cu. In.

Secondary Reservoir \_\_\_\_\_ Cu. In.

Parking Reservoir \_\_\_\_\_ Cu. In.

Accessory Reservoir \_\_\_\_\_ Cu. In.

Other Reservoir \_\_\_\_\_ Cu. In.

**Section 16**

**Power Steering**

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

Relief Pressure \_\_\_\_\_ psi

Power Steering Fluid Capacity \_\_\_\_\_ qts.

Effort at Steering Wheel  
(Unloaded stationary coach  
on dry asphalt pavement) \_\_\_\_\_ lbs.

**Section 17**

**Transmission**

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

Model Number \_\_\_\_\_

Gear Ratios \_\_\_\_\_

Number of Forward Speeds \_\_\_\_\_

Oil Capacity (including  
heat exchanger) \_\_\_\_\_ gal.

Retarder Make, Type & Size \_\_\_\_\_

Weight, Complete \_\_\_\_\_ lbs.

**Section 18**

**Propshaft**

Manufacturer \_\_\_\_\_

Length \_\_\_\_\_

**Section 19**

**Wheels**

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

Size \_\_\_\_\_  
Mounting \_\_\_\_\_  
Protective Coating \_\_\_\_\_

**Section 20**  
**Chassis Lubrication**

Manufacturer \_\_\_\_\_  
Model \_\_\_\_\_

**Section 21**

**Not Used**

**Section 22**

**Not Used**

**Section 23**

**Not Used**

**Section 24**

**Door System**

Manufacturer \_\_\_\_\_

Model:

Front Door \_\_\_\_\_

Rear Door \_\_\_\_\_

Open/Close Mechanism (air, electric, spring, other)

Front Door \_\_\_\_\_

Rear Door \_\_\_\_\_

**Heating and Ventilating Equipment**

Heating System Capacity \_\_\_\_\_ B.T.U.

Ventilating Capacity \_\_\_\_\_ CFM per passenger

Ventilating System Noise Level \_\_\_\_\_

Manufacturer & Model \_\_\_\_\_

**Roof Vent Blowers**

Horsepower \_\_\_\_\_

Speed(s) \_\_\_\_\_

Capacity \_\_\_\_\_ CFM

Controls

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

Model Number \_\_\_\_\_

Driver Heater

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_

Model Number \_\_\_\_\_

Capacity \_\_\_\_\_ B.T.U.

**Section 25**

**Passenger Loading System**

Manufacturer \_\_\_\_\_

Type \_\_\_\_\_  
Model Number \_\_\_\_\_  
Capacity \_\_\_\_\_ lbs.  
Operator Control Layout \_\_\_\_\_  
Restraint System Type And Model Number \_\_\_\_\_

Dimensions

Width of Ramp \_\_\_\_\_ In.  
Length of Ramp \_\_\_\_\_ In.

Cycle Times

|                  | Normal Idle | Fast Idle  |
|------------------|-------------|------------|
| Stowed to Ground | _____ Sec.  | _____ Sec. |
| Ground to Stow   | _____ Sec.  | _____ Sec. |
| Total Cycle      | _____ Sec.  | _____ Sec. |

System Fluid Capacity \_\_\_\_\_ Qts.

Fluid Type Used \_\_\_\_\_

Operating Hydraulic Pressure \_\_\_\_\_ psi

Hydraulic Cylinders Used \_\_\_\_\_

Hydraulic Cylinder Size \_\_\_\_\_

Weight of Complete Lift \_\_\_\_\_ lbs.

**Section 26**

**Electronics**

Video System Manufacturer \_\_\_\_\_

Number of Cameras \_\_\_\_\_

Destination Sign Manufacturer \_\_\_\_\_

**SECTION 10 – SAMPLE CONTRACT AND BOND FORMS**

**C.1 Order of Precedence (SBPG 2.2.2)**

The Contract consists of the following:

|   |   |   |
|---|---|---|
| <p><i>(a)(for use in negotiated procurements only)</i><br/>                 Part 1 - Contractor's Best and Final Offer and Procuring Agency's Notice of Award<br/>                 Part 2 - General Contractual Provisions<br/>                 Part 3 - Quality Assurance Provisions<br/>                 Part 4 - Warranty Provisions<br/>                 Part 5 - Technical Specifications<br/>                 Addenda - As issued<br/>                 Contractor's Proposal including any modifications explicitly incorporated in Contractor's Best and Final Offer</p> | <p><i>(b) (for use in negotiated procurements only)</i><br/>                 Part 1 - Contractor's Best and Final Offer and Procuring Agency's Notice of Award<br/>                 Part 2 - General Contractual Provisions<br/>                 Part 3 - Quality Assurance Provisions<br/>                 Part 4 - Warranty Provisions<br/>                 Part 5 - Technical Specifications<br/>                 Addenda - As issued.</p> | <p><i>(c)(for use in competitive bids)</i><br/>                 Part 1 - Contractor's Offer and Procuring Agency's Notice of Award<br/>                 Part 2 - General Contractual Provisions<br/>                 Part 3 - Quality Assurance Provisions<br/>                 Part 4 - Warranty Provisions<br/>                 Part 5 - Technical Specifications<br/>                 Addenda - As issued.</p> |
|---|---|---|

In case of any conflict among these documents where the parties' intended resolution is not clear, the order of precedence shall be:

|  |   |
|--|---|
| <p><i>(b)</i><br/>                 First - Addenda issued by Procuring Agency<br/>                 Second - Part 5, Technical Specifications<br/>                 Third - Parts 2, 3, and 4 of this document<br/>                 Fourth - Contractor's Offer<br/>                 Fifth - Contractor's Proposal</p> | <p><i>(a)</i><br/>                 First - Addenda issued by Procuring Agency<br/>                 Second - Part 5, Technical Specifications<br/>                 Third - Parts 2, 3, and 4 of this document<br/>                 Fourth - Contractor's Offer</p> |
|--|---|

**C.2 Compensation**

The Procuring Agency shall pay and the Contractor shall accept the amounts set forth in the price schedule 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, expenses, storage and shipping, risks and obligations, taxes (as applicable), fees and profit, and any unforeseen costs.

NOTE: *The advanced payment option may be used to advance funds to the contractor whether payment is otherwise due on progress completed or on delivery (see options below).*

**ADVANCE PAYMENT OPTION** *(The following optional provision is a guideline for drafting any advance payment option that might be included.)* The Procuring Agency shall pay to the Contractor twenty percent (20%) of the total amount of the price schedule within 30 (thirty) calendar days after the issuance of the notice of award and upon receipt of Contractor's invoice and provision by the Contractor the evidences of insurance required by "Insurance" (Section 2.7.1) and Performance Bond specified by "Performance Bond" (Section 2.7.2). The Advance Payment shall be refunded to the Procuring Agency as prorata credits against future invoices, whereas each prorata credit is calculated as the same percentage that the invoice amount (not discounted for any liquidated damages) is of the total amount of the price schedule, or, in the event that the Contract is terminated for any reason, as a direct payment.

***(a) Delivery Payment***

All payments shall be made as provided herein, less any additional moneys withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make payments for buses at the unit prices itemized in the Price Schedule within 30 (thirty) calendar days after the delivery and acceptance of each bus and receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the Procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

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

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

2. Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract, excluding training.
2. Rectification of any deficiencies found during the acceptance of buses.
4. Contractor provision of any certifications as required by law and/or regulations.
4. Completion of post delivery audits required under the Contract

***(b) Delivery Payment with Retention***

All payments shall be made as provided herein, less a withholding of two percent (2%) plus any additional moneys withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make payments for buses at the unit prices itemized in the Price Schedule within 30 (thirty) calendar days after the delivery and acceptance of each bus and receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the Procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

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

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

5. Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract, excluding training.
6. Rectification of any deficiencies found during the acceptance of buses.
7. Contractor provision of any certifications as required by law and/or regulations.
8. Completion of post delivery audits required under the Contract.

(Include the following provision if there is no applicable prompt payment law or regulation.)  
- The Procuring Agency shall pay to the Contractor interest daily on the balance of any payments due, as specified above, at the prime rate of interest published by the Wall Street Journal, beginning 30 (thirty) days after payments are due.

### **Progress Payments (SBPG 2.4 continued)**

*(c) Progress Payments (Include the following provision if progress payments are to be made.)*

*NOTE: The following is a model clause that the Procuring Agency can use as a guideline in preparing any progress payment provision. If progress payments are to be included, security for the progress payments of Milestone No. 1 to the Contractor should be required of the Contractor through a Performance Bond. The bond amount should not be less than the Procuring Agency's financial exposure for cumulative payments for Milestone No. 1 and any advance payment.*

All payments shall be made as provided herein, less any moneys to be withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.3.4).

The Procuring Agency shall make progress payments to the Contractor for buses in accordance with the performance milestones set forth below.

Title to material included in any progress payment request shall pass to the Procuring Agency upon payment by the Procuring Agency. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of buses procured in accordance with the requirements of the Contract.

The (*suggested*) performance milestones and payment limits shall be as follows:

1. The Procuring Agency shall make payments for buses at forty percent (40%) of the unit price(s) for each bus(es) itemized in the price schedule upon verification by the Procuring Agency's Inspector that said bus(es) have had the front and rear axles installed in the manufacturing cycle at the Contractor's plant and within 30 (thirty) calendar days of receipt of a proper invoice. Invoices submitted under this milestone shall include a listing of all major components and component serial numbers that shall be the same as in the final bus record.

2. The Procuring Agency shall make payments for buses at twenty percent (20%) of the unit price(s) for each bus(es) itemized in the price schedule when the Procuring Agency's Inspector has approved shipment of said bus(es) from the Contractor's plant and within 30 (thirty) calendar days of receipt of a proper invoice.

3. The Procuring Agency shall make payments for buses at thirty-eight percent (38%) of the unit price(s) for each bus(es) itemized in the price schedule upon the delivery and acceptance of each bus and within 30 (thirty) calendar days of receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance the procuring Agency may, at its exclusive option, "conditionally accept" the bus and place it into revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any conditionally accepted bus the payment shall be reduced by an amount to be withheld, and paid upon corrective action by the contractor, equal to twice the estimated cost for parts and labor for the corrective action.

4. The Procuring Agency shall make payments for spare parts and/or equipment at the unit prices itemized in the price schedule upon the delivery and acceptance of said spare parts and/or equipment and within 30 (thirty) calendar days of receipt of a proper invoice.

Title for spare parts and/or equipment shall transfer to the Procuring Agency upon payment. Said title shall be free of all encumbrances.

5. The Procuring Agency shall make a final payment of two percent (2%) of the total Contract price plus any moneys withheld, within 30 (thirty) calendar days of receipt of a proper invoice and the following:

- (b) Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by the Contract, excluding training.



- (b) Rectification of any deficiencies found during the acceptance of buses.
- (c) Contractor provision of any certifications as required by law and/or regulations.
- (d) Completion of post delivery audits required under the Contract.

Progress payments requests shall be accompanied by a certification, or affidavit, signed by the Contractor's officer certifying that the work covered by the progress payment requested has been completed. The Procuring Agency reserves the rights of inspection and audit to verify said progress as provided in "Audit and Inspection of Records" (Section 2.6) and Part 3.

(Include the following provision if there is no applicable prompt payment law or regulation.)  
- The Procuring Agency shall pay to the Contractor interest daily on the balance of any payments due, as specified above, at the prime rate of interest published by the Wall Street Journal, beginning 30 (thirty) days after payments are due.

### **C.3 Contract Term and Period of Performance (LACMTA Contract No. 3)**

The Effective Date of this Contract shall be the Effective Date set forth in the Notice to Proceed ("NTP"), or if issued, a Limited Notice to Proceed ("LNTP"). Contractor shall commence work after the Effective Date of the Contract, upon receipt of the LNTP or NTP as provided herein. The base contract will contain orders for a total of 260 Vehicles all of which will have CNG propulsion systems. The Contract will have a delivery date for all vehicles by June 30, 2010. Said delivery date shall be automatically extended on a day-for-day basis if the Contract is not executed by Metro on or before May 30, 2008. If any Option is exercised, the Option Vehicles or other Option items shall be delivered in accordance with the schedule contained in the Notice of Exercise of Option.

### **C.4 Notices (LACMTA SP-2)**

- A. Any Notice legally required to be given by one party to another under the Contract, including but not limited to those regarding interpretation of the Contract or changes thereto, shall be in writing and dated. The Notice shall be signed by the party giving such Notice or by a duly authorized representative of such party.
- B. Notices shall not be effective for any purpose whatever unless enclosed in a sealed envelope and transmitted by registered mail or any certifiable delivery service addressed to:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, MS 99-9  
Los Angeles, California 90012-2952

Attention: Margaret Merhoff, Contract Administration Manager  
Contract No. RFP No. OP33202082

- C. All Notices to the Contractor will be enclosed in a sealed envelope and transmitted by personal delivery to the Contractor or its authorized representative or by registered mail or any certifiable delivery service addressed as follows:

(Information will be incorporated at time of award)

Any Notice of changes of address shall be given according to the provisions of this Special Provision.

**C.5 Entire Agreement (Integration Clause) (LACMTA Contract No. 9)**

This Contract constitutes the complete and entire agreement between the Metro and Contractor and supercedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written which are not incorporated as a part of the Contract.

**Sample Contract Form**

**LOS ANGELES COUNTY**

**METROPOLITAN TRANSPORTATION AUTHORITY**

**CONTRACT**

**CONFORMED May 15, 2008**

## CONTRACT

between

CONTRACT NO-OP33202082

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY  
ONE GATEWAY PLAZA,  
LOS ANGELES, CA 90012-2932

RFP NO. OP33202082

GRANT NO. TBD

and

PERIOD OF PERFORMANCE: TO  
JUNE 30, 2010

NORTH AMERICAN BUS INDUSTRIES  
106 NATIONAL DRIVE  
ANNISTON, ALABAMA 36207

CONTRACT AMOUNT: Not to  
Exceed: \$156,572,260

TEL: (256) 831-4965

CONTRACT TYPE: Fixed Price Unit Rate

### **FOR UP TO 260 45 FOOT LOW FLOOR COMPOSITE STRUCTURE CNG AND HYBRID ELECTRIC TRANSIT VEHICLES**

---

This Contract, dated as of the 15th day of May, 2008, is entered into by and between LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (Metro) AND NORTH AMERICA BUS INDUSTRIES, INC. (Contractor). In consideration of all of the mutual covenants of the parties, as set forth below, the parties hereby agree as follows:

#### **1. CONTRACT DOCUMENT AND ORDER OF PRECEDENCE**

- A. This Contract includes this Form of Contract and the other following Contract Documents and Attachments, which are incorporated herein and are made a part of this Contract.
- B. Except as otherwise specified herein, in the event of any conflict, the precedence of the Contract Documents shall be as follows:
  - Form of Contract
  - Part B-1 - Regulatory Requirements (Pro Form 39, dated 10/22/04 ; Conformed 4.16.08)
  - Part C - Special Provisions (Conformed 5.15.08)

- Part B - General Conditions, (Conformed 4.16.08)
  - Part D - Warranty Provisions, (Conformed 4.16.08)
  - Part E - Quality Assurance Provisions, (Conformed 4.16.08)
  - Part A - Specifications (Conformed 4.16.08)
- C. 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. SCOPE OF WORK**

Contractor shall furnish all necessary labor, materials, supplies, and transportation necessary to manufacture and deliver up to 260 45 Foot Low Floor Composite Structure CNG Transit Vehicles and Spare Parts in accordance with this Contract and necessary to manufacture and deliver all Option Vehicles and other Option items in accordance with any Option exercised hereunder.

## **3. PERIOD OF PERFORMANCE**

The Effective Date of this Contract shall be the Effective Date set forth in the Notice to Proceed (“NTP”), or if issued, a Limited Notice to Proceed (“LNTP”). Contractor shall commence work after the Effective Date of the Contract, upon receipt of the LNTP or NTP as provided herein. The base contract will contain orders for a total of 260 Vehicles all of which will have CNG propulsion systems. The Contract will have a delivery date for all vehicles by June 30, 2010. Said delivery date shall be automatically extended on a day-for-day basis if the Contract is not executed by Metro on or before May 30, 2008. If any Option is exercised, the Option Vehicles or other Option items shall be delivered in accordance with the schedule contained in the Notice of Exercise of Option.

## **4. PAYMENT PROVISIONS**

In consideration of the manufacture and delivery of the Base Vehicles and Spare Parts and Contractor’s performance in accordance with all of the terms and conditions of the Contract, Metro shall pay Contractor the unit prices of the Base Vehicles and Accepted in accordance with the Contract in an amount not to exceed the Total Contract Price of \$156,572,260 as follows.

**Base Vehicles**

| Item Description                      | No. of Units | Unit Price | Total Price          |
|---------------------------------------|--------------|------------|----------------------|
| CNG Composite Structure Vehicles      | 260          | \$597,475  | \$155,343,500        |
| Delivery Charge                       | 260          | \$4,726    | \$1,228,760          |
| <b>TOTAL PRICE, CNG Base Vehicles</b> |              |            | <b>\$156,572,260</b> |

**Gasoline/Hybrid Vehicles**

Contractor provided the following pricing for Gasoline/Hybrid Vehicles exclusive of sales/use taxes. As of the Effective Date of the Contract, Metro has not yet decided to purchase Gasoline/Hybrid Vehicles. Metro reserves the right to purchase said Vehicles under the provisions of SP-27, Options.

| Item Description                                  | No. of Units | Unit Price | Total Price |
|---|--------------|------------|-------------|
| Gasoline/Hybrid Composite Structure Vehicles      | 0            | \$799,950  | \$0         |
| Delivery Charge                                   | 0            | \$4,726    | \$0         |
| <b>TOTAL PRICE, Gasoline/Hybrid Base Vehicles</b> |              |            | <b>\$0</b>  |

**Spare Parts**

Contractor provided the following pricing for Spare Parts exclusive of sales/use taxes. As of the Effective Date of the Contract, Metro has not decided to purchase any Spare Parts. Said pricing shall be valid for one year for the Effective Date of the Contract. In the event that spare parts are ordered, Metro shall require the Contractor to invoice and remit all applicable Sales/Use Taxes.

| Item Description                    | No. of Units | Unit Price  | Total Price |
|-------------------------------------|--------------|-------------|-------------|
| Power Plant Assemblies              |              | \$60,853.00 |             |
| Transmission                        |              | \$15,402.00 |             |
| A/C compressor                      |              | \$3,869.00  |             |
| Total Delivery Charges (included in |              | NA          |             |

|                     |  |  |  |
|---------------------|--|--|--|
| unit costs)         |  |  |  |
| <b>Total Spares</b> |  |  |  |

**5. PROGRESS PAYMENTS**

Metro has set aside \$15,534,350 for progress payments. The progress payments for the Vehicles will be made according to the following schedule.

- A. \$7,267,175 – Production Vehicle - This amount will be paid as a progress payment following the manufacture and inspection of the first partially completed Vehicle totally produced after Metro’s on-site inspector begins inspection services at the Contractor’s facility in Hungary. Payment will be made thirty days following authorization of the shipping of that partially completed Vehicle but shall not occur earlier than July 1, 2008. (Said amount does not include the remaining payments involving this Vehicle.)
- B. \$7,267,175 – Acceptance of Anniston Pilot Bus. The first production Vehicle on line in the Contractor’s Anniston AL facility shall be designated as the Pilot Vehicle. Payment for the Pilot Vehicle will be paid as a progress payment following Acceptance of the Pilot Vehicle. Payment shall be payable within 30 days following acceptance of the specific Vehicle. (Said amount does not include the remaining payments involving the bus.)
- C. \$500,000 – Shall be payable within 30 days after all of the following:
  - Receipt of the Draft Training Program and resumes of proposed Trainers.
  - Receipt of Draft Preventive Maintenance Procedures
  - Receipt of Draft Diagnostic Manual
  - Receipt of Draft Parts Manual
- D. \$500,000 - Shall be payable within 30 days after all of the following:
  - Receipt and Acceptance of the Final Training Program
  - Receipt and Acceptance of Final Preventive Maintenance Procedures
  - Receipt and Acceptance of Final Diagnostic Manual
  - Receipt and Acceptance of Final Component Repair Manuals
  - Receipt and Acceptance of Final Parts Manuals

- Receipt and Acceptance of Final “As Built” Drawings

For the 260 Vehicles, the following two payments will be made:

- a. \$268,863.75 will be paid at the midpoint of the Vehicle manufacturing process for each of the 260 Vehicles. The midpoint of the Vehicle manufacturing process shall be determined at the Pre-Production Meeting.
- b. \$273,589.75 that includes delivery costs will be paid thirty days following Acceptance for each of the remaining 260 Vehicles.

Title to material included in any progress payment request shall pass to the Metro upon payment by the Metro. Said title shall be free of all encumbrances. However, such transfer of title shall not relieve the Contractor of its responsibility for the furnishing, installation, fabrication or inclusion of said materials as a deliverable element of Vehicles procured in accordance with the requirements of the Contract.

If Metro exercises one or more Options contained in the Contract, payments for all Option Vehicles and the delivery charges will be paid in following progress payments. Forty five percent (45%) shall be paid within 30 days from the midpoint of production and the remaining balance that represents fifty-five percent (55%) plus delivery costs shall be paid within 30 days following Acceptance of each Vehicle. The value of any previously executed additive or deductive Modifications shall be factored into the above progress payment formula. Any additive or deductive Modifications that are executed following the exercise of an Option shall modify only the final progress payment identified above. The Modification that definitizes the Option Order shall stipulate exact payment amounts. In the event that an Option Order includes the provisions of gasoline/hybrid vehicles, Metro reserves the right to require the provision of a Pilot Vehicle and shall negotiate a reasonable progress payment that shall be paid 30 days following Acceptance of the Pilot Vehicle.

## **6. TAX CREDITS**

In the event Contractor is entitled to Federal or State tax credits or refunds conditioned on the sale of CNG buses to a public agency, the Contractor agrees to rebate an amount equal to ninety (90) percent of the per bus credit or refund to Metro when the Contractor takes the credit and/or realizes the refund. The provision of such credits shall not affect any other responsibilities contained in the Contract.

## **7. INVOICES**

Contractor shall submit invoices for all Vehicles, Spare Parts, and all equipment and other items purchased under this Contract to Metro 30 calendar days prior to



each delivery. Payment shall be within 30 days after Acceptance of the item. If an Option is exercised, final payment for Option Vehicles shall be made within 30 days following final Acceptance of each Vehicle. Proforma invoices will be acceptable. Metro shall pay all Sales/Use Taxes for each bus. **For any spare parts, training aids or diagnostic equipment ordered under the Contract, Metro shall require the Contractor to invoice and remit all applicable Sales/Use Taxes.**

A separate invoice shall be submitted for each Vehicle, including exercised Option Vehicles. Each invoice shall include:

- Contract number
- Model and serial number of Vehicle invoiced
- Unit or total prices by line item number
- Total invoice amount.

A separate invoice shall be submitted for Spare Parts, and exercised Option items. Each invoice shall include:

- Contract number
- Description of the item
- Unit or total prices by line item number
- Total invoice amount.

All invoices shall be submitted in writing and delivered or mailed to the MTA as follows:

Los Angeles County Metropolitan Transportation Authority  
Contract Accounting  
P.O. Box 512296  
Los Angeles, CA 90051-0296

Expedited Payment Discount

Metro may consider payment terms of less than 30 days if the Contractor provides a discount as consideration for the expedited payment. No discount will be considered in the award of the Contract. Negotiation of any proposed expedited payment discount shall be conducted and finalized prior to the conclusion of the Pre-Production Meetings for the Base Order or for any subsequent Option Order.

## **8. COMMUNICATIONS**

Communications in connection with this Contract shall be in writing and shall be delivered personally; or by telex, facsimile, electronic mail; or by regular, registered, or certified mail addressed to Metros Authorized Representative, as designated in the LNTP or NTP at Los Angeles County Metropolitan Transportation Authority, 1 Gateway Plaza, Los Angeles, Ca. 90012 and with copies to such other persons as are designated in the LNPT or NTP, or in writing

by Metro's Authorized Representative. The Contractor shall designate its Authorized Representative in writing, upon receipt of the LNTP or NTP from Metro. Telephone calls may be used to expedite communications but shall not be binding unless confirmed in writing by the parties' Authorized Representatives and be otherwise enforceable under this Contract

Communications shall be deemed received by the receiving party at the time they are actually received at the address of the recipient previously designated by the receiving party.

**9. COMPLETE AGREEMENT**

This Contract constitutes the complete and entire agreement between the Metro and Contractor and supercedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written which are not incorporated as a part of the Contract.

**CONTRACTOR NAME**

**LOS ANGELES COUNTY  
METROPOLITAN  
TRANSPORTATION AUTHORITY**

**ROGER SNOBLE  
CHIEF EXECUTIVE OFFICER**

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED  
OFFICIAL

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
(PRINT OR TYPE NAME)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

APPROVED AS TO FORM  
RAYMOND G. FORTNER, JR  
COUNTY COUNSEL

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
DEPUTY

TAX ID NO.: \_\_\_\_\_

**Sample Performance Bond**  
**Sample Payment (Material and Labor) Bond**  
**Sample Final Release of Liens and Claims**

**SAMPLE CONTRACT**