



# **REQUEST FOR PROPOSALS**

## **HEAVY DUTY BUSES**

**DULUTH TRANSIT AUTHORITY**

### **Addendum #8**

May 5, 2021

I. Please note: **The Proposal due date HAS BEEN CHANGED to 2:00 P.M. ON THURSDAY, May 20, 2021.** Please change all references to the Proposal due date accordingly.

II. Approved Equals. Changes to the Request for Proposals Terms and Conditions:

1. Request for Proposals, Paragraph G-14, ~~%taxes+~~ Please add the following: ~~%the DTA and/or the Participating Agency shall be liable for any such federal, state or local taxes applicable to the complete bus as delivered that are promulgated and become effective between the date of Award of this Contract and the delivery date of the vehicle(s).+~~

2. Section B, Qualification Requirements, paragraph (2)(b), please delete the word ~~%equipment+~~ the first time it appears on the paragraph, and insert ~~%the estimated number of maximum vehicles per year on Schedule A, and includes a+~~

~~%b. Adequate manufacturing facilities sufficient to produce and factory test equipment the estimated maximum number of vehicles per year on schedule A, and includes a spare parts procurement and distribution system ÷ +~~

1. Example Contract, Article 9, ~~%indemnification+~~

Please DELETE the Article in its entirety.

Please INSERT the following:

~~%~~ARTICLE 9 INDEMNIFICATION

The Contractor shall, to the extent permitted by law, defend, indemnify and save the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses and suits or actions or proceedings, including reasonable expenses, costs and attorney's fees incurred by the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota that may grow out of the matter covered by this Contract. Said obligation does not include indemnification of the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, but shall include but not be limited to, the obligation to defend, indemnify and save harmless the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, in all cases where claims of liability against the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota arise out of acts or omissions of DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, its officers, employees, servants, agents, Subcontractors and Suppliers which are derivative of the negligence or intentional acts or omissions of the Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this Contract and to the work to be done and things to be supplied hereunder.

Each party shall promptly notify the other in writing of the notice or assertion of such claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota shall not

make any admission that might be materially prejudicial to the Contractor unless the Contractor has failed to take over conduct of any negotiations or defense within a reasonable time after the notice and authority above provided. The DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota shall at the request of the Contractor, furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding and shall be repaid all reasonable costs incurred in doing so. The DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota shall have the right to be represented therein by advisory council of its own selection at its own expense.

The obligations of the Contractor under the above paragraph shall not extend to circumstances where injury, death or damages are caused solely by the negligent acts, errors or omissions of the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, its officers, employees, agents or consultants, including, without limitation, negligence in giving direction or instruction with respect to the requirements of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where injury, death or damages are caused, in whole or in part, by the negligence of any third party operator, not including an assignee or Subcontractor of the Contractor, subject to the right of contribution.

2. The Contractor agrees to defend, indemnify and save the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, from and against any and all claims, including reasonable attorney's fees, costs and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to or recoverable from the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota by reason of any claim arising out of or relating to the services provided herein infringing or misappropriating a United States or foreign patent, copyright, trade secret, trademark or other proprietary right. In the event the Contractor is enjoined from providing the services herein and such injunction is not dissolved within thirty (30) calendar days, or in the event that the Contractor is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark or other proprietary right in the access or the use of the services provided herein, then contractor shall, at its sole cost and expense:

- a. Obtain for the DTA the right to continue using such services as provided herein;
- b. Replace or modify such services as provided herein so they do not infringe upon or misappropriate such property rights and are free to be used by the DTA, or
- c. In the event the Contractor is unable or determines in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Contractor shall reimburse the DTA any prepaid fees and the full cost of any transition services, including the purchase of new software, hardware or other goods and services to receive the services as provided herein.+

2. Example Contract, Article 10, Insurance: Please DELETE paragraph 4, ~~Professional/Technical Errors and Omissions and/or Miscellaneous Liability Insurance~~ in its entirety. This insurance is not required for this procurement.
3. Example Contract, Article 10, Insurance: Clarification: Because of the variety of manufacturers that may be responding to this RFP, the DTA will not remove the requirement of the Contractor

to request written approval from the DTA General Manager to waive the deductible threshold of more than \$50,000.

4. Example Contract, Article 16, State, Federal, OSHA Safety Requirements: Please delete the word ~~“OSHA”~~ in the title, and add ~~“all applicable OSHA and/or FMVSS requirements”~~ at the end of the first sentence
5. Section 4, Special Specifications, paragraph (B) ~~“price escalation”~~, please add the following:  
~~“In lieu of the calculation of the PPI, the Proposer may Propose set prices for years 2-5. Evaluation of future costs will be evaluated by the same percent increase over the base year for proposed prices for all vendors.”~~
6. Section 4, Special Specifications, Paragraph E, Delivery, subparagraph 2: in the second sentence, please add the words ~~“or upon placing the vehicle(s) into revenue service, whichever occurs sooner”~~  
~~“Payments for the vehicle(s) will not be made until the vehicle(s) has passed delivery inspection by the DTA and/or the Participating Agency, which will be completed no less than thirty (30) days after arrival or upon placing the vehicles into revenue service, whichever occurs sooner.”~~
7. Section 4, Paragraph E, Delivery, subparagraph 2: Please delete the requirement to provide a sixty day temporary tag: ~~“A sixty day temporary tag must be delivered with each vehicle.”~~
7. Section 4, Special Specifications, paragraph E, Delivery, subparagraph 3, please add bullet (i):  
~~“A complete set of as-built drawings, including electrical schematics that shows where added equipment was electrically attached to the factory electric power shall be delivered to the Agency within four weeks after delivery of the bus.”~~
9. Section 4, Special Specifications, paragraph F, subparagraph 5: Please delete the first sentence, ~~“Pending acceptance of the equipment, it is owned by and is the responsibility of the Contractor.”~~ Removal of this sentence does not diminish the Contractor’s responsibilities in the subsequent language of the paragraph.
8. Section 4, Special Specifications: paragraph (F), ~~“Acceptance Tests”~~; paragraph 7, ~~“Retention of sums charged against Contractor”~~, please add the following: ~~“Retention of money against the Contractor shall not exceed 5% of the total of the Participating Agency’s order.”~~
10. Section 4, Special Specifications, paragraph G, subparagraph 1, please add the following after the first paragraph:  
~~“In the event that production or delivery of the coaches are delayed under a Force Majeure event prior to all of the coaches being completed and delivered, the warranty period for the partial coach delivery shall begin upon acceptance of the last coach delivered or on the date each coach is placed into revenue service, whichever comes first. When production and delivery restarts after a Force Majeure event, the warranty period for the remaining coaches to be delivered shall be when the last coach is delivered or the date when each coach is placed into revenue service, whichever comes first.”~~
10. Section 4, Special Specifications, paragraph G, Warranty Guarantee, subparagraph (5), please add the following after the second sentence: ~~“Where additional time may be required, within 10 days, Contractor shall work with the Participating Agency to develop an agreeable repair plan”~~

and timeline, including reasonable time to engineer a repair if necessary, and/or time to acquire long-lead parts or components as needed. Contractor shall maintain a sufficient stock of high usage parts to prevent unnecessary delays.+

11. Section 4, Special Specifications, Paragraph G, Warranty Guarantee, subparagraph (7), please note that this is for those items covered under the Manufacturer's Warranty. The Participating Agency may also elect to extend warranties on major components offered by the individual major components manufacturer, such as engine, transmission, axles, etc. Costs for extended warranties shall be itemized at the time of Proposal. Please add the following: This extension is applicable to items covered under the Manufacturer's Warranty, and any other individual major component manufacturer warranty, such as engine, transmission, axles, etc. Costs for extended warranties shall be itemized at the time of Proposal.+
12. Section 4, Special Specifications, subparagraph (H)(4), please add the following after the second sentence: ~~Contractor shall maintain a readily available inventory of high usage and fast moving parts, which shall be shipped~~ +  
  
Please add the following after the third sentence: ~~DTA may require that the Contractor supply parts for warranty-covered repairs being performed by the DTA. Those parts may be remanufactured but shall have the same form, fit and function and warranty. Contractor shall maintain a readily available inventory of high usage and fast moving parts, which shall be shipped prepaid to DTA from any source selected by the Contractor within ten (10) working days of receipt of the request for said parts and shall not be subject to a DTA handling charge. For parts that require a longer lead time or engineer review, Contractor shall provide a written estimated timeline within three days of the DTA request for the repair. These parts shall not be subject to a handling charge to the DTA.~~+  
  
13. Section 4, Warranty Provisions, Paragraph 6: Please delete the words ~~plus the cost of towing the bus if such action was necessary and if the bus was in the normal service area.~~ + DTA will not require reimbursement of towing charges unless the bus is towed to an OEM repair shop outside of the DTA Service Area.
14. Section 4, Special Specifications, Paragraph H, Warranty Provisions, paragraph 7, please add the words ~~are received by the Contractor~~+after the words ~~defective part(s)~~+.
15. Section 4, Special Specifications, Paragraph H, Warranty Provisions, subparagraph 12: Please delete ~~The warranty shall include all towing, travel and all related expenses.~~+
16. Section 4, Special Specifications, Paragraph H, Warranty Provisions, subparagraph 13: Please change the ECS warranty requirement from 5 years or 150,000 miles to ~~5~~ years or 100,000 miles.+
17. Section 4, Special Specifications, Paragraph H, Warranty Provisions, subparagraph 15: please change the following: Delete the words ~~the applicable warranty period shall be extended by the number of days equal to the delay period~~+, and Insert: the Contractor will work with the DTA to obtain from the OEM an extension to the warranty period equal to the delay period.+
18. Section 4, Special Specifications, Subparagraph I, ~~Fleet Defects~~+. Please change the specifications to 25% of the same components in the same or similar application where such items are covered by Warranty in orders of 10 or more buses.

18. Section 4, Special Specifications, Paragraph I, Fleet Defects, subparagraph 3, please add the following after the first sentence: ~~%~~Where the correction must be made by a component manufacturer, the Contractor shall communicate the repair requirements to the component manufacturer for correction, however, the Contractor is not relieved of its responsibility to ensure that the coach meets the performance requirements of the Contract Documents.+
19. Section 4, Special Specifications, paragraph I, Fleet Defects, subparagraph 5, please add the following at the end of the paragraph: ~~%~~Where additional time may be required, Contractor shall work with the Participating Agency to develop an agreeable repair plan and timeline, including reasonable time to engineer a repair if necessary, and/or time to acquire long-lead parts or components as needed. Contractor shall maintain a sufficient stock of high usage parts to prevent unnecessary delays.+
20. Section 4, Special Specifications, Paragraph J, Parts Availability Guarantee, DTA acknowledges that New Flyer provides thirty day pricing information for parts listed in the Recommended Stocking List during customer's first bus delivery and more inclusive Parts Provisioning List following the last bus delivery. Thereafter, competitive pricing will be made available by the Procuring Agency's designated New Flyer Customer Service Representative.
21. Section 4, Special Specifications, Paragraph, J, Parts Availability Guarantee, subparagraph 4, please change the timeline for the deadline that Contractor must provide part information to the Procuring agency from 8 hours to 24 hours.
18. Section 4, Special Specifications, Paragraph K, Diagnostic Equipment: Please delete the words ~~%and included in the purchase price of the vehicle.+~~ Please insert ~~%~~Separate from the base bus bid and added to the order at the Participating Agency's discretion.+ The price sheet has been modified to reflect this change.
19. Section 4, Special Specifications, Paragraph K, subparagraph 2, bullet (c), please add the words ~~%~~within four weeks of delivery of the last vehicle of the order+at the end of the sentence for as-built electrical wiring diagrams.
20. Section 4, Special Specifications, Paragraph I, Manuals, subparagraph 2, bullet (d), please add the following: ~~%~~Contractor may provide sample manuals at the time of Proposal submittal.+
21. Section 4, Special Specifications, Paragraph I, Manuals, subparagraph 3, please add the following to the first sentence: ~~%~~Within thirty days of the first production bus,ō +and add the words ~~%~~and/or PowerPoint presentation+after the work ~~%~~video+. The delivery date requirement for Parts Manuals, Service Manuals, the Bus System Drawings, and other required manuals is up to 30 days after the delivery of the purchasing agency's last bus is accepted. Manuals on USB are permitted. ENC's Bus Orientation in a PowerPoint format is approved.
23. Section 4, Special Specifications, paragraph K, Manual Content, paragraph 5: It is acknowledged that there are basic body and structural Information included in New Flyer bus

service manuals, however, in the event that a major accident occurs, the customer must contact New Flyer Technical Services for support to ensure the busses are rebuilt properly.

24. Section 4, Special Specifications, Paragraph K, Manuals, subparagraph 5, Manual Content: Stanchion layouts and window assemblies in the New Flyer manuals are illustrations only.
25. Section 4, Special Specifications, Paragraph K, Manual Content, subparagraph 5: Graphics of individual parts are not available in New Flyer manuals. Bus technical manuals will include graphics of replaceable parts in a PDF file.
26. Section 4, Special Specifications, Paragraph K, Manual Content, subparagraph 5: Separate troubleshooting guides for major components such as engine, transmission, and HVAC purchased from the respective manufacturer of the component and supplied by the Contractor to the Purchasing Agency is approved.
22. Section 4, Special Specifications, Paragraph K, Maintenance Manuals, paragraph 7: Please delete everything after the first sentence of the paragraph. The revised paragraph should read ~~The Contractor shall provide updated serial number resulting from warranty campaigns.~~
23. Section 4, Special Specifications, Paragraph K, Training, Paragraph 11, training costs will be separate from the price of the bus. Please change the following: Delete ~~include a minimum of eighty (80) hours~~ insert: ~~provide a separate price for~~
24. Section 4, Special Specifications, Paragraph K, Training, subparagraph 11(3): Please delete the word ~~instruction~~ and insert ~~information~~. The DTA recognizes that the manufacturer does not provide driving instruction, but rather, information on driving the buses.
25. Section 4, Special Specifications, Paragraph K, Training, Paragraph 12, please insert the following after ~~will provide~~ ~~a separate price for a~~. The price sheet has been modified to reflect this change.
26. Section 4, Special Specifications, Paragraph K, Training, Diagnostic Equipment: Clarification: Proposer should provide separate pricing for all training modules available, as well as Diagnostic Equipment, in the blank spaces at the bottom of the pricing sheet in blank spaces.
26. Section 4, Special Specifications, Paragraph N, Consumable Parts: Please add the following: ~~New Flyers~~ request to provide a first bus Recommended Stocking List during the first bus delivery, that includes part number, item description, stocking status, lead time and 30-day pricing information is approved. Upon delivery of the last bus, New Flyer will provide a more inclusive Parts Provisioning List using further part assembly breakdown information is approved.
27. Section 4, Special Specifications, Paragraph O, Liquidated Damages; paragraph 5(a), Delivery of Heavy Duty Buses: Please delete the following: ~~Please note that the delivery time is set for in each Participating Agency purchase order and agreed upon by both parties. If this is not reasonable, note that in the Proposal.~~

Please insert the following: ~~Each Participating Agency shall request a cost summary from the Contractor in advance of the Participating Agency issuing an order under this Contract. Contractor shall include an estimated delivery timeline in number of days from the signed order. Normal delivery schedule for heavy duty buses shall be no longer than 18 months (547 days)~~

from the date of the signed purchase order from the Participating Agency. If Contractor is unable to meet that timeline, they must communicate the anticipated timeline at the time a cost summary is provided to the Participating Agency, and it shall be at the Participating Agency's option whether to accept the revised timeline or decline to place an order. No Liquidated Damages will be assessed if the Contractor communicated the timeline in advance of the Participating Agency placing the order and the Participating Agency accepted the revised timeline.

The maximum amount of Liquidated Damages assessed by the Participating Agency to the Contractor under this provision is \$200,000 per bus order by the respective Participating Agency. Please note that Liquidated Damages may be assessed by each or all of the Participating Agencies only for their respective bus order. Assessment of Liquidated Damages for any one order does not limit Liquidated Damages on future orders under this Contract.

27. Section 4. Special Specifications, Paragraph 0, Liquidated Damages, subparagraph 5(b): Please add the following at the beginning of the paragraph: ~~At~~, after the Participating Agency accepts the Contractor's timeline.
27. Section 6, Submittal Requirements, (A) Proposer's Statement of Qualifications, paragraph II. Please delete the word ~~all~~ and insert the word ~~representative~~ as follows: ~~Proposer shall submit a representative list of fleets operating with similar type of vehicles in the United States. Proposer's standard list of references is acceptable.~~
28. Section 8, Proposal Pricing Sheet: Please DELETE ~~Class 700~~ from the CNG pricing in 2023 and 2024 and insert ~~heavy duty bus~~.
29. Section 8, Proposal Pricing Sheet: Clarification: Proposers may elect to propose future year pricing using the applicable PPI pricing in subsequent years of the Contract, or may elect to not increase the price in future years, Propose just the PPI increase, or Propose more or less than the PPI pricing. If the Proposer elects to Propose whatever the change in the PPI pricing is in subsequent years, enter ~~per PPI~~ on the line. For example, if the Proposal is to price the bus 2% more than the PPI price increase, then Proposer should enter 2% on the pricing line, or conversely, 2% less than the PPI price increase, then a -2% should be entered.
30. Pricing Sheet clarification: Please include all required items in the respective base bus pricing, and provide separate pricing for the items identified individually to allow the Purchasing Agency to evaluate the cost of the respective item. For example, the base bus for Duluth includes wiring for the Genfare FastFare farebox. The DTA may decide to order fareboxes with the buses, so the price of the farebox needs to be itemized to allow the DTA to determine the cost difference.

For example, the DTA base bus includes a Sierra Wireless MG 90 cellular router, but the cost of the router, or the CradlePoint IBR1700 is requested so the Participating Agencies can determine if there is justification for adding a cellular router at the time of the bus order. It is understood that pricing will change in future years.

If the Proposer does not have a separate price for a specific item, it may be left blank. For example if the divider behind the driver does not include a schedule holder, it does not have to be itemized.

If an item has been accepted as an approved equal, it does not have to be itemized. For



example, one roof hatch instead of two hatches on a 35-foot CNG bus does not have to be itemized, it is included in the base price of the bus.

- III. Approved Equals to Technical Specifications. Please note that those items that are accepted as an approved equal are selected individually by the purchasing agency at the time of placing an order under the Contract.
  1. Section 1.36, Interior Climate Control: New Flyers request to provide an ambient temperature range of 10 degrees F to 95 degrees F to obtain a passenger compartment temperature of 65 degrees F and 78 degrees F is accepted as an approved equal.
  2. Section 3, Electronic Equipment Compartment: ENC standard Electronics cabinet is accepted as an approved equal.
  3. Section 3.3: Destination Sign: New Flyers request to provide a front destination sign compartment that is open on each end and does not provide fans is approved.
  4. Section 3. Electronic Equipment Compartment: ENC request for a 22.5-inch deep by 63 inch high by 36-inch wide powder-coated cabinet is accepted as an approved equal.
- IV. Attached are copies of the Revised Request for Proposals and the Technical Specifications with the changes incorporated.
- V. Attached is a revised Pricing Sheet with approved equals.