

Council Meeting of
April 19, 2011

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: Transit – Authorize contract and purchase order for Compressed Natural Gas buses.

Expenditure: Not to exceed \$11,163,884.61

RECOMMENDATION

Recommendation of the Transit Director that City Council approve a contract and purchase order with New Flyer of America to purchase 20 Compressed Natural Gas Buses at a cost not to exceed \$11,163,884.61.

FUNDING

Funding will come from Federal Transit Administration Grants – Section 5309 Capital Program Bus and Bus Related, Section 5307 Capital Formula Assistance and Congestion Mitigation and Air Quality Improvement funds. The local matching funds will come from the Proposition C 40% Municipal Operators Service Improvement Program (MOSIP), Proposition A Discretionary and State 1B Bond funds. No City General Funds will be used for this purchase.

BACKGROUND

On June 15, 2010, Your Honorable Body authorized the Transit Department to move forward with a second bus order from New Flyer of America to purchase additional alternative fuel vehicles. The Southern California Air Quality Management District (SCAQMD) Rule 1192 "Clean On-Road Transit Buses" requires that public transit fleet operators to acquire only alternative fuel heavy duty vehicles to reduce pollutant emissions.

At that time, Transit, along with several other transit agencies and cities, was a partner in the Cooperative Procurement Pilot Program (CPPP) with the City of Montebello to acquire Gasoline-Electric Hybrid buses (the City of Montebello RFP NO. 06-01). Unfortunately, Innovative Solutions for Energy (ISE), the company that built the hybrid propulsion package for the buses, filed for Chapter 11 bankruptcy and this action froze all bus production for Gasoline-Electric buses for several months. Although ISE appears to be

recovering, rather than the possibility of facing a similar situation in the future, Transit decided to expand to other forms of alternative energy vehicles. Transit has chosen to go forward with Compressed Natural Gas (CNG) buses as part of our Fleet Modernization Project. The CPPP, for all intents and purposes, is now completed and the previous Purchase Order between Transit and New Flyer for \$7,800,000 will be cancelled as Gasoline-Electric Hybrid Buses are not available for immediate purchase.

With the help of San Diego Metropolitan Transit System (MTS), Torrance Transit was able to acquire the options/assignments for 20 CNG buses, per MTS' existing agreement with New Flyer.

ANALYSIS

The Transit Department is undergoing a three phase Fleet Modernization Project that will replace all of its existing diesel-powered buses with alternative fueled buses by FY2015. The CNG being purchased are priced at a cost not to exceed \$558,194.23 per vehicle or \$11,163,884.61 for the entire order (including taxes and delivery).

Per the MTS RFP, buses will be manufactured out of plants in Winnepeg, Canada and Crookston, Minnesota. Shell fabrication (approximately 40% of the bus build) will take place in Winnepeg. The buses will then be shipped to Crookston for additional construction and completion (approximately 60% of the bus build). The majority of parts and components needed to build the buses will come from American companies, per Federal Buy America requirements.

Funding to procure the vehicles is as follows:

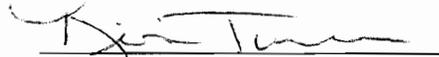
GRANT	SOURCE	AMOUNT
CA-95-X146 (CMAQ)	Federal	\$3,929,687.38
CA-90-Y715	Federal	\$2,477,000.00
CA-90-Y816	Federal	\$1,995,768.00
CA-04-0132	Federal	\$1,329,240.00
CA-04-0063	Federal	\$365,567.00
CA Proposition 1B Bond	State	\$89,559.23
Prop A Discretionary	Local	\$524,000.00
Municipal Operators Service Improvement Program (MOSIP)	Local	\$453,063.00
TOTAL FUNDING		\$11,163,884.61

Maintenance of the vehicles will require the addition of two (2) new mechanics. Twelve (12) of the twenty (20) buses are required for new expansion service (Rapid Bus and the Congestion 110 Freeway High Occupancy Toll) and have service funding for approximately two years. When the funding expires, the service will become part of the regional formula program and will be funded by it. The eight (8) other buses are replacement buses and will be maintained as part of the current fleet with no additional mechanics required.

The service area will require very extensive renovation of the existing facility. Until the renovations are completed equipment will need to be serviced externally, utilizing a mobile lift, which the department already has. A preliminary assessment was conducted and the cost estimate to retrofit the transit service area is between \$800,000 and \$900,000. Staff is in the process of seeking engineering consultants to develop and design the retrofit project and finalize the project cost. Funding is available in the FY 2011-2012 Federal Transit Administration (FTA) Section 5307 capital funds. The use of a portion of the FY 12 Section 5307 funding for facility retrofitting will not negatively impact the transit capital program. Additionally, staff will also investigate funding opportunities from the South Coast Air Quality Management District (SCAQMD) MSRC Clean Transportation Fund Program.

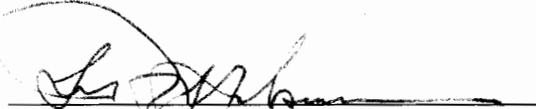
All vehicles purchased under this agreement meet or exceed all State and local requirements regarding vehicle emissions for the foreseeable future. CNG is a proven technology and has been powering transit fleets worldwide for the last 20 years.

Respectfully submitted,



Kim Turner
Transit Director

Concur:



LeRoy J. Jackson
City Manager

ATTACHMENT: A) New Flyer Bus Contract

PURCHASE AGREEMENT BY AND BETWEEN
THE City OF TORRANCE AND NEW FLYER OF
AMERICA INC

THIS PURCHASE AGREEMENT ("Agreement") is made and entered into this 5th day of April, 2011, by and between the City of Torrance, a California municipal corporation (hereinafter referred to as the "City"), and New Flyer of America Inc., a North Dakota corporation (hereinafter referred to as "New Flyer"). City and New Flyer are sometimes collectively referred to herein as the "Parties."

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.

B. New Flyer is incorporated in the State of North Dakota and legally authorized to do business in the State of California. New Flyer represents it has the background, knowledge, experience and expertise necessary to provide the City with the Compressed Natural Gas Powered Low Floor Transit Buses" set forth in this Agreement.

C. City seeks to purchase from New Flyer, and New Flyer desires to sell to the City, twenty (20) forty-foot (40') Compressed Natural Gas Powered Low Floor Transit Buses (collectively referred to herein as either "Buses" or "Vehicles") for the City of Torrance as further described in the San Diego Metropolitan Transit System (MTS) Request for Proposals ("RFP") MTS Doc. No. G1101.0-07 entitled "Request for Proposal for 35' and 40' Low Floor Transit Buses".

D. City's Transit Department (or the Torrance Transit System) operates a transit fleet of 51 buses. The Torrance Transit Fleet Modernization Project/Replacement calls for the replacement of 51 Torrance buses which will have provided (on average) 18 years of service at the time of replacement. These vehicles will have exceeded the federal requirement for life expectancy and are in need of replacement.

E. The South Coast Air Quality Management District ("SCAQMD") and the Air Resource Board ("ARB") currently prohibit the City from purchasing diesel vehicles because they do not meet SCAQMD or ARB standards for pollutants. Alternative fuel vehicles include hybrid gasoline electric, compressed natural gas (CNG) and liquid natural gas (LNG). The Transportation Department has elected to purchase compressed natural gas buses (CNGB) because this type of power system will provide cost savings in relation to fuel consumption.

F. On May 21, 2007, the San Diego Metropolitan Transit System (MTS) released an RFP (MTS DOC. NO G1101.0-07) for the purchase of 35' and 40' Low Floor Transit Buses. New Flyer of America was the winning proposer of this RFP. (ATTACHEMENT A)

G. A negotiated procurement for the purchase of low floor CNG buses in response to the RFP was successfully accomplished between MTS and New Flyer.

H. On February 16, 2011, the Torrance Transit System requested and received 20 options/assignments to purchase buses from MTS, per MTS DOC. NO G1101.0-07. (ATTACHMENT B)

H. All of the rolling stock federal requirements have been met by New Flyer, including certifications of compliance with Buy America, Federal Motor Vehicle Safety Standards, Bus Testing, Pre-Award and Post-Delivery Audits. The Buy America requirements specify that the cost of components and subcomponents produced in the United States must be more than 60 percent of the cost of all components and final assembly must take place in the United States. The CNG buses' frame and flooring will be made in Canada and final assembly will take place in Crookston, Minnesota.

O. The submitted proposal price was at a cost not to exceed \$502,360.95 per vehicle for 40-foot buses (ATTACHMENT C). City requested several changes beyond the most recent vehicle specifications, for a total unit cost not to exceed \$558,194.23 per vehicle, or \$11,163,884.61 for the entire order of 20 buses. Please note this is only the price per vehicle and does not include other vehicle options and equipment that the City may later purchase (e.g. – such as diagnostic computers, decals, spare parts, etc.) – which will be billed and paid for separately.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, City and New Flyer agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS.

The above "Recitals" are true and correct and constitute a material part hereof, and shall hereby be incorporated by reference as though fully set forth herein. The "Exhibits" of this Agreement constitute a material part hereof, and are hereby incorporated by reference as though fully set forth herein.

2. PURCHASE OF TWENTY 40-FOOT COMPRESSED NATURAL GAS LOW FLOOR TRANSIT BUSES ASSIGNED FROM SAN DIEGO METROPOLITAN TRANSIT SYTEM.

2.1. Bus Specifications

Specifications and other project documents for the purchase of the subject Buses were developed by City in conjunction with other municipal bus operators, including but not limited to MTS as specified in RFP MTS DOC. NO G1101.0-07, for the purchase of 35' and 40' Low Floor Transit Buses, released on May 21, 2007.

The following documents are incorporated into this Agreement by reference: RFP MTS DOC. NO G1101.0-07, and all referenced Specifications ("Specifications"), details, standard drawings, and appendices; adjustments to the Specifications specific to the 40- and 35-foot buses the City may purchase; all required bonds, insurance certificates, permits, notices, schedules, forms, certifications, and affidavits; and any and all addenda or supplemental agreements clarifying the purchase contemplated herein as may be required to ensure its receipt in acceptable manner (collectively referred to as the "Contract Documents.>").

For the purpose of this Agreement, should there be any inconsistency or conflict regarding contract provisions that would apply to this Agreement, the following order of precedence shall apply:

1. Purchase Agreement;
2. Revised Best and Final Offer
3. RFP MTS DOC. NO G1101.0-07 New Flyer's Proposal
4. Addenda Issued by City of Torrance
5. RFP MTS DOC. NO G1101.0-07 "Procurement of 35' and 40' Low Floor Transit Buses, Technical Specifications"
6. RFP MTS DOC. NO G1101.0-07 "Procurement of 30 and 40' Low Floor Transit Buses (Request for Proposals, Offer & Award, General Contractual Provisions, Quality Assurance Provisions and Warranty Provisions)

As set forth in Request for RFP MTS DOC. NO G1101.0-07 included in the Revised "Best and Final Offer", the CNG Powered Low Floor Transit Buses shall contain, in pertinent part, the following:

2.2. All New Materials and Parts. New Flyer shall utilize and incorporate all new material and parts into each of the equipment purchased pursuant to this Agreement.

2.3. Workmanship. New Flyer covenants with the City to furnish its best skill, judgment and efforts and to cooperate with the City and any other consultants engaged by the City to perform its duties and obligations under this Agreement. Workmanship throughout the performance of this Agreement shall conform to the highest standard of commercially reasonable practice of work.

New Flyer acknowledges the provisions of the California State Labor Code requiring every employer to be insured against liability for worker's compensation, or to undertake self-insurance in accordance with the provisions of that Code, and certifies compliance with such provisions. All services required under this Agreement will be

performed by New Flyer, or under its supervision, and all personnel shall possess the qualifications, permits, and licenses required by the State and local law to perform such services. In addition, New Flyer agrees to comply with all applicable laws and regulations (whether federal, state or local) relating to performance of services under this Agreement and completion of the Project.

New Flyer shall be solely responsible for the satisfactory work performance of all personnel engaged in performing service required by this Agreement, and compliance with all reasonable performance standards established by City. New Flyer shall be responsible for payment of all employees' and subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security. New Flyer shall indemnify and hold harmless the City from any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

3. COMPENSATION.

3.1 Pricing As full compensation for all of the equipment, goods and services set forth in this Agreement, the City shall pay and New Flyer agrees to accept, the prices set forth in the Revised "Best and Final Offer" attached hereto as Exhibit A. The total amount of the compensation shall not exceed the sum of \$558,194.23 per vehicle or \$11,163,884.61 for the entire order of 20 buses, plus in recommended spare parts/diagnostic tooling package, for 40-foot buses. City shall pay New Flyer within thirty (30) days of receipt by City of invoice for the Buses and full acceptance of the Buses by the City.

3.2 Purchase Price as Full Compensation

City shall pay and New Flyer 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 this Agreement, 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. Said compensation shall also cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress and completion of the work, and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.

3.3 Time of Payment

City shall make payments for Buses at the unit prices itemized in the Revised Best and Final Offer, attached hereto as Exhibit A within thirty (30) calendar days after the delivery and acceptance of each Bus and receipt of a proper invoice. In the event that a Bus does not meet all requirements for acceptance, the City may, at its exclusive

option, "conditionally accept" the Bus and place it into revenue service pending receipt of New Flyer of furnished materials and/or labor necessary to effectuate corrective action for acceptance of the Bus. For any conditionally accepted Bus, the payment shall be reduced by an amount to be withheld equal to twice the estimated cost for parts and labor for the corrective action, and paid upon corrective action by New Flyer.

City 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.

City shall make a final payment within 30 (thirty)-calendar days of receipt of a final proper invoice and the following:

1. Delivery and acceptance of all deliverables, including manuals and other documentation required by this Agreement, excluding training.
2. Rectification of any deficiencies found during the acceptance of Buses.
3. New Flyer provision of any certifications as required by law and/or regulations.
4. Completion of post delivery audits required under the Agreement.

4. DELIVERY AND ACCEPTANCE SCHEDULE.

New Flyer shall deliver and ensure acceptance of all of the Buses in a timely manner, in accordance with the following schedule:

<i>ITEM</i>	<i>COMPLETION DATE</i>
Delivery of 20 buses comprised of 40-Foot Low Floor CNG Powered Buses	TBD
City Acceptance	30 days after Delivery of each bus to City

All of the goods, equipment and services shall be furnished and delivered to the Torrance Transit Yard (at 20500 Madrona Avenue, Torrance, CA 90503), in first class condition, complete and ready for service for the Torrance Transportation Department. New Flyer shall assume all costs and responsibility for delivery.

An extension of the period for completion shall be granted by The City of Torrance for reasons outside the control of New Flyer. New Flyer shall request an extension by notifying City in writing at least fifteen (15) days prior to the expected Completion Date.

No extension of time requested or granted hereunder shall entitle New Flyer to additional compensation unless, as a consequence of such extension, additional work must be performed and such additional work is approved in writing by City. In such event, City shall in good faith consider any request for additional compensation submitted by New Flyer.

4.1 Liquidated Damages

New Flyer's Obligations: New Flyer recognizes and acknowledges that failure on the part of New Flyer to complete the work in a timely manner can cause irreparable harm to City's operation of the Torrance Transit. It is mutually understood and agreed by and between the Parties to the Agreement 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 New Flyer to complete the Work within the time specified in "Delivery Schedule" (Section 4), except for any excusable delays as provided therein or any extension thereof, City will be damaged thereby. Therefore, a fixed charge of \$300.00 per calendar day per bus shall be deducted from the invoice as liquidated damages for each bus not delivered in service ready condition as inspected by City at the time of acceptance. The City will be relying upon New Flyer's in-house ISO 9001 process program to ensure that the buses upon delivery will be in compliance with all specifications and meet the California Code of Regulations (CCR), Title 13, et al.

New Flyer hereby agrees to pay the aforementioned amounts as fixed, agreed and liquidated damages, and not by way of penalty, to City and further authorizes City to deduct the amount of the damages from money due New Flyer under this Agreement, computed as aforesaid. If the monies due New Flyer are insufficient or no monies are due New Flyer, New Flyer shall pay City the difference or the entire amount, whichever may be the case, within 30 (thirty) calendar days after receipt of a written demand by the City.

City's Obligations: The City's contractual obligations to New Flyer shall be limited to the payment of the Compensation provided for in this Agreement. In no event shall the City be liable for any special, consequential, indirect or incidental damages arising out of or in connection with this Agreement unless otherwise specified herein.

5. TRAINING.

New Flyer shall provide training to the City's transportation personnel to ensure proper operation and maintenance of Buses. New Flyer shall also provide on-site technicians to commission equipment for initial operations. Training dates to be determined by City of Torrance.

6. WARRANTY.

As set forth in Contract Deliverables, Warranties Included in Bus Price of the Best and Final Offer specified in Exhibit A, New Flyer hereby warrants and guarantees to the City that all of the goods and equipment of the Buses shall be free from defects in material and workmanship for the periods specified in Exhibit A with respect to the entire Bus, subsystems and/or components.

7. NONDISCRIMINATION.

In the performance of this Agreement, New Flyer represents and agrees that New Flyer, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, creed, color, religion, national origin, ancestry, sex, marital status, age, sexual orientation, handicap, or disability, in accordance with the requirements of state and federal. Such discrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8. SUBCONTRACTOR.

New Flyer shall not subcontract any portion of the services to be performed under this Agreement without the prior written consent of the City. Subcontracts, if any, shall contain a provision making them subject to all provisions in this Agreement. No person or firm whose name is included in the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violation of Various Public Contracts Incorporating Labor Standards Provisions shall be eligible to subcontract on any portion of this Agreement.

9. PROHIBITION AGAINST TRANSFERS.

New Flyer shall not assign, sublease, hypothecate, or transfer this Agreement or any interest or obligations herein directly or indirectly, by operation of law or otherwise during the term of this Agreement or during the operation of any of the warranties without the prior written consent of the City. As a condition to any assignment or transfer, any prospective assignee or transferee shall also assume the obligations to the City pursuant to this Agreement, including the warranties set forth in Section 6. Any attempt to assign, sublease, hypothecate, or transfer this Agreement without prior written consent of City shall be null and void, and any assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of New Flyer, or of the interest of any general partner or joint

venturer or syndicate member or covenant, if New Flyer is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of New Flyer, shall be construed as an assignment of this Agreement. For purposes of this Agreement, "control" means the ownership fifty percent (50%) or more of the voting power of the corporation.

10. NOTICES.

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals hereunder shall be given to the following addresses or such other addresses as the parties may designate by written notice:

To City: Sue Herbers, City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90503
Facsimile: (310) 618-2931

with a copy to:

Kim Turner, Director
Torrance Transit System
20500 Madrona Avenue
Torrance, CA 90503
Facsimile: (310) 618-6229

To New Flyer: New Flyer of America Inc.
711 Kernaghan Avenue
Winnipeg, Manitoba, Canada R2C3T4
Attention: Paul Smith, Executive Vice President,
Sales and Marketing

11. INDEMNIFICATION AND INSURANCE.

11.1. Indemnification for Acts or Omissions of New Flyer. New Flyer shall indemnify, and hold harmless City, its City Council, boards and commissions, officers, , agents and employees (collectively hereinafter the "City") against any or all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, reasonable attorneys' fees, costs and expenses, which may accrue against the City arising out of, or resulting from the negligent or willful acts or omissions of New Flyer or its officers, agents,

employees, subcontractors or subconsultants, or related corporations attributable to its performance under this Agreement.

11.2. Indemnification for Claims Brought By Subconsultants of New Flyer.

In addition, New Flyer shall defend, indemnify, and hold harmless the City, from and against any and all claims and losses whatsoever, including reasonable attorney's fees occurring or resulting to any and all persons, firms, or corporations employed or contracted by New Flyer or its subcontractor or subconsultants in connection with its performance under this Agreement.

11.3. Insurance. New Flyer shall maintain and provide the City with proof of insurance of the following types and specified amounts:

<u>Type of Insurance</u>	<u>Limits of Liability (Minimum)</u>
Workman's Compensation	Statutory
General Liability	\$5,000,000 combined single limit
Automobile Liability	\$5,000,000 combined single limit

The City of Torrance shall have no responsibility of liability for such insurance coverage.

New Flyer must provide a certificate of insurance compliance within 15 calendar days after Notification of Award. Proof of liability insurance shall be by means of an endorsement stating that the City of Torrance is an additional insured under the liability policy. The City shall be listed as an additional insured on all certificates of insurance and must be notified 30 days in advance of insurance cancellation or termination. Certification to be submitted to the City Clerk concurrently with the execution of this Agreement.

12. TERMINATION

12.1. Notice of Default and Termination. In the event that either party hereto fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, the non defaulting party shall give the defaulting party written notice of the default, the nature of the default, and of the steps necessary to cure the default.

For any breach deemed by the non-defaulting party to constitute a material breach, the defaulting party is required to cure the breach within five (5) calendar days upon receipt of written notice. For any breach deemed by the non-defaulting party to constitute a non-material breach, the defaulting party is obligated to cure such breach within fifteen (15) calendar days upon receipt of written notice. However, if the nature of the non-material breach requires more than fifteen (15) days to cure, the defaulting party shall have thirty (30) days to diligently pursue and complete a cure.

In addition to any other available legal or equitable rights or remedies, if the default is not cured within the time periods described above, the non-defaulting party may terminate this Agreement by giving written notice thereof to the defaulting party, setting forth the effective date thereof.

12.2. Termination Without Cause. The City shall have the option, at its sole discretion and without cause, of terminating this Agreement in whole, or in part, by giving ten (10) days written notice to New Flyer as provided herein.

12.3. Payment Upon Termination. Upon the termination of this Agreement as provided herein, the City shall provide to New Flyer the part of Compensation which would otherwise be payable to New Flyer for services completed as of the date of termination, less the amount previously paid or withheld with respect to the Compensation.

12.4. Expiration. After full acceptance of the Buses by City, this Agreement shall

12.5. expire upon full payment of the Compensation by the City to New Flyer. Warranty Agreement shall remain in effect despite expiration of this Agreement.

13. DISPUTE RESOLUTION.

Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties. If any legal action or proceeding is necessary to enforce any provision of this Agreement or for breach of this Agreement, the prevailing party shall be entitled to receive from the opposing party all costs and expenses and such amount as may be adjudged to be reasonable attorney's fees. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by the prevailing party as well as any attorneys' fees paid to outside attorneys in connection with the action.

14. GOVERNING LAW AND VENUE.

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought to enforce this Agreement shall be brought in the appropriate court in Los Angeles County, State of California.

15. COMPLIANCE.

It is agreed that the New Flyer shall comply and shall require its subcontractors to comply with all applicable state (California) and federal laws and regulations, including but not limited to those set forth in RFP No. 06-01.

16. DAYS.

Any term in this Agreement referencing days of performance shall be deemed to be calendar days and not business days unless otherwise specified.

17. BINDING ON ASSIGNS.

Each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties.

18. INDEPENDENT CONTRACTOR

New Flyer is, and shall at all times remain as to City, a wholly independent contractor. New Flyer shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of New Flyer or any of New Flyer's employees, except as set forth in this Agreement. New Flyer shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City, provided, however, that nothing contained in this provision shall be construed or interpreted so as to deprive New Flyer of any and all defenses or immunities available to public officials acting in their official capacities. New Flyer agrees to pay all required taxes on amounts paid to New Flyer under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. New Flyer shall fully comply with the workers' compensation laws regarding New Flyer and New Flyer's employees. New Flyer further agrees to indemnify and hold City harmless from any failure of New Flyer to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to New Flyer under this Agreement any amount due to City from New Flyer as a result of New Flyer's failure to promptly pay to City any reimbursement or indemnification arising under this Section 7.

19. INVALIDITY.

Any provision of this Agreement that shall be deemed to be invalid or illegal shall not affect the remainder of this Agreement.

20. TIME IS OF THE ESSENCE.

Time is of the essence in this Agreement, and as such, the Parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein in a timely manner.

21. COUNTERPARTS.

This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

22. CAPTIONS.

The captions of the various articles and paragraphs of this Agreement are for the convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement or any part or parts of this Agreement.

23. CONSTRUCTION.

In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any party, it being agreed by the Parties or their agents having all participated in the preparation of this Agreement.

24. COOPERATION/FURTHER ACTS.

The Parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign such additional documents as may be necessary, appropriate and convenient as related to.

25. REFERENCES.

All references to New Flyer with respect to this Agreement shall include all personnel, employees, agent and subcontractors of New Flyer.

26. WAIVER.

A waiver by the City of any breach or default of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach or default of the same or any other term, covenant, or condition contained herein, whether of the same or a different character. No waiver, benefit, privilege or service voluntarily given or performed by one party shall give the other any contractual right by custom, estoppel, or otherwise.

27. ENTIRE AGREEMENT.

This Agreement in addition to the attached Exhibits contains the entire agreement between City and New Flyer and supersedes any prior or written statements or agreement between the parties. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged

herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. No attempted waiver of any of the provisions herein, nor any change, amendment or modification of this Agreement shall be effective unless in writing and signed by the party against whom the same is sought to be enforced.

The following documents are hereby incorporated into this Agreement by reference:

1. RFP MTS DOC. NO G1101.0-07 "Procurement of 35' and 40' Low Floor Transit Buses dated May 21, 2007, Addendums, Approved Equals and all referenced details such as master resolution lists, standard drawings, and appendices, together with the adjustments to the Specifications specific to the twenty (20) vehicles to be purchased by the City.
2. Price Proposal referenced as Revised Best and Final Offer received from New Flyer specific to the twenty (20) Vehicles to be purchased by City, which is attached hereto as ATTACHMENT C.

28. EFFECTIVE DATE.

Unless otherwise specified herein, this Agreement shall become effective as of the date on which the last of the parties, whether New Flyer or City, executes said Agreement.

29. SIGNATURES.

New Flyer affirms that the signatures, titles, and seals set forth hereinafter in execution of this Agreement represents all individuals, firm members, partners, joint ventures, and /or corporate officers having principal interest herein.

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SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

CITY OF TORRANCE,
A Municipal Corporation

NEW FLYER OF AMERICA INC.

Frank Scotto, Mayor

By: _____
Name:
Title:

ATTEST:

Sue Herbers, City Clerk

By: _____
Name:
Title:

APPROVED AS TO FORM:

**(Please note, two signatures
required for corporations pursuant
to California Corporations Code
Section 313)**

By: _____
John L. Fellows III, City Attorney



February 28, 2011

Kim Turner
 Transit Director
 City of Torrance
 20500 Madrona Ave
 Torrance, CA 90503-2654

Subject: Quotation for Heavy Duty Low-Floor CNG Transit Buses

Dear Kim:

New Flyer is pleased to submit a revised quotation for the production of twenty (20) 40' CNG buses based on New Flyer's contract with San Diego (MTS). The revision in price is due to the changes that were requested during the teleconference held between New Flyer & the City of Torrance on February 17, 2011.

The revised price for twenty (20) 40' buses is **\$ 502,360.95/bus** including ADA & Delivery to Torrance, CA.

ADA amount is - \$ 28,203/bus
 Delivery amount is - \$ 4,037.60/bus

Please see below for details regarding the requested changes:

- 1.) Add splash aprons to aft of front wheelhouse - \$47.37/bus
- 2.) EMP Cooling System -\$8,061.73/bus
- 3.) Driver's side mirror, 2/1 split, flat/convex - \$77.65/bus
- 4.) Curbside mirror, 2/1 split, flat /convex, dual remote control heated – (\$22.72)
- 5.) Fire Suppression inspection gauge (interior light panel/viewing panel) - \$81.00
- 6.) DRI AVA provisions only – (\$5,612.17)
- 7.) Tamper proof enclosure for the DVR – No price increase per vendor.

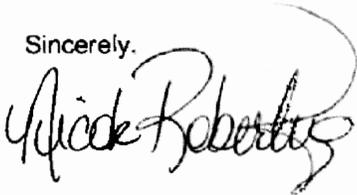
Please note that all other terms and conditions, as quoted to you on January 27, 2011, remain unchanged.

The quotation is open for acceptance for thirty (30) days. Please indicate your acceptance by signing and returning a copy of the Price Change Summary to:

Mark Brager, Director, North American Transit Sales
(204)-224-4214
mark_brager@newflyer.com

Please contact me with any questions: I can be reached at 204-224-6240 or
nicole_robertus@newflyer.com

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Robertus". The signature is written in a cursive style with a large, looping flourish at the end.

Nicole Robertus
Bus Option Revenue Coordinator

Cc: Mark Brager, Mark Fisher, Adrian Graca– New Flyer



QUOTATION FOR HEAVY DUTY LOW-FLOOR CNG TRANSIT BUSES

SECTION 1

Contents:

Title	Submission Requirements
Price Change Summary:	Attached is our price change summary. Please indicate your acceptance by signing and returning a copy to New Flyer, attention Mark Brager, North America Transit Sales by Fax at: 204-224-4214



Price Change Summary

Property:	Torrance, CA
Option Origin:	SR 1277
Sales Release No.:	Option # 2010-068
Quantity:	20
Type:	C40LFR
Price Change No.:	1
Revision:	Post PPM - Rev C
Date:	28-Feb-11

	<u>Each</u>	<u>Total</u>
Original Contract Price Base Coach	\$ 418,363.00	\$ 8,367,260.00
Base Bus Price Change Total	\$ 83,997.95	\$ 1,679,959.06
Contract Spares Base Bus Price Change Total	\$ -	\$ -
Revised Price Base Bus (including ADA & delivery)	\$ 502,360.95	\$ 10,047,219.06
ADA Equipment Included Above	\$ 28,203.00	\$ 564,060.00
Delivery Included Above	\$ 4,037.60	\$ 80,752.00
Bus Price Excluding ADA & Delivery	\$ 470,120.35	\$ 9,402,407.06
9.75% California State Tax	\$ 55,833.28	\$ 1,116,665.55
Bus Price Including Taxes (Excluding ADA & Delivery)	\$ 525,953.63	\$ 10,519,072.61
Original Contract Price for Contract Spares (If priced separately)		\$ -
Contract Spares Changes (Priced Separately) Total	\$ -	\$ -
Revised Contract Spares Priced Separately		\$ -
Original Contract Price for Miscellaneous (If priced separately)		\$ -
Miscellaneous Price Change Total	\$ -	\$ -
Revised Miscellaneous Priced Separately		\$ -
Original Total Contract Price Excluding Tax		\$ 8,367,260.00
Total Contract Price Changes		\$ 1,679,959.06
9.75% California State Tax		\$ 1,116,665.55
Revised Total Contract Price Including Tax		\$ 11,163,884.61

Authorized Signatures:

New Flyer Authorization:

Signature: _____

Title: _____

Date: _____

Property Authorization:

Signature: _____

Title: _____

Date: _____



QUOTATION FOR HEAVY DUTY LOW-FLOOR CNG TRANSIT BUSES

SECTION 2

Contents:

Title	Submission Requirements
Price Detail Sheet	Attached is our price change details sheet. This sheet includes all price changes that are required from the base bus price to the proposed configuration as requested.



Price Change Detail

Torrance, CA
 SR 1277
 Option # 2010-068
 20
 C40LFR

party:
 lion Origin:
 es Release No.:
 antity:
 t Type:

Option No.	Reference No.	Option Group	SRCR No.	Description	Total	Total Con
203	1	Suspension Front		Change front axle brake chambers from Bendix Type to MGM long stroke. Swap 203 option group with SR-1394 Torrance.	\$ 1,068.69	21.5
246	2	Air, Brake & Lev System		Add E-stroke as per SR-1394 Torrance.	\$ 1,736.39	34.7
204	3	Suspension Rear		Change rear axle brake chambers from Bendix to MGM long stroke. Swap 204 option group with SR-1394 Torrance. 5.44 rear axle configuration.	\$ 2,739.61	54.7
205	4	Tires		Change wheels & tires from Michelin XZ02 steel white powdercoat to Bridgestone aluminum with polished Dura-bright finish. Swap 205 option group with SR-1394 Torrance.	\$ 2,891.10	53.8
246	5	Air, Brake & Lev System		Add Emergency Air tank as per SR-1394 Torrance.	\$ 123.07	2.4
280	6	Battery Compartment		Change batteries from two 8D batteries to four Delco 31CT batteries as per SR-1394 Torrance.	\$ 142.19	6
289	7	PA System		Change PA System to SpeakEasy II as per SR-1394 Torrance.	\$ 1,331.61	30.6
420	8	Body AP Before Paint		Change front mask and headlamps to be as per Victoria style.	\$ 173.74	11.4
277	9	Interior Lighting		Change interior lights from Pristina Fluorescent to full TCB LED. Hadley/CB combination no longer offered.	\$ 2,400.75	48.0
394	10	Paint & Decal		Change paint scheme from all white to SR-1394 Torrance paint (white, grey, clear and green) including Torrance specific decals.	\$ 1,786.07	25.5
420	11	Body AP After Paint		Change wheels from air powered to electric powered as per SR-1394 Torrance.	\$ 98.15	1.1
422	12	Body AP After Paint		Change front radio box to SDS box as per SR-1394 Torrance.	\$ 3,685.32	73.7
470	13	Engine Dust Shields		Remove dust shields NR as per SR-1394 Torrance.	\$ (348.49)	16.5
460	14	Windows		Change passenger windows from Arrow Global to Transit Caret(Ricon) as per SR-1394 Torrance.	\$ 6,391.92	127.8
460	15	Windows		Change destination signs from Luminator LED to Twin Vision Smart Series and add AVA/AVL & tacholink EDR systems per SR-1394 Torrance.	\$ 16,441.45	328.9
470	16	Mirrors		Change mirrors from Lucernix to Hadley. Swap 480 option group with SR-1394 Torrance.	\$ 341.00	6.9
480	17	Door Exit		Change exit door control to Class Acoustic Sensing System. Swap 491 option group with SR-1394 Torrance.	\$ 2,844.30	56.8
526	18	Seating & Stanchions		Change Seating & Stanchion set-up to be as per SR-1394 Torrance. Swap 526 option group with SR-1394 Torrance. Qty of seats = 36 including barrier[11]	\$ 5,413.18	108.2
549	19	HVAC System		Change HVAC system from TK-RR to Carrier RRT. Also note, there is no room for a Carrier AvantiAC roof-mount All electric on a CNG.	\$ 1,328.43	26.5
580	20	Wheelchair Lift		Change wheelchair ramp to Ricon front ramp. Swap 580 option group with SR-1394 Torrance.	\$ 3,967.73	70.1
600	21	Customer Options		Swap 600 customer option group with SR-1394 Torrance.	\$ 23,436.59	468.7
246	22	Air, Brake & Lev System		Add of separator as per SR-1394 Torrance.	\$ 171.58	3.4
Deliverable	23	Deliverable		Add Drive-A-Way	\$ 4,037.60	80.7
549	24	HVAC System		Property is requesting to change from Carrier to TK-T11	\$ 4,541.05	90.8
Manuals	25	Deliverable		Change to Torrance Specific Publications package	\$ 1,321.43	26.4
203	26	Suspension Front		PPM - Property is requesting to add additional splash aprons to aft of front wheels	\$ 41.37	\$
231	27	Cooling System		PPM - Property is requesting to change to air cooled EMP cooling system	\$ 8,061.73	161.2
480	28	Mirrors		PPM - Property is requesting to change the driver's side mirror to 2/1 split Flat/Convex	\$ 77.65	1.5
480	29	Mirrors		PPM - Property is requesting to change the exterior outside mirror to 2/1 split Flat/Convex, dual remote control heated	\$ (22.72)	(4)
600	30	Customer Options		PPM - Property is requesting to add a fire suppression inspection gauge (interior Light Panel/viewing panel)	\$ 81.00	1.6
470	31	Destination Signs		PPM - Property is requesting DRI AVA provisions only (fishwire conduit) removed from item '15 already submitted to customer	\$ (5,612.17)	(112.2)
600	32	Customer Options		PPM - Add a tamper proof DVR enclosure. No increase from GE.	\$ -	\$
Blue Price Change Total					\$ 83,997.96	1,679.9
Grand Total					\$ 83,997.96	1,679.9



CITY OF
TORRANCE

TRANSIT DEPARTMENT

Kim Turner
Transit Director

Kim Turner
310-618-6245
kturner@torrnet.com

February 16, 2011

Paul C. Jablonski
Chief Executive Officer
San Diego Metropolitan Transit Systems
1255 Imperial Avenue, Suite 1000
San Diego, CA 9210-7490

Reference: Assignment of Contract with New Flyer Industries

Dear ^{Paul} ~~Mr.~~ Jablonski,

It is our understanding that the San Diego Metropolitan Transit System (MTS) is willing to release a number of options available under the contract between MTS and New Flyer Industries as MTS will not be exercising them at this time.

The City of Torrance, Torrance Transit System (TTS), is interested in acquiring some of these options. We are planning to purchase up to twenty (20) low-floor buses off of the aforementioned contract as a part of our Fleet Modernization Plan. If you concur with the transfer of these options, please sign below and fax a copy to my attention at (310) 618-6229.

If you have any questions or concerns, please feel free to contact me.

Thanks and best regards,

Kim Turner
Transit Director

Concur:

MTS Authorized Signature



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

January 18, 2007

New Flyer of America, Inc. (New Flyer)
Mr. Chris Cudmore, Manager - Transit Sales
Sales & Marketing Department
711 Kernaghan Ave.
Winnipeg, Manitoba, Canada R2C 3T4

Subject: Notice of Award
Metropolitan Transit System (MTS)
35' and 40' Low Floor Transit Buses Request For Proposals (RFP),
Doc. No. G1101.0-07

Dear Chris,

Thank you for your participation in the MTS 35' and 40' Low Floor Transit Buses procurement.

Pursuant to the solicitation document, this is your formal notification that the MTS Board of Directors on January 17, 2008, authorized the award of this contract to your company New Flyer of America (NFA), Inc. for a 5 year period. In addition the Board authorized the initial purchase of up to twelve (12) each 35' GE35LFR buses and fifty (50) each C40LF buses at a total cost of \$28,626,658.06. The total cost includes: disabled access equipment, delivery, training and materials, tools and diagnostic equipment, and California sales tax. This award and initial order is contingent upon the successful completion of a pre-award audit and funding.

We are currently assembling the standard agreement for this contract and will notify you when it is ready for signatures. I have asked Mark Abbey, our Internal Auditor, to contact Greg Cherneski to begin the pre-award audit. NFA should expedite the audit process and provide current evidence of insurances as stipulated in the RFP. When the above has been completed, MTS is prepared to issue a Notice to Proceed.

On behalf of MTS, I would like to thank you for your participation in this procurement and look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Ceragioli", written over a white background.

Mike Ceragioli
Contract Officer

MC:kb

cc: Procurement File



REQUEST FOR PROPOSAL FOR

35' and 40' **LOW FLOOR TRANSIT BUSES**

MTS Doc. No. G1101.0-07

SAN DIEGO METROPOLITAN TRANSIT SYSTEM
Purchasing/Procurement Department
100 16th Street
San Diego, CA 92101
(619) 238-0100

Key RFP Dates	
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MTS Issues Request for Proposals:	May 21, 2007
Pre-Proposal Conference:	May 31, 2007, at 10:00, Prevailing Local Time
Deadline for Submitting Written Questions:	June 12, 2007 at 4:00 p.m., Prevailing Local Time
MTS Issues Response to Written Questions:	June 22, 2007
<u>Proposal Due Date:</u>	<u>June 27, 2007 at 4:00 p.m., Prevailing Local Time</u>
Negotiations:	Week of July 30, 2007
Best & Final Offer:	Week of August 13, 2007
Anticipated Notice of Intent to Award:	Week of August 27, 2007
Anticipated Notice to Proceed:	Week of October 22, 2007
Contract Effective Date:	November 1, 2007

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May 21, 2007

Dear Prospective Proposer:

Subject: **REQUEST FOR PROPOSALS FOR 35' AND 40' LOW FLOOR TRANSIT BUSES (MTS DOC. NO. G1101.0-07)**

The San Diego Metropolitan Transit System (MTS) is interested in receiving proposals from qualified manufactures under a negotiated procurement for 35' and 40' Low Floor Transit Buses. These vehicles will be for MTS and its bus operational arm San Diego Transit Corporation (SDTC) collectively referred to as MTS or the Agencies. MTS is a California public agency established by California Public Utilities Code, section 120000 et seq. MTS and its subsidiaries are subject to the California Tort Claims Act (Cal. Pub. Util. Code § 120202).

The intent of this Request for Proposals (RFP) is to negotiate the procurement of 35' and 40' transit buses over a five (5) year period. MTS will make annual assessments of their bus needs for each contract year of the Contract. MTS is requesting proposals that reflect the following projected deliverables:

Year one (1) of the contract, MTS will purchase a minimum of (10) or up to twenty (20) each advanced designed 35' low floor transit buses and a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.

- Year two (2) of the contract, MTS will purchase a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.
- Year three (3) of the contract, MTS will purchase a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.
- Year four (4) of the contract MTS will purchase up to one hundred (100) each 40' low floor transit buses as funding permits. (Waiting for input from RT & CS)
- Year five (5) of the contract MTS will purchase up to one hundred (100) each 40' low floor transit buses as funding permits. (Waiting for input from RT & CS)
- The options shall be exercised for quantities up to 100 buses for any agency on one or more occasions over a five (5) year period from the date of the Notice to Proceed. Option prices must remain firm for one (1) year from the date of the Notice to Proceed. After that, the prices are subject to adjustment using the Produce Price Index (PPI) for Truck and Bus Bodies #1413. There will be a cap of four (4%) percent for any given one (1) year period starting from the Notice to Proceed. The number of options exercised at any given time will be determined upon the available funding at the time of each execution. The option buses shall be exercised per the scope of the original specifications. A cost or price analysis will be performed at the time of execution to determine if the option price or the current market price is the more advantageous offer. If the option price is not the most advantageous, the option shall not be exercised and a new solicitation shall be performed.

The detailed technical specifications and schedule of delivery as described above can be reviewed in the attached Scope of Work (Section 5 and 6).

This letter, together with its attachments, comprises the MTS RFP for buses. This proposal package includes the following:

- Proposal Instructions, Special Provisions, Quality Assurance Provisions, and Warranty Provisions (Sections 1, 2, 3, and 4). These attachments offer general instructions on the execution of the proposal, the proposal evaluation process, and the requirements each Proposer must meet.
- Scope of Work (Sections 5 and 6). The Proposer will be expected to manufacture and deliver the 35' and 40' Low Floor Transit Buses described in the Scope of Work.
- Standard Procurement Agreement (Section 8) and attached Federal Requirements (Section 9). The successful Proposer will be required to execute the Agreement and comply with the insurance provisions contained therein. Any proposed waiver or changes to the Agreement must be clearly identified in the proposal with any cost impacts specifically identified. It is within MTS's discretion to accept or reject any proposed waiver or change to the Agreement. Any requested waivers or changes regarding subcontractors' insurance should identify the subcontractor's scope of work, current insurance levels, and associated costs of proposed insurance amounts.

CALENDAR OF EVENTS

The schedule of events leading from issuance of the RFP to award of a contract is as follows:

ACTION	DATE
MTS Issues Request for Proposals:	May 21, 2007
Pre-Proposal Conference:	May 31, 2007, at 10:00 a.m., Prevailing Local Time
Deadline for Submitting Written Questions:	June 12, 2007, at 4:00 p.m., Prevailing Local Time
MTS Issues Response to Written Questions:	June 22, 2007
<u>Proposal Due Date:</u>	<u>June 27, 2007, at 4:00 p.m., Prevailing Local Time</u>
Negotiations:	Week of July 30, 2007
Best & Final Offer:	Week of August 13, 2007
Anticipated Notice of Intent to Award:	Week of August 27, 2007

Anticipated Notice to Proceed:

Week of October 22, 2007

Contract Effective Date:

November 1, 2007

We believe this timetable is reasonable and do not expect or desire a lengthy glossy proposal. The proposal should be concise and to the point.

MTS POINT OF CONTACT

Mr. Mike Ceragioli, Contract Officer, is the sole point of contact for this solicitation. Mr. Ceragioli can be reached via telephone at (619) 238-0100, Ext. 6493 or via email at mike.ceragioli@sdmts.com. Proposers are directed not to contact other representatives of MTS, including any personnel, or Board members in connection with this RFP. Noncompliance with this requirement may result in your firm's proposal being considered nonresponsive.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (NOTE – THIS PROVISION WILL ONLY APPLY TO THOSE CONTRACTS AWARDED AND PAID FOR WITH FEDERAL FUNDS)

POLICY

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. 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 C.F.R. Part 23 apply to this agreement.

DBE OBLIGATION

Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 C.F.R. 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 C.F.R. 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 MTS or such remedy as MTS deems appropriate.

DBE CERTIFICATION

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" form, see Section 11, Page 267, that it has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual Disadvantaged Business Enterprise (DBE) subcontracting participation goal.

TERMS AND CONDITIONS

The proposed contract terms and conditions are identified in the Standard Procurement Agreement (Section 8) and Federal Requirements (Section 9).

PROPOSAL EVALUATION PROCESS

Any contract resulting from this RFP will be awarded to the qualified firm whose proposal, as determined by MTS, best meets the requirements set forth in the Proposal Instructions, Special Provisions, Quality Assurance Provisions, and Warranty Provisions (Sections 1, 2, 3, and 4) and the Scope of Work (Sections 5 and 6). MTS uses a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include experience and qualifications, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to MTS.

An evaluation committee will review all proposals received using the criteria described in Section 1. MTS may elect to interview qualified Proposers. MTS reserves the right to reject all proposals, to select without further discussion or interviews, to request additional information, and to negotiate the final terms and conditions.

MTS may, at its sole and absolute discretion, reject any or all parts of the proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP. The decision as to who shall receive a contract award, or whether or not an award shall ever be made as a result of this RFP, shall be at the sole and absolute discretion of MTS.

PROPOSAL ACCEPTANCE PERIOD

One (1) original and ten (10) copies of the completed proposal should be submitted to MTS no later than **4:00 p.m. prevailing local time on June 27, 2007**. No exceptions will be made to this deadline. All proposals shall be delivered to MTS at 100 16th Street, San Diego, California 92101, Attention: Mike Ceragioli. Clearly specify on the proposal, "35' and 40' Low Floor Transit Buses-RFP, MTS Doc. No. G1101.0-07, MTS Payroll and HRIS." Proposals will not be accepted via facsimile.

Sincerely,

Paul C. Jablonski
Chief Executive Officer

PJ/MC:kb

- | | | |
|-----------|-----|--|
| Sections: | 1. | Request for Proposal Instructions |
| | 2. | Special Provision & Federal Requirements |
| | 3. | Quality Assurance Provisions |
| | 4. | Warranty Provisions |
| | 5. | Scope of Work – 35' Low Floor Bus |
| | 6. | Scope of Work – 40' Low Floor Bus |
| | 7. | Cost/Pricing Forms |
| | 8. | Sample of Standard Procurement Agreement |
| | 9. | Federal Requirements |
| | 10. | Sample of Insurance Certificate |
| | 11. | Required Forms |

SECTION 1

PROPOSAL INSTRUCTIONS**1.0 SOLICITATION DATA - MTS AND CONTRACT OFFICER**Request for Proposal MTS Doc. No. G1101.0-07

Proposals delivered in person or by private delivery courier, shall be delivered to the following address:

**Metropolitan Transit System
Attention: Mike Ceragioli, Contract Officer
MTS Procurement Department
100 16th Street
San Diego, CA 92101**

Proposals delivered by an overnight courier, shall be delivered to the following address:

**Metropolitan Transit System
Attention: Mike Ceragioli, Contract Officer
MTS Receiving Department
100 16th Street
San Diego, CA 92101**

Proposals delivered using the U.S. Postal Services, shall be addressed as follows:

**Metropolitan Transit System
Attention: Mike Ceragioli, Contract Officer
MTS Procurement Department
P.O. Box 122511
San Diego, CA 92112-2511**

Telephone: (619) 238-0100 Ext. 6493 Fax No.: 619-696-7084Email: mike.ceragioli@sdmts.com**IDENTIFICATION OF PROPOSALS**

Proposer shall submit **one (1) original and ten (10) copies** of their proposal in a sealed package, addressed as shown above, bearing the Proposers name and address and clearly marked as follows:

“35’ and 40’ LOW FLOOR TRANSIT BUSES RFP”

MTS Doc. No. G1101.0-07

Proposers shall be entirely responsible for any consequences resulting from any inadvertent opening of unsealed or improperly identified packages. It is the Proposers sole responsibility to see that its proposal is received as required. Proposals arriving late due to a delay in the delivery process will not be accepted.

ACCEPTANCE OF PROPOSALS

- MTS reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- MTS reserves the right to withdraw this RFP at any time without prior notice and MTS makes no representations that any contract will be awarded to any Proposer responding to this RFP.
- MTS reserves the right to postpone proposal openings for its own convenience.
- MTS reserves the right to require confirmation of information furnished by Proposer or for the Proposer to provide additional evidence of qualifications to perform the work or to obtain information from any source that has the potential to improve the understanding and evaluation of the proposals.
- Proposals received by MTS are considered public information and will be made available upon request after award.
- Proposals submitted are not to be copyrighted.

PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Proposer in:

- Preparing its proposal in response to this RFP;
- Submitting that proposal to MTS;
- Negotiating with MTS any matter related to this proposal; or
- Any other expenses incurred by Proposer prior to date of award, if any, of the Agreement.

MTS shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its proposal. Proposer shall not include any such expenses as part of its proposal.

JOINT OFFERS

Where two Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. MTS intends to contract with a single firm and not with multiple firms doing business as a joint venture.

CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be structured as a firm fixed price Contract for buses and parts described and included in this RFP as Sections 5 and 6, Scope of Work.

PROPOSED AGREEMENT

The successful Proposer will be subject to the provisions contained in Section 8, Sample Standard Procurement Agreement and the General Conditions, all Special Provisions, and the Federal Requirements included in this RFP and this includes any changes that may be made to reflect the terms of the successful Proposer's proposal. The final Agreement shall also incorporate other pertinent terms and conditions set forth in this RFP.

The Proposer's attention is directed to Section 8.1.2, titled "Insurance," which specifies the minimum insurance requirements that must be met by the successful Proposer. The Proposer is required to provide evidence of their ability to acquire the required insurance with their proposal. Should the Proposer be unable to provide evidence of insurance within fourteen (14) days after notification of award by MTS, award may be made to an alternative Proposer.

The Proposer's inability or unwillingness to meet any requirements set forth in Section 8, as a condition of contract award, must be stated as an exception in the proposal.

1.1 SCOPE

The San Diego Metropolitan Transit System (MTS) requests proposals for the manufacture and delivery of 35' and 40' transit buses and spare parts over a five year period in accordance with the terms and conditions set forth below. The Contract shall be a firm-fixed price Contract. MTS is requesting proposals that reflect the following projected deliverables:

- Year one (1) of the contract, MTS will purchase a minimum of (10) or up to twenty (20) each advanced designed 35' low floor transit buses and a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.
- Year two (2) of the contract, MTS will purchase a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.
- Year three (3) of the contract, MTS will purchase a minimum of twenty (20) or up to fifty (50) each 40' low floor transit buses as funding permits.
- Year four (4) of the contract MTS will purchase up to one hundred (100) each 40' low floor transit buses as funding permits.
- Year five (5) of the contract MTS will purchase up to one hundred (100) each 40' low floor transit buses as funding permits.

- The options shall be exercised for quantities up to 100 buses for any agency on one or more occasions over a five (5) year period from the date of the Notice to Proceed. Option prices must remain firm for one (1) year from the date of the Notice to Proceed. After that, the prices are subject to adjustment using the Produce Price Index (PPI) for Truck and Bus Bodies #1413. There will be a cap of four (4%) percent for any given one (1) year period starting from the Notice to Proceed. The number of options exercised at any given time will be determined upon the available funding at the time of each execution. The option buses shall be exercised per the scope of the original specifications. A cost or price analysis will be performed at the time of execution to determine if the option price or the current market price is the more advantageous offer. If the option price is not the most advantageous, the option shall not be exercised and a new solicitation shall be performed.

The MTS reserves the right to award its total requirements to one Proposer, or to apportion those requirements among more than one Proposer, as the MTS may deem to be in its best interests.

1.2 SOLICITATION SCHEDULE

The following is the solicitation schedule for Proposers:

Proposers Communications and Requests:	Sec. 1.4
MTS Response to Communications and Requests:	Sec. 1.5
Proposal Due Date:	Sec. 1.7
Interviews:	Sec. 1.8

1.3 PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held by MTS on May 31, 2007, at 10:00 a.m., prevailing local time. The conference will be held at the MTS Offices located at 1255 Imperial Ave., Suite 1000, San Diego, CA 92101. MTS strongly recommends that any party intending on submitting a proposal attend this conference but it is not mandatory.

1.4 PROPOSER COMMUNICATIONS AND REQUESTS

All correspondence, communication and/or contact in regard to any aspect of this solicitation or offers shall be with the Contract Officer identified in "MTS and Contract Officer" (Section 1.0) above, or his/her designated representative. Proposers and their representatives shall not make any contact with or communicate with any MTS Board Members or staff, or MTS consultants, other than the Contract Officer in regard to any aspect of this solicitation or offers. Failure to do so may result in your proposal being deemed non-responsive.

At any time during this procurement up to the time specified in "Solicitation Schedule" (Section 1.2), Proposers 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 Officer and may be transmitted by facsimile. The Proposer making the request shall be responsible for its proper delivery to the MTS and on the form provided in "Request for Pre-Offer Change or Approved Equal" (Section 11).

1.5 MTS RESPONSE TO COMMUNICATIONS AND REQUESTS

The MTS will not respond to oral requests. 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 MTS 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 MTS shall not be binding on the MTS.

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

All written questions and/or requests received by the MTS within the identified time will be answered in written addenda no later than, 4:00 p.m., prevailing local time on June 12, 2007.

1.6 ADDENDA TO RFP

The MTS 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 MTS shall provide copies of Addenda to all prospective Proposers officially known to have received the RFP. Prospective Proposers, or their agents, shall be responsible to collect the addendum at the address provided in "MTS and Contract Officer" (Section 1.0). Notification of or the addendum will also be e-mailed by request to all such prospective Proposers officially known to have received the RFP and to the address provided by each prospective Proposer. Failure of any prospective Proposer to receive the notification or addendum shall not relieve the Proposer 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 Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals, failure to do so may result in disqualification.

If the MTS 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 MTS determines will allow Proposers sufficient time to revise their proposals. Any new Due Date shall be included in the addenda.

1.7 DUE DATE

Sealed proposals, **one (1) original and ten (10) copies** must be received by the MTS on or before **4:00 p.m., prevailing local time on June 27, 2007**. 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 one hundred eighty (180) days.

1.8 INTERVIEWS

During the evaluation period, the MTS may interview some or all of the proposing firms. The MTS has identified the week of July 30, 2007, as the date we anticipate to conduct interviews. All prospective Proposers will be asked to keep this date available. No other interview dates will be provided, therefore, if a Proposer is unable to attend the interview on this date; its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Proposer after which the evaluation committee will ask questions related to the firm's proposal and qualifications. The committee will use pre-established criteria during the interview process to score and make their final recommendation.

1.9 INSTRUCTIONS TO PROPOSERS

A) TECHNICAL PROPOSAL REQUIREMENTS

A letter of transmittal shall be addressed to the Contract Officer and must, at a minimum, contain the following:

- Identification of the offering firm(s), including name, address and telephone number of each firm;
- Proposed working relationship among offering firms (e.g., prime/subcontractor), if applicable;
- Acknowledgement of receipt of RFP addenda, if any; name, title, address and telephone number of contact person during the period of proposal evaluation;
- A statement to the effect the proposal shall remain valid for a period of not less than one hundred eighty (180) days from the date of submittal; and
- Signature of the person authorized to bind the offering firm to the terms of the proposal.

Proposals should be submitted on 8½" x 11" paper, using a single method of fastening. Offers should be typed; double spaced and should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged and presentations should be brief and concise. The proposal should not exceed one-hundred (100) pages in length, excluding any appendices. Information should be presented in the order which it is requested.

B) PROPOSER QUALIFICATIONS STATEMENT

This section of the proposal should establish the ability of the Proposer to satisfactorily provide the required equipment and services by reasons of; demonstrated competence in the product and service to be provided; the nature and relevance of recently completed work; staffing capability, work load and record of meeting schedules on similar projects; strength and stability as a business concern; strength of dealer/manufacturer relationship; and supportive client references. Proposer must provide a narrative that establishes their ability to meet the minimum qualification requirements as described in Section 1.14 "Qualification Requirements."

Provide a brief profile of the firm, including its principal line of business, the year founded, and form of organization (corporation, partnership, and sole proprietorship), number and location of offices, licenses held, number of employees, and a general description of the firm's financial condition. Identify any conditions (e.g. bankruptcy, pending litigation, planned office or plan closures, and impending merger) that may impede the Proposers ability to complete the project. Describe the firm's experience in providing like equipment to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project.

Identify subcontractors, if any, by company name, address, contact person, telephone number and project function. Provide the same information for each subcontractor as requested above, and describe any experience working with each subcontractor. Also, identify the portion of work to be completed by the subcontractor and the total dollar value of the work.

In addition, for each project cited as related experience, furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. The Proposer may also supply references from other work not cited in this section as related experience. Listing of references shall include a detailed description of the work performed for the client referenced. Proposer must provide, as a minimum, three (3) references.

The Proposer shall state on the form provided in "Proposer Service and Parts Support Data" (Section 11) the representatives responsible for assisting the MTS, 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.

C) PROPOSAL

The Proposer shall provide a narrative addressing the Technical Vehicle Specifications contained in Sections 5 and 6 of this RFP, which exhibits the Proposers understanding of MTS's needs and requirements. This narrative should address each category of the technical specification in the same order as it is presented in the scope of work.

The Proposer may also propose enhancements to the Technical Vehicle Specification which do not materially deviate from the objectives or required content of the core requirements. Enhancements must meet or exceed the

minimum technical specification defined in the scope of work. The Proposer shall provide a Physical/Performance Requirements Chart that demonstrates how the enhancement meets or exceeds the core requirements of the Technical Vehicle Specification, and furnish any narrative required to explain or qualify the specifications provided in the proposal. Failure to provide this supporting documentation may cause your proposal to be negatively evaluated.

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where the Proposer wishes to propose alternative approaches to meeting the MTS's technical or contractual requirements, these should be thoroughly explained. Substitutions which deviate from the minimum technical specifications must be submitted as a request using the procedure described in Section 1.4 "Proposers Communications and Requests."

D) MANAGEMENT PLAN

This section of the proposal should establish the qualifications of the proposed project staff in terms of education, experience and professional credentials; the logic of the Proposers proposed project organization as measured by lines of reporting and control; and the adequacy of labor resources as evidenced by the proposed distribution of labor hours.

Identify key personnel proposed to perform work on the project, and indicate major areas of subcontracted work, if any. Include a project organization chart which clearly delineates communication/reporting relationships among the project staff and among the various firms involved.

Furnish brief resumes for the proposed Project Director and other key personnel. Resumes must feature experience most directly relevant to the work proposed for such key personnel on this project. Resumes should also describe the involvement of the key personnel in the related experience of the firm cited in the preceding section "Proposers Qualification Statement" (Section 1.10.B) and indicate length of time employed by the Proposer. Include a statement that key personnel shall be available for the duration of the project, and acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of MTS.

E) PRICE PROPOSAL REQUIREMENTS

The Proposer is required to complete and execute the Pricing Schedule of Forms and provide same in the price proposal. Prices proposed should be exclusive of applicable state and local taxes imposed by state or local governments. The Contractor shall be liable for payment of all state and local taxes applicable to the complete bus as delivered. The MTS shall furnish to the Contractor a list of applicable state and local taxes imposed at the Due Date. MTS is exempt from the payment of Federal Excise and Transportation Taxes. The MTS 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. Quantities listed are estimated quantities which shall be used for the purpose of evaluation.

Quantity. This indefinite delivery/indefinite quantity contract is for the purchase of buses and equipment as specified, and is effective for a five (5) year period. The quantities of buses and equipment specified in the contract are estimates only. All buses and equipment to be furnished under the contract shall be ordered by issuance of a purchase order.

Prices. MTS reserves the right to order buses and equipment over the five (5) year period beginning upon the date of contract award. The prices of such buses and equipment shall be the prices quoted below. These prices shall remain firm/fixed for any orders issued by MTS within a period of two hundred forty (240) days of contract award. The price(s) of any buses or equipment ordered by MTS after the initial two hundred forty (240) days firm/fixed price period shall be that quoted (Base Order Prices) plus any escalation which will be calculated based on the following formula which utilizes the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category 1411-06, "Heavy Duty Trucks Over 10,000 Pounds". The escalation in this index will be used to adjust the Base Order Prices. **However, in no event will the price(s) for any purchase order release exceed, by more than 4%, the price(s) that would have been in effect twelve (12) months prior to the date of the release.**

Formula:

Index Point Change

	<u>Example</u>
PPI Index: Future Award Month:	141.1
Less PPI Index: Base Award Month:	<u>137.6</u>
Equals Index Point Change:	3.5

Index Percent Change

Index Point Change	3.5
Divided by PPI Index: Base Award Month:	37.6
Equals	.0254
Results Multiplied by 100	.0254 x 100
Equals Percent Change	2.54%
Base Order Price	\$1,000.00
Plus Percent Change (2.54% x \$1,000)	<u>25.40</u>
Revised Price for Future Order	\$1,025.40

Example. MTS awarded its contract in September, 2000, and has received its initial order of buses in June 2001. In July, 2001, MTS elects to purchase more buses for delivery in 2002. On the date of the purchase order (July, 2001), the then most current published data (in MTS's possession) for PPI-Category 1411-06 shows an index value of 141.1 (Future Award Month). The index for September, 2000 (Base Award Month) was 137.6. The percentage change in the index values from September, 2000, to July, 2001 would be 2.54%. The buses ordered in July, 2001, would be priced 2.54% higher than the base award price. This example assumes that the July, 2001 order contained no significant equipment modifications when compared with the original order.

Significant Equipment Modifications. If any significant equipment modifications are made, in compliance with Sections 2.2 through 2.4, under the Terms and Conditions of this contract, MTS and Contractor will enter into negotiations to determine the price of the equipment modification(s) and the impact of the modification(s) on the Base Order Price(s).

The following calculations will be used to convert the then-current price of the modification(s) to the value of the modification(s) on the date of the Base Order Price:

FORMULA:

<u>Index Point Change</u>	<u>Example</u>
PPI Index: Future Equipment Modification Month:	141.1
Less PPI Index: Base Award Month:	<u>137.6</u>
Equals Index Point Change:	3.5
 <u>Index Percent Change</u> 	
Index Point Change:	3.5
Divided by PPI Index: Base Award Month:	137.6
Equals:	.0254
Results Multiplied by 100:	.0254 X 100
Equals Percent Change:	2.54%
Future Equipment Modification Price:	\$200.00
Less Percentage Change (2.54% X 200.00):	\$ 5.08.
Value of Equipment Modification During Base Award Month:	\$194.92
Base Award Price:	\$1,000.00
Plus Equipment Modification Cost:	<u>\$ 194.92</u>
Equals Revised Base Order Price:	\$1,194.92

All future releases, including the equipment modification(s), will be priced based upon the new revised Base Order Price.

F) PROPOSAL PACKAGING REQUIREMENTS

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 (BAFO) which may be requested.

PACKAGE NO. 1**TECHNICAL PROPOSAL:**

35' and 40' Heavy Duty, Low-Floor, Transit Buses

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

SUBMITTED BY:

(Proposers Name and Address)

PACKAGE NO. 2**PRICE PROPOSAL:**

35' and 40' Heavy Duty, Low-Floor, Transit Buses

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

SUBMITTED BY:

(Proposers 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.

G) MODIFICATION OR WITHDRAWAL OF PROPOSALS

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

A Proposer may withdraw a proposal already received prior to the Proposal Due Date by submitting, in the same manner as the original proposal, to the MTS a written request for withdrawal executed by the Proposers authorized representative. After the proposal Due Date, a proposal may be withdrawn only if the MTS fails to award the Contract within the proposal validity period prescribed in "Due Date" (Section 1.7) or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.

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

1.10 PROPOSAL EVALUATION, NEGOTIATION AND SELECTION

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 Proposers within the competitive range, after which Best and Final Offers (BAFOs) may be requested. However, the MTS may select a proposal for award without any discussions or negotiations or request for any BAFO(s). Subject to the MTS's right to reject any or all proposals, the Proposer will be selected whose proposal is found to be most advantageous to the MTS, based upon consideration of the criteria of "Qualification Requirements" (Section 1.15) and "Proposal Evaluation Criteria" (Section 1.16) below.

1.11 OPENING OF PROPOSALS

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 MTS officials, employees and agents having a legitimate interest will be provided access to the proposals and evaluation results during this period.

1.12 EVALUATION TEAM

An Evaluation Team shall make all decisions regarding the evaluations, determination of responsible Proposers and the competitive range, negotiations and the selection of the Proposer, if any, that may be recommended for award of the Contract. The Evaluation Team will carry out the detailed evaluations and report all of its findings to the MTS CEO who will bring it to the MTS's Board of Directors for final approval.

1.13 PROPOSAL SELECTION PROCESS

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 Proposer shall be made by consideration of only the criteria of "Qualification Requirements" (Section 1.15) and "Proposal Evaluation Criteria" (Section 1.16) below. Section 1.11 specifies the requirements for determining responsible Proposers, all of which must be met by a Proposer to be found qualified. Final determination of a Proposers qualification will be made based upon all information received during the evaluation and interview process and as a condition for award. Section 1.16 contains all of the evaluation criteria, and their relative order of importance, by which a proposal from a qualified Proposer will be considered for selection. An award, if made, will be to a responsible Proposer for a proposal which is found to be in the MTS's best interest, price and other evaluation criteria considered.

The procedures to be followed for these evaluations are provided in "Evaluation Procedures" (Section 1.17) below.

1.14 **QUALIFICATION REQUIREMENTS**

The following are the requirements for qualifying responsible Proposers. All of these requirements must be met; therefore, they are not listed by any particular order of importance. The Proposer 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:

- A) 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:
 - 1. Proposer'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 MTS or the Proposer.
 - 2. 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.
 - 3. Ability to obtain required insurance with coverage values that meet minimum requirements evidenced by a letter from an underwriter confirming that the Proposer can be insured for the required amount.

- B) 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:
 - 1. 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.
 - 2. Adequate manufacturing facilities sufficient to produce and factory-test equipment on schedule.
 - 3. 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.

- C) Evidence that Proposer is qualified in accordance with Section 3-Quality Assurance Provisions.

- D) Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability, and steps Proposer took to resolve any judgments, liens, fleet defects history, and warranty claims. Evidence shall be by client references.

1.15 PROPOSAL EVALUATION CRITERIA

The following are the complete criteria, listed by their relative degree of importance, by which proposals from responsible Proposers 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, understandings or deviations must be explicitly and fully separately stated in your proposal. Any exceptions, conditions, reservations, understandings or deviations will be evaluated according to the respective evaluation criteria and/or sub-criteria which they affect and may cause the MTS to consider a proposal to be inside or outside the competitive range.

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:

1. Price
2. Lead Time Contract Year (1) One and Delivery Schedule Proposed for 40' Buses Contract Years Two (2) through Five (5)
3. Technical Requirements, Qualifications and Resources, and Management Plan
4. Training

1.16 EVALUATION PROCEDURES

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. MTS reserves the right to request a Proposer to provide any missing information and to make corrections. Proposers are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in "Instructions to Proposers" (Section 1.9). Therefore, Proposers shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Proposer has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully and separately stated in the proposal. 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 "Proposal Evaluation Criteria" (Section 1.15).

Evaluations will be made in strict accordance with all of the evaluation criteria and procedures specified in "Proposal Selection Process" (Section 1.13) above. The MTS will select for any award the highest ranked proposal from a responsible Proposer, qualified under "Qualification Requirements" (Section 1.14) which does not render this procurement financially infeasible and is judged to be most advantageous to the MTS based on consideration of the evaluation "Proposal Evaluation Criteria" (Section 1.15).

1.17 EVALUATIONS OF COMPETITIVE PROPOSALS

- A) Qualification of Responsible Proposers.
Proposals will be evaluated in accordance with requirements of “Qualification Requirements” (Section 1.14) to determine the responsibility of Proposers. Any proposals from Proposers whom the MTS finds not to be responsible and finds cannot be made to be responsible may not be considered for the competitive range. Final determination of a Proposer’s responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by the MTS, information submitted in a BAFO and information resulting from MTS inquiry of Proposer’s references and its own knowledge of the Proposer.
- B) Detailed Evaluation of Proposals and Determination of Competitive Range.
Each proposal will be evaluated in accordance with the requirements and criteria specified in “Proposal Selection Process” (Section 1.13).

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 MTS finds not to meet these requirements, and may not be made to meet these requirements, may be determined by the MTS to not be considered for the competitive range. The requirements are as follows:

1. Proposer is initially evaluated as responsible in accordance with the requirements of “Qualification Requirements” (Section 1.14), or that the MTS finds it is reasonable that the proposal can be modified to meet said requirements. Final determination of responsibility will be made with final evaluations.
2. Proposer 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 MTS to be either a defect that the MTS will waive in accordance with “Acceptance/Rejection of Proposals” (Section 1.0) or that the proposal can be sufficiently modified to meet these requirements.
3. 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 MTS will carry out and document its evaluations in accordance with the criteria and procedures of “Proposal Selection Process” (Section 1.13). Any extreme proposal deficiencies which may render a proposal unacceptable will be documented. The MTS will make specific note of questions, issues, concerns and areas requiring clarification by Proposers and to be discussed in any meetings with Proposers which the MTS finds to be within the competitive range.

Rankings and spreads of the proposals against the evaluation criteria will then be made by the MTS 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.

- C) Proposals not within the Competitive Range. Proposers of any proposals that have been determined by the MTS 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.
- D) Discussions with Proposers in the Competitive Range. The Proposers whose proposals are found by the MTS 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 Proposer may be invited for a private interview(s) and discussions with the MTS 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, deviations, or understandings to any Contract requirements, said conditions, exceptions, reservations, deviations, or understandings may be negotiated during these meetings. However, the MTS shall have the right to reject any and all such conditions and/or exceptions, and instruct the Proposer to amend its proposal and remove said conditions and/or exceptions; and any Proposer failing to do so may cause the MTS to find such proposal to be outside the competitive range.

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

- E) Factory and Site Visits. The MTS reserves the right to conduct factory visits to inspect the Proposer's facilities and/or other transit systems which the Proposer has supplied the same or similar equipment.
- F) Best and Final Offers (BAFO). After all interviews have been completed, each of the Proposers in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFOs shall include:
1. Notice that discussions/negotiations are concluded;
 2. Notice that this is the opportunity for submission of a BAFO;
 3. A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs;
 4. 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;
 5. Notice that if Proposers 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 a Proposer in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by the MTS according to the same requirements and criteria as the initial proposals "Proposal Selection Process" (Section 1.13). The MTS 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 MTS and considered according to the relative degrees of importance of the criteria defined in "Proposal Evaluation Criteria" (Section 1.15).

The MTS will then choose that proposal which it finds to be most advantageous to the MTS 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 MTS reserves the right to make an award to any Proposer whose proposal it judges to be most advantageous to the MTS based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs.

1.18 CONFIDENTIALITY OF PROPOSALS

Access to government records is governed by the Laws of the State of California. Except as otherwise required by the Laws of the State of California, the MTS 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 a Proposer 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.

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

Upon a request for records from a third party regarding this proposal the MTS 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 MTS's defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.

The MTS shall employ sound business practices no less diligent than those used for the MTS's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proposers and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the Laws of the State of California against disclosure of such information and material to third parties except as permitted by the

Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by the MTS in its sole discretion, bears appropriate notices relating to its confidential character.

1.19 RESPONSE TO PROPOSALS

A) Acceptance/Rejection of Proposals

The MTS reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Proposers, and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to the MTS, price and other evaluation criteria considered. The MTS 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 MTS reserves the right to waive any defects, or minor informalities or irregularities in any proposal which do not materially affect the proposal or prejudice other Proposers.

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

The MTS may reject a proposal that includes what MTS deems as unacceptable conditions, exceptions, reservations, deviations or understandings.

1.20 SINGLE PROPOSAL RESPONSE

If only one proposal is received in response to this RFP and it is found by the MTS to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for the MTS of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer 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 a Proposer'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 Proposer's Offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer 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 there from shall not obligate the MTS to accept such a single proposal; and the MTS may reject such proposal at its sole discretion.

1.21 CANCELLATION OF PROCUREMENT

The MTS 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 MTS Board of Directors.

1.22 AVAILABILITY OF FUNDS

This procurement is subject to the availability of funding in the form of a grant from the Federal Government and or Local Government. The MTS'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 MTS for any payment shall arise until funds are made available to the Contract Officer for this Contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contract Officer. Any award of Contract hereunder will be conditioned upon said availability of funds for the Contract.

1.23 PROTESTS

Any protests by an interested party regarding this procurement shall be made in accordance with protest procedure of the MTS.

1. Protests Prior to Proposal Due Date

Following the advertisement of this formal RFP, prior to the issue, and prior to the due date, a protest may be filed with MTS. Protests must be in writing and received by MTS within **ten (10) calendar days** after the first advertisement of the RFP. The Chief Executive Officer or his designee will notify all Proposers that a protest has been filed, and will issue a written decision on the protest prior to the due date. A protest may be renewed by refiling the protest with MTS within **fifteen (15) calendar days** from the postmark date of the notice of intent to award.

2. Protests Received After Proposal Due Date

MTS will evaluate all proposals and determine the best-qualified proposers. A notice of intent to award will be mailed to all proposers. Any protest to the notice must be in writing and received by MTS within **fifteen (15) calendar days** from the postmark date of the notice.

3. Protest Contents

The protestor must demonstrate or establish a clear violation of a specific law or regulation, e.g., a violation of the prohibition against exclusionary or unduly restrictive specifications. The protest must contain a full and complete written statement of the grounds for protest and all supporting documentation. MTS may, but is not obligated to, request additional information concerning the grounds for protest.

4. Replies to Protests

MTS' Protest Committee will review all protests as soon as possible. All material submitted by the protestor will be considered. Such material will not be withheld from any interested party outside of MTS or any agency, which may be involved with the procurement except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact may be affixed to the front page of the protest document and alleged proprietary information shall be so identified wherever it appears.

MTS' Protest Committee will reply to all protests in writing with its determination.

5. Request for Protest Reconsideration

Upon receipt of MTS' decision, the protestor may file a request for protest reconsideration. A request for protest reconsideration must be directed to the Chief Executive Officer in writing and received within **five (5) full working days** from the postmark date of the reply from MTS.

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the Board prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation.

The decision of the protest by the Board shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

6. FTA review of Protests

A. Review of Protests

1. FTA will only review protests regarding the alleged failure of the subgrantee to have written protest procedures or alleged failure to follow such procedures.
2. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See, e.g., Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 23.73.
3. FTA will only review protests submitted by an interested party as defined in paragraph C, below.

B. Remedy

FTA's remedy for a subgrantee's failure to have written protest procedures or failure to follow such procedure is limited to requiring the subgrantee to develop such procedures, if necessary, and follow such procedures in reviewing the protest at issue, if the subgrantee desires FTA financial participation in the contract in question. In instances where a grantee has awarded to another Proposer prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

C. Definitions.

For the purposes of this Section the following definitions apply:

1. "Days" refers to working days of the Federal Government.
2. "File" or "submit" refers to the date of receipt by FTA.
3. "Interested party" means an actual or prospective Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract.
4. "Proposal" includes the term "offer" or "proposal" as used in the context of negotiated procurements.

D. Time for Filing.

1. Protestors shall file a protest with FTA not later than **five (5) days** after a final decision is rendered under the subgrantee's protest procedure. In instances where the protestor alleges that the subgrantee failed to make a final determination on the protest, protestors shall file a protest with FTA not later than **five (5) days** after the protestor knew or should have known of the subgrantee's failure to render a final determination on the protest.
2. Subgrantees shall not award a contract for **five (5) days** following its decision on a Proposal protest except in accordance with the provisions and limitations of subparagraph H. After **five (5) days**, the subgrantee shall confirm with the FTA that the FTA has not received a protest on the contract in question.

E. Submission of Protest to the FTA

1. Protests should be filed with the appropriate FTA Regional Office with a concurrent copy to the subgrantee.
2. The protest filed with the FTA shall:
 - (a) Include the name and address of the protestor.
 - (b) Identify the subgrantee, project number, and the number of the contract solicitation.

- (c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- (d) Include a copy of the local protest filed with the subgrantee and a copy of the subgrantee's decision, if any.

F. Grantee response.

- 1. FTA shall notify the subgrantee in a timely manner of the receipt of a protest. FTA shall instruct the subgrantee to notify the Protestor of the protest if award has been made or, if no award has been made, to notify all interested parties. The subgrantee shall notify all who receive such notice that they may communicate further directly with the FTA.
- 2. The subgrantee shall submit the following information not later than **ten (10) days** after receipt of notification by FTA of the protest:
 - (a) a copy of the subgrantee's protest procedure;
 - (b) a description of the process followed concerning the protestor's protest; and
 - (c) any supporting documentation.
- 3. The subgrantee shall provide the protestor with a copy of the above submission.

G. Protestor comments. The protestor must submit any comments on the subgrantee's submission not later than ten days after the protestor's receipt of the subgrantee's submission.

H. Withholding of Award. When a protest has been timely filed with the subgrantee before award, the subgrantee shall not make an award prior to **five (5) days** after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless the subgrantee determines that:

- 1. The items to be procured are urgently required;
- 2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- 3. Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

In the event that the subgrantee determines that the award is to be made during the **five (5) day** period following the local protest decision or the pendency of a protest, the subgrantee shall notify the FTA prior to making such award. FTA will not review the sufficiency of the subgrantee's determination to award during the pendency of a protest prior to FTA's Proposal protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

- I. FTA Action. Upon receipt of the submissions, FTA will either request further information or a conference among the parties, or will render a decision on the protest.

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

1.24 NOTIFICATION OF AWARD AND DEBRIEFING

Proposers who submit a proposal in response to the RFP shall be notified in writing regarding the firm awarded the contract. Such notification shall be made within three (3) days of the date the contract is awarded.

Proposers who were not awarded the contract may obtain a prompt explanation concerning the strengths and weaknesses of their proposal. Unsuccessful Proposers who wish to be debriefed, must request the debriefing in writing and it must be received by the MTS within three (3) days of the notification of the contract award.

SECTION 2

2.0 DEFINITIONS - THE FOLLOWING TERMS ARE USED IN THIS DOCUMENT

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

Best and Final Offer (BAFO). The last Offer made by a Proposer. If a BAFO is not specifically requested by the MTS, or if the Proposer does not timely respond to a request for BAFO, the most recent, current Offer is the BAFO.

MTS. The San Diego Metropolitan Transit System.

Contract. The Offer and its acceptance by the MTS as manifested by the contract documents specified in "Contract Documents" (Section 2.1.B).

Contract Officer. The person who is executing this Contract on behalf of the MTS, and who has authority over this procurement except as limited herein.

Conditional Acceptance. Acceptance of supplies or services that do not conform to the contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

Contractor. The successful Proposer 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 MTS as specified in "Instructions to Proposers" (Section 1.9).

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

Proposer. 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.

Solicitation. MTS's Request for Proposals.

Supplier or Subcontractor. Any manufacturer, company, or MTS 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.

2.1 **CONTRACT AND MODIFICATIONS**

A) **CONTRACT AWARD AND EXECUTION**

The acceptance of an Offer for award, if made, shall be evidenced by a letter of notification that will be sent registered mail to the Proposer whose Offer is accepted. No other act by the MTS shall evidence acceptance of an Offer. Such notice shall obligate said Proposer to commence performance under the Contract as specified in "Production of Documents" (Section 2.36).

The MTS's intent is to enter into a contract for a first article bus, notice to proceed for the initial order production of buses and options that may be exercised at the MTS's discretion, for possible future deliveries. The process shall consist of the following steps:

- a) Proposal, evaluation and award for the production of a first article bus and intent for first production award based upon evaluation and successful acceptance, which will require extensive testing of up to sixty (60) days prior to acceptance of the first article.
- b) Upon acceptance of the first article bus, the MTS will issue a written "Notice to Proceed" for the initial production and delivery.
- c) Upon acceptance of the first production, the MTS would determine whether to exercise option one for the next production of buses.
- d) Upon the decision of the MTS, a written notice will be sent to the contractor informing them of the decision to continue ("Notice to Proceed"), or not.
- e) The MTS, at its sole discretion, may choose to exercise the options identified in the agreement. Each option in this RFP would go through the same exercise prior to any options being exercised.

B) **CONTRACT DOCUMENTS**

The Contract consists of the following:

- a) Contractor's Best and Final Offer and MTS's Notice of Award
- b) Standard Procurement Agreement, Standard Conditions Procurement and Federal Requirements
- c) Quality Assurance Provisions
- d) Warranty Provisions
- e) Technical Specifications
- f) Addenda – As issued
- g) Contractor's Proposal including any modifications explicitly incorporated in Contractor's Best and Final Offer

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

- h) Addenda issued by MTS
- i) Sections 5 and 6, Technical Specifications
- j) Sections 2, 3 and 4 of this document
- k) Standard Procurement Agreement, Standard Conditions Procurement, and Federal Requirements
- l) Contractor's Offer
- m) Contractor's Proposal

2.2 CONTRACTOR CHANGES

Any proposed change in this Contract shall be submitted to MTS for approval.

2.3 WRITTEN CHANGE ORDERS

Oral change orders are not permitted. No change in this Contract shall be made unless the Contract 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 Contract Officer.

2.4 CHANGE ORDER PROCEDURE

As soon as reasonably possible but no later than thirty (30) calendar days after receipt of the written change order to modify the Contract, the Contractor shall submit to the Contract 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 Contract 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.

2.5 PRICE ADJUSTMENT FOR REGULATORY CHANGES

If price adjustment is indicated, either upward or downward, it shall be negotiated between the MTS and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective after the Due Date. Such price adjustment may be audited, where required.

2.6 PARTIES

The parties to the contract are MTS as defined in "Definitions", Section 2.0 and the selected Proposer.

2.7 SUCCESSION

The Contract will be binding on the parties, their successors, and assigns.

2.8 ASSIGNMENT AND SUBCONTRACTING

MTS wishes to establish an Agreement with a Contractor to provide 35' and 40' heavy duty low floor transit buses. The Agreement resulting from this procurement between MTS and the Contractor would allow for the assignment of all or part of the specified 35' and 40' heavy duty low floor transit buses to any other transit agency or government agency. When buses included in the scope of the Agreement resulting from this procurement are needed by another transit or government agency, the Agreement may be assigned to that agency upon mutual agreement between MTS and the affected agency.

In addition, 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 be effective until approved in writing by the other party.

2.9 SPECIFICATION AND OFFER OMISSIONS

Notwithstanding the provision of drawings, technical specifications, or other data by the MTS, 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 MTS shall not be the responsibility of the Contractor unless they are included in this Contract.

Any request, condition, exception, reservation, understanding or other deviation by Contractor not separately stated as required by "Instructions to Proposers" (Section 1.9) by completing the specified form(s) shall be invalid and shall not be binding on the MTS.

2.10 TERMINATION OF CONTRACT FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- A. immediately discontinue performance on the date and to the extent specified in the notice;
- B. place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- C. promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS's concurrence assign to MTS those orders; and
- D. assist MTS, upon request, in the maintenance, protection, and disposition of property acquired by MTS under this agreement.

If claimed in writing within thirty (30) calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- A. all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- B. a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- C. costs of settling and paying supplier's claim arising out of the canceled orders; and
- D. a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

2.11 TERMINATION FOR DEFAULT

MTS may terminate the whole or any part of Contractor's performance in any one of the following circumstances:

- A. if Contractor fails to make delivery or fails to perform within the time specified herein or any extension thereof; or
- B. if Contractor delivers nonconforming goods; or
- C. if Contractor fails to perform in accordance with the provisions of this agreement, or so fails to make progress as to endanger performance of this agreement in accordance with its terms.

In the event of any such failure, MTS will provide Contractor with notice of the nature of the failure and MTS's intention to terminate for default. In the event Contractor does not cure such failure within ten (10) calendar days of such notice, MTS will provide Contractor with written Notice of Termination for Default.

In the event MTS terminates as provided herein, MTS may procure, upon such terms, and in such manner as MTS may deem appropriate, supplies or services similar to those so terminated, and Contractor shall be liable to MTS for any excess costs for such similar supplies or services; and Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this clause.

In the event of Contractor's default, Contractor agrees to mitigate damages by cooperating with MTS in transferring information and disposing of goods in process or MTS's materials as MTS may reasonably request. If after Notice of Termination for Default it is determined for any reason that 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 the Termination for Convenience clause.

2.12 DISPUTES

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MTS's General Counsel. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the MTS, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MTS and the Contractor arising out of or relating to this agreement or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within the State of California, County of San Diego.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

2.13 COMMUNICATIONS

Communications in connection with this Contract shall be in writing and shall be delivered by any of the following methods; personally; or e-mail; or by facsimile; or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of the MTS and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing.

2.14 BUS DELIVERY PROCEDURE

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

100 16TH Street, San Diego, CA 92101
 Attention: Maintenance Department

2.15 DELIVERY SCHEDULE

The buses shall be delivered at a rate of at least four (4) buses per week, not to exceed nine (9) buses per week. The maximum time allotted to complete the delivery will be calculated at the rate of four (4) buses a week. Hours of delivery shall be 8:00 a.m. through 3:00 p.m., Monday through Friday. Contractor's failure to meet the delivery schedule herein may result in "Liquidated Damages" (as described in Section 2.25).

2.16 PRE-DELIVERY TESTS AND INSPECTIONS

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 Section 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.

2.17 ASSUMPTION OF RISK OF LOSS

The MTS shall assume risk of loss of the bus on delivery, as defined in "Bus Delivery Procedure" (Section 2.14), if delivered by common carrier or driveway, or on release to the MTS'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 drive-away 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 MTS with the bus.

2.18 ACCEPTANCE OF BUS

Within thirty (30) calendar days after arrival at the designated point of delivery, the bus shall undergo the MTS tests defined in Section 3, "Quality Assurance Provisions." If the bus passes these tests or if the MTS does not notify Contractor of non-acceptance within thirty (30) calendar days after delivery, acceptance of the bus by the MTS occurs on the thirtieth day after delivery. Acceptance may occur earlier if the MTS 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 2.20) have been carried out and the bus retested until it passes.

2.19 CONDITIONAL ACCEPTANCE

If the bus fails these tests, it may be "Conditionally Accepted" (as defined in 2.0) or it shall not be accepted until the repair procedures defined in "Repairs After Nonacceptance" (Section 2.20) have been carried out and the bus retested until it passes.

2.20 REPAIRS AFTER NONACCEPTANCE

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

2.21 REPAIRS BY CONTRACTOR

After non-acceptance of the bus, the Contractor must begin work within five (5) working days after receiving notification from the MTS of failure of acceptance tests. The MTS 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 MTS's option, the Contractor may be required to remove the bus from the MTS's property while repairs are being affected. If the bus is removed from the MTS'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.

2.22 REPAIRS BY MTS

- A) **Parts Used.** If the MTS performs the repairs after non-acceptance 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 reports of all repairs covered by this procedure shall be submitted by the MTS to the Contractor for reimbursement or replacement of parts.
- B) **Contractor Supplied Parts.** If the Contractor supplies parts for repairs being performed by the MTS after non-acceptance of the bus, these parts shall be shipped prepaid to the MTS from any source selected by the Contractor within ten (10) working days after receipt of the request for said parts.
- C) **Return of Defective Components.** The Contractor may request that parts covered by this provision to be returned to the manufacturing plant. The total costs for this action shall be paid by the Contractor.
- D) **Reimbursement for Labor.** The MTS 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, twenty-five (25%) percent fringe benefits, plus fifty-eight (58%) percent overhead, 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 MTS's service garage at the time the defect correction is made.

- E) Reimbursement for Parts. The MTS 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 fifteen (15%) percent handling costs.

2.23 CONTRACTOR'S DELAY

If the Contractor is delayed at any time during the progress of the work by the neglect or failure of the MTS or by a cause described below, then the time for completion and/or affected delivery date(s) shall be extended by the MTS subject to the following conditions:

- A) 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;
- B) The Contractor demonstrates that the completion of the Work and/or affected delivery(s) will be actually and necessarily delayed;
- C) 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
- D) The Contractor makes written request and provides other information to the MTS as described in "Notification of Contractor Delay" (Section 2.23).

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 2.25) for delays occurring prior to, or subsequent to the occurrence of an excusable delay.

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

2.24 NOTIFICATION OF CONTRACTOR DELAY

Notwithstanding "Contractor's Delay" (Section 2.23), no extension or adjustment of time shall be granted unless (1) written notice of the delay is filed with the MTS within fourteen (14) calendar days after the commencement of the delay, and (2) a written application therefore, stating in reasonable detail the causes, the effect to date and the

probable future effect on the performance of the Contractor under the Contract, and the portion or portions of the Work affected, is filed by the Contractor with the MTS within thirty (30) calendar days after the commencement of the delay. No such extension or adjustment shall be deemed a waiver of the rights of either party under this Contract. The MTS shall make its determination within thirty (30) calendar days after receipt of the application.

2.25 LIQUIDATED DAMAGES

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 2.15), except for any excusable delays as provided in "Unavoidable Delays" (Section 2.23 and 2.24), or any extension thereof, the MTS 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 MTS shall be fixed at \$250.00 per calendar day per bus not delivered in substantially as good condition as inspected by the MTS 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 MTS and further authorizes the MTS 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 MTS the difference or the entire amount, whichever may be the case, within thirty (30) calendar days after receipt of a written demand by the Contract 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 MTS arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

The MTS specifically reserves the right, without limitation of any other rights, to terminate the Contract in accordance with "Termination of Contract" (Section 2.10).

2.26 TITLE

Upon acceptance of each bus, the Contractor warrants that the title shall pass to the MTS free and clear of all encumbrances. Manufacturer shall deliver the vehicles to MTS registered and with license exempt plates installed.

2.27 PAYMENT

The MTS 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.

All payments shall be made as provided herein, less a withholding of twenty (20%) percent plus any additional monies withheld as provided below and less any amounts for liquidated damages in accordance with "Liquidated Damages" (Section 2.25).

All buses will be subject to forty (40) hours continuous revenue service without experiencing any malfunctions, this is the requirement for releasing the twenty (20%) percent of final payment.

The MTS shall make payments for buses at the unit prices itemized in the Price Schedule within, less retention, thirty (30) calendar days after the delivery of each bus and receipt of a proper invoice. In the event that the bus does not meet all requirements for acceptance, the MTS 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 or two times the estimated cost for parts and labor for the corrective action, plus the twenty (20%) percent retention.

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

- Delivery and acceptance of all Contract deliverables, including manuals, and other documentation required by the Contract, excluding training.
- Rectification of any deficiencies found during the acceptance of buses.
- Contractor provision of any certifications as required by law, regulations and/or the RFP.
- Delivery of all spare components.

2.28 TRAINING

The Contractor shall provide Training and Instruction to MTS by a qualified Instructor. The Contractor shall provide direct presentation classes, for various size groups, to MTS mechanics on the proper operation and maintenance of equipment. MTS Transit Services Training Manager shall approve proposed subjects and scheduling of the classes conducted by the Contractor a minimum of ninety (90) days prior to the delivery of the first vehicle. Training shall be provided throughout the Contract period up to one year following receipt of the final vehicle.

A) TRAINING MATERIALS

The Contractor shall provide visual and printed teaching materials as needed during classroom instruction. Teaching materials include lesson plans, student hand-outs, printed technical literature, schematics, diagrams, service training and operating manuals, slides, CD-ROM presentations, overhead presentations, VHS tapes, DVD videos, and etc. The Contractor shall provide an Instructor's Lesson Plan that is distinctly different and more detailed than the Student hand-out and shall include learning objectives, references, Instructor's comments, time estimates, and materials needed. Student hand-outs shall contain exactly what is presented and discussed in class. The Contractor shall provide all necessary copies of training materials needed to present each class.

The Contractor will provide two sets of all teaching materials presented to MTS, in hard copy and in computer form, to the MTS Transit Services Training Department.

B) TRAINING CURRICULUM

The Contractor shall develop and submit a training curriculum using Microsoft Office Word 7.0 and/or Power Point 2003. The curriculum shall be designed specifically for the MTS Vehicle order and shall include the following equipment and class times:

• Engine	2 sessions, 32 hours each
• Transmission	2 sessions, 32 hours each
• Electrical/Electronic Controls	6 sessions, 16 hours each
• Hybrid Electrical System	6 sessions, 16 hours each
• Air Conditioning and Heating	6 sessions, 16 hours each
• Fire and Gas Detection	6 sessions, 2 hours each
• Operator Seat	6 sessions, 2 hours each
• Air Brake/ABS System	6 sessions, 4 hours each
• Foundation Brakes	6 sessions, 4 hours each
• Passenger Door	4 sessions, 4 hours each
• Preventive Maintenance	6 sessions, 4 hours each
• Destination Sign	4 sessions, 8 hours each
• Wheelchair Ramp System	4 sessions, 2 hours each
• Fuel System	6 sessions, 8 hours each
• Vehicle Orientation	8 sessions, 4 hours each
• Security Camera System	4 sessions, 8 hours each
• Articulation Joint	4 sessions, 8 hours each
• Parts/Service Manual	4 sessions, 8 hours each

2.29 BULLETINS

Each and every time a change or modification is made to the vehicles described within this specification, the manufacturer will announce and initiate this action by issuing a bulletin. The bulletin shall be mailed to the MTS, 100 16th Street, San Diego, California 92101, Attention: Manager of Maintenance. This bulletin service will start after MTS's receipt of the first vehicle and remain active throughout the service life. Each bulletin will contain at least the following ingredients:

- Description of actual change or modification
- Date of implementation
- Replacement pages for service and/or parts manuals as applicable
- Method of implementation

2.30 DOCUMENTS

For each series of vehicles produced, the Contractor shall provide ten (10) each of the following manuals and documentation, to be submitted in hard copy as well as AutoCAD media: 10 and PDF with auto start. The Contractor shall keep maintenance manuals available for a period of three (3) 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 fifteen (15) years. The supplied parts, maintenance, and operator's manuals shall incorporate all equipment ordered on the buses covered by this procurement. The following manuals shall be supplied as indicated in sets, such that a set consists of a hardcopy and CDROM.

2.31 PARTS AVAILABILITY GUARANTY

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 fifteen (15) 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 MTS are not received within two (2) 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 MTS, within eight (8) hours of the MTS'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 MTS.

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

2.32 INTERCHANGEABILITY

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.

2.33 SURVIVABILITY

Contractor's obligations under this Section 2.33 shall survive the nominal expiration or discharge of other Contract obligations and MTS may obtain any remedy under law, Contract or equity to enforce the obligations of contractor that survive the manufacturing, warranty, and final payment periods.

2.34 AUDIT AND INSPECTION OF RECORDS

In accordance with 49 C.F.R. § 18.36(i), 49 C.F.R. § 19.48(d), and 49 U.S.C. § 5325(a), provided the MTS is the FTA Recipient or a subgrantee of the FTA Recipient, the Contractor agrees to provide the MTS, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, or any of their duly authorized representatives access to any books documents, papers, and records of the Contractor which are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts, and transcriptions and (2) when conducting an audit and inspection.

- A) In the event of a sole source Contract, or single Offer, single responsive Offer, or competitive negotiated procurement the Contractor shall maintain and the Contract Officer, the U.S. Department of Transportation (if applicable), or the representatives thereof, shall have the right to examine all books, records, documents, and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the contract shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.

- B) For Contract modifications or change orders the Contract Officer, the U.S. Department of Transportation (if applicable), or their representatives shall have the right to examine all books, records, documents, and other cost and pricing data related to a Contract modification, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract modification or change order shall be made available for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract modification or change order for the purpose of conducting a cost analysis. If an examination made after execution of the contract modification or change order reveals inaccurate, incomplete, or out-of-date data, the Contract Officer may renegotiate the contract modification or change order price adjustment and the MTS shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.
- C) For any cost reimbursable work the Contractor shall maintain and the Contract Officer, the U.S. Department of Transportation (if applicable), or their representatives shall have the right to examine books, records, documents, and other evidence, including review of accounting principles and practices that reflect properly all direct and indirect costs incurred as related to said cost reimbursable work.
- D) The materials described in Paragraphs A, B and C above shall be available at the Contractor's office at all reasonable times for inspection, audit, and making excerpts and transcriptions until three (3) years from the date of final payment under the Contract except that the materials described in Paragraph A above shall also be available prior to any award and materials relating to Sections 2.28, 2.29, 2.30, 2.31, 2.32 and 2.33. For records relating to appeals under "Disputes" (Section 2.12), "Audit and Inspection of Records" (Section 2.34), litigation, or the settlement of claims arising out of the negotiation or the performance of contract modifications, records shall be kept available until such appeals, litigation, or claims have been disposed of.
- E) The Contract Officer and his/her representative and any other parties authorized under this clause shall employ sound business practices to protect the confidence of the data specified under this clause, for which the Contractor provides access, against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that any confidential data bears appropriate notices relating to its confidential character.
- F) The requirements of this section are in addition to other audit, inspection, and record-keeping provisions specified elsewhere in the Contract documents.

2.35 INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself. The insurance certificate's verbiage, as so stated in Section E, "Sample of Insurance Certificate," should be strictly adhered to as represented in the sample.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

- (a) Commercial General Liability. At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance for bodily injury and property damage in an occurrence form and with insurance companies acceptable to MTS. Commercial General Liability Insurance must include coverage for the following:

- Premises/Operations Liability
- ~~Aggregate Limits per Project~~
- Products/Completed Operations Liability
- No Explosion, Collapse, and Underground (XCU) exclusion
- Contractual Liability, with respect to this agreement
- Personal Injury Liability
- Broad Form Property Damage
- Independent Contractors

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear.

- (b) Automobile Liability. At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- (c) Workers' Compensation/Employer Liability. At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

(1) Owner-Provided Builder's Risk
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, material men, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

(2) Railroad Protective or Equivalent
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: Purchase separate Railroad Protective Liability Policy as required.

(3) Professional Liability
REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this agreement.

(4) Pollution Legal Liability
REQUIRED

At all times during this contract, and for twenty-four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to services or operations under this agreement. The extended discovery period must be no less than twenty-four (24) months.

(5) Contractor Equipment
REQUIRED

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

(6) Installation Floater
REQUIRED

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(7) Garage Keeper's Legal Liability & Automobile Portion
REQUIRED

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(8) Primary and Non-Contributory Insurance
REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

(9) Crime Fidelity Insurance
REQUIRED

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include Electronic and Computer Crime.

C. MINIMUM POLICY LIMITS REQUIRED

	Combined Single Limit (CSL)
Commercial General Liability (Per Occurrence):	<u>\$1,000,000</u>
Automobile Liability:	<u>\$1,000,000</u>
Worker's Compensation Employer's Liability:	<u>\$1,000,000</u>

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B (1) Builder's Risk:	<u>Replacement Cost</u>
<input type="checkbox"/> B (2) Railroad Protective	<u>\$</u>
<input type="checkbox"/> B (3) Professional Liability	<u>\$</u>
<input type="checkbox"/> B (4) Pollution Liability	<u>\$</u>

<input type="checkbox"/>	B (5) Contractor Equipment	<u>Replacement Cost</u>
<input type="checkbox"/>	B (6) Installation Floater	<u>Replacement Cost</u>
<input type="checkbox"/>	B (7) Garage Keeper's Legal Liability	<u>\$1,000,000</u>
<input checked="" type="checkbox"/>	B (8) Primary and Non-Contributory Insurance	<u>As Required</u>
<input type="checkbox"/>	B (9) Crime Fidelity Insurance	<u>\$</u>

D. POLICY PROVISION REQUIRED

All policies and coverages shall contain a provision for thirty (30) days written notice by the Insurer(s) to MTS Contracts Specialist of any cancellation or material reduction of coverage. A ten (10) day notice is required for non-payment of premium.

E. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

2.36 PRODUCTION OF DOCUMENTS

Upon award of the Contract to an Proposer, such Proposer 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 thirty (30) calendar days after the date of receipt of the notice of award or within such further time as the MTS may allow. Failure to fulfill these requirements within the specified time is cause for termination of the Contract under "Termination for Default" (Section 2.11).

2.37 INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind

or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

2.38 MATERIALS/ACCESSORIES RESPONSIBILITY

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 MTS, 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 2.17).

2.39 POLICIES FOR ALL TIERS

Contractor agrees to comply with this Section 2.8 and to include these requirements in all subcontracts of every tier.

2.40 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

As a Federal Transit Administration (FTA) grantee, the Metropolitan Transit System (MTS), a California Public Agency, is required to inform the Contractor of the following information:

The Federal Government shall not be subject to any obligations or liabilities to any third-party contractor or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this contract. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third-party contract, the Federal Government continues to have no obligations or liabilities to any party, including the third-party contractor.

2.41 FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Section 3801, et seq., and U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies" 49 C.F.R., Part 31, apply to its actions pertaining to this contract. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes a

false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with federal assistance authorized by 49 U.S.C., Section 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C., Section 1001 and 49 U.S.C., Section 5307(n) (1), to the extent the Federal Government deems appropriate.

2.42 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The RFP provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. 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 MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

2.43 CHANGES IN FEDERAL LAWS AND REGULATIONS

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 MTS 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.

2.44 CARGO PREFERENCE

If applicable, 46 U.S.C. 1241(b) (1) and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement.

- A. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least fifty (50%) percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
- B. The Contractor shall furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C., 20590, marked with appropriate identification of the project.
- C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

2.45 ENERGY EFFICIENCY

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

2.46 RECYCLED PRODUCTS REQUIREMENTS (APPLICABLE TO ALL CONTRACTS INVOLVING ITEMS DESIGNATED BY THE EPA, WHERE THE PROCURING AGENCY PURCHASES \$10,000 OR MORE OF ONE OF THESE ITEMS IN A FISCAL YEAR, OR WHEN THE COST OF SUCH ITEMS PURCHASED DURING THE PREVIOUS FISCAL YEAR WAS \$10,000)

Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

2.47 PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by the FTA.

2.48 DISADVANTAGED BUSINESS ENTERPRISE POLICY

Pursuant to Title 49, Code of Federal Regulations, Part 23.67, an Offeror, as a condition of being authorized to respond to this solicitations, must certify by completing "DBE APPROVAL CERTIFICATION" (Section 1.1.7.7), that it has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual Disadvantaged Business Enterprise (DBE) subcontracting participation goal.

2.49 PATENT AND RIGHTS IN DATA

- A. Rights in Data - These following requirements apply to each contract involving experimental, developmental or research work:

1. 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. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - (1) Any subject data developed under that contract, whether or not a copyright has been obtained; and

 - (2) Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA.

 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first

produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:
1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agrees to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

2.50 INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from. (41 U.S.C. § 22.)

2.51 PROHIBITED INTEREST

As an FTA grantee, MTS is required to inform the Contractor of the following information:

No, member, officer, or employee of a local public body, during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising there from.

2.52 TITLE VI CIVIL RIGHTS ACT OF 1964

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. Compliance with Regulations. The Contractor and any Subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; 49 U.S.C. § 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation

of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- B. Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, or age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. Information and Reports. The Contractor shall provide all information and reports required by the regulations or directive issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to MTS or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with nondiscrimination provisions of this contract, MTS shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:
- withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 - cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions. The Contractor shall include the provisions of Sections A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as MTS or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance provided; however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MTS to enter into such litigation to protect the interests of MTS, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2.53 EMPLOYEE PROTECTIONS

- A. Construction Activities. For construction activities exceeding \$2,000 performed in connection with the project, the successful bidder shall comply with the following construction employee protection requirements:
1. Davis-Bacon Act, as amended. The successful bidder shall comply and assure compliance with the requirements of 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a through 276a (7), and implementing U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5. In addition to other requirements that may apply:
 - a. The successful bidder shall pay wages to laborers and mechanics performing third party contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. The MTS agrees to furnish the bidder a copy of the current prevailing wage determination issued by the U.S. DOL for third-party contract work under the project upon request, and agrees to refrain from awarding any affected third-party contract until the third-party contractor agrees to the required wage determination.
 - b. MTS shall report to FTA every suspected or reported violation of the Davis-Bacon Act or its federal implementing regulations.
 2. Contract Work Hours and Safety Standards Act, as amended. The successful bidder shall comply and assures compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 333; and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926. In addition to other requirements that may apply:
 - a. In accordance with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours, and that each worker shall be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The successful bidder shall ensure that determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to

Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the contract Work Hours and Safety Standards Act," 29 C.F.R. Part 5.

- b. In accordance with section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 333, the successful bidder shall assure that no laborer or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety, as determined in accordance with U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926."
 - c. The requirements of this subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinarily available on the open market.
3. Copeland "Anti-Kickback" Act, as amended. The successful bidder shall comply with the Copeland "Anti-Kickback" Act, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. In addition to other requirements that may apply:
- a. The successful bidder will not induce, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which that employee is otherwise entitled.
 - b. MTS shall report every suspected or reported violation of the Copeland "Anti-Kickback" Act or its federal implementing regulations to FTA.
- B. Activities Not Involving Construction. For nonconstruction activities exceeding \$2,500 performed in connection with the project, the successful bidder shall comply with the following employee protection requirements:
1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, the successful bidder shall assure that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of forty (40) hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The successful bidder agrees that determinations pertaining to these requirements will be made in accordance with the applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

2. The requirements of this subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.
- C. State and Local Government Employees. The successful bidder shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the project.
- D. Transit Employee Protective Arrangements. The successful bidder shall comply with the following requirements applicable to transit operations performed in connection with the project:
1. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved, the successful bidder shall carry out the project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the project and to meet the requirements of 49 U.S.C. § 5333(b), and U.S. guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance projects for the elderly and persons with disabilities authorized by 49 U.S.C. § 5310(a) (2) or to formula assistance projects for nonurbanized areas authorized by 49 U.S.C. § 5311.
 2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. § 5310(a) (2) for the Elderly and Persons with Disabilities. If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for public body subrecipients under the project, the successful bidder shall carry out the project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The successful bidder shall carry out the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas. The successful bidder shall comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

2.54 ENVIRONMENTAL REQUIREMENTS

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The successful bidder shall recognize that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The successful bidder shall recognize that U.S. EPA, FHWA and other agencies of the Federal Government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the project. Thus, the successful bidder agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and MTS. The successful bidder acknowledges that this list does not constitute the successful bidder's entire obligation to meet all federal environmental and resource conservation requirements.

- A. Environmental Protection. The successful bidder shall comply with the applicable requirements of the National Environment Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. in accordance with Executive Order no. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

- B. Air Quality

1. The successful bidder 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. Specifically:
 - a. The successful bidder shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite

air quality conformity finding for the Project, the successful bidder shall implement each air quality mitigation and control measure incorporated in the Project. The successful bidder agrees that any Project identified in a State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.

- b. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the successful bidder should be aware that the following U.S. EPA regulations, among others may apply to its projects: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate U.S. EPA Regional Office.

C. Clean Water

1. The successful bidder 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.
2. The successful bidder agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate U.S. EPA Regional Office.

- D. Use of Public Lands. The successful bidder agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the project unless the FTA makes the specific findings required by 49 U.S.C. § 303.

- E. Mitigation of Adverse Environmental Effects. The successful bidder agrees that if the project should cause adverse environmental effects, the successful bidder will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The successful bidder agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. § 303) and with any

conditions the Federal Government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. As soon as the Federal Government and the successful bidder reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The successful bidder agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

2.55 DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS

As an FTA grantee, MTS is required to inform the Contractor of the following information:

This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are not excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.

The Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29 Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by MTS. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to MTS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions in excess of \$100,000.00 aggregate.

2.56 RESTRICTIONS ON LOBBYING

- A. MTS and Contractor shall not use federal assistance funds to support lobbying.
- B. In accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has: (a) received the Contractor's certification 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, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the project is originally derived, consistent with 31 U.S.C. § 1352, and (b) if applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the project.

- C. The Contractor agrees to provide MTS a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is included in this package for your use.

2.57 FLY AMERICA REQUIREMENTS

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 C.F.R. 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.

2.58 PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS - CERTIFICATIONS REQUIRED

The 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:

- A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder 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.
- B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- C. Federal Motor Vehicle Safety Standards (FMVSS): The 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.

2.59 BUY AMERICA REQUIREMENTS

As an FTA grantee, MTS is required to inform the Contractor of the following information:

The bidder's attention is directed to the "Buy America" requirements set forth in Section 165 of the federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 C.F.R., Part 661). Information on "Buy America" requirements (49 C.F.R., Part 661) is available for review at the MTS office.

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- A. Applying this provision would be inconsistent with the public interest.
- B. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this project.
- C. Including domestically produced material will increase the cost of the contract by more than twenty-five (25%) percent.
- D. Note: In calculating the cost of components under the terms of this provisions, labor costs involved in the final assembly are not to be included.
- E. Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than sixty (60%) percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.
- F. In reference to exception C above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential ten or twenty-five (10% or 25%) percent and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall project contract." When both "rolling stock" and "nonrolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.
- G. Thus, the foreign purchased components of the individual bid items will be adjusted upward for purposes of determining Buy America compliance only, by ten (10%) percent for rolling stock and twenty-five (25%) percent for nonrolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.
- H. The revised bid amount will be the basis for determining the lowest bidder.
- I. Within five (5) days of written notification, the bidder shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 C.F.R., part 661.
- J. The Buy America Certificate included in the Contract Documents, Alternative 'A' or 'B,' must be completed and submitted with the bid. A bid which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.

- K. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the bidder for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

2.60 SOLICITATION SPECIFICATION REQUIREMENTS

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

2.61 BUS TESTING

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

- A) 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 MTS prior to the recipient's final acceptance of the first bus.
- B) 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.
- C) 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 MTS prior to MTS'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.
- D) 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.

2.62 COMPLIANCE TO INDUSTRIAL SAFETY CODES

All equipment shall be in complete compliance with all requirements of the laws of the State of California and City and County of San Diego, as well as all applicable federal laws and regulations at date of delivery and/or installation at MTS.

2.63. WORKMANSHIP

All bidders must conform to the final approved specifications. Workmanship throughout shall conform to the highest standard of commercially accepted practice for the class of work, and shall result in a neat and finished appearance.

2.64. CONSISTENCY OF PRODUCT

On procurements requiring multiple units or periodic delivery of a product, all units or product shall be identical unless otherwise stated in the technical specifications. Contractor will be required to correct or replace (at MTS discretion) said units or products found inconsistent and compensate MTS for any damages incurred.

2.65. OMISSIONS

No advantage shall be taken by the Bidder and/or manufacturer in the omission of any parts or details, which make the equipment complete and ready for service, even though such parts or details are not mentioned in these specifications. All units or parts not herein specified shall be manufacturer's standard units.

2.66. BRAND NAMES

Whenever reference to a specific "Brand Name" is made in these specifications, it is to be considered illustrative but not restrictive, and is used to describe a component which has been selected by MTS as best meeting the specific minimal operational, design, performance, capacity, maintenance, quality and reliability criteria. Wherever a "Brand Name" appears, the words "or approved equal" are automatically inferred.

2.67. COMPONENT MATERIAL

The Bidder shall assume responsibility for materials and accessories used in the manufacture thereof, whether the same are made by the manufacturer or purchased under sub-contract.