



Duluth Transit Authority

REQUEST for PROPOSALS

FOR

HEAVY DUTY BUSES

August 28, 2020

Duluth Transit Authority

2402 W. Michigan St · Duluth, MN 55806

(218) 623-4329 fax: (218) 722-4428

email: nbrown@duluthtransit.com

Duluth Transit Authority
Heavy Duty Buses

Procurement # 041-20-0034.1

Duluth Transit Authority
Request for Proposals
HEAVY DUTY BUSES

The Duluth Transit Authority hereby requests sealed Proposals for the purchase and delivery of 30-foot, 35-foot, 40-foot, 45-foot heavy duty transit buses for the DTA and other participating agencies.

Background information, description of the project scope of work and submission requirements may be obtained by calling, emailing or writing the Duluth Transit Authority, Procurement Manager, 2402 West Michigan Street, Duluth, MN 55806; 218-623-4329, or nbrown@duluthtransit.com. Proposal packages will be mailed or emailed to all interested parties.

Proposals must be received no later than **2:00 p.m., Thursday, October 22, 2020**.

The DTA encourages the participation of small and disadvantaged business enterprises, and affirmatively assures that equal opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, gender, marital status, disability, or age.

This request does not obligate the DTA to complete the work contemplated in this notice and the DTA reserves the right to accept or reject any or all proposals, or waive any minor informalities for good cause upon a finding that it is in its interest to do so. All expenses incurred in response to this notice shall be borne by the proposer.

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Section 1 Introduction

A. Introduction

1. This is a JOINT Procurement. The Duluth Transit Authority (~~%DTA+~~) invites qualified firms to submit proposals in response to the Request for Proposals for the production and delivery of 30, 35 and 40-foot heavy duty low floor transit buses, and/or 45-foot Coach transit buses. Proposers are not obligated to Propose on each size or type of transit bus requested.
2. The DTA intends that this Contract be in effect for a period of five (5) years from the effective date of the executed Contract. The DTA anticipates an award will be issued in last quarter 2020.
3. This RFP is issued on behalf of a consortium of transit authorities; the DTA is the Lead Agency. A Master Contract form with Proposals and Best And Final Offers (~~%BAFO+~~) as applicable, will be given to each Participating Agency for their review and award. Participating Agencies will issue individual purchase orders to the successful Proposer(s) selected by the Participating Agency. Each purchase awarded by a Participating Agency shall be awarded within the Proposal validity period. The DTA shall incur no financial responsibility or other liability in connection with purchases entered into between the Contractor and another Participating Agency. The Participating Agency shall accept sole responsibility for placing orders and making payments to the Contractor.
4. The DTA will be using this procurement to purchase at least four (4) and as many as twelve (12) heavy duty buses in 2021 for delivery in 2022. Each Participating Agency may, at their sole discretion, procure up to the maximum number of buses stated in this RFP, based on each agency's requirements and available funding. Participating Agencies and bus quantities are shown in the Bus Order Summary with their minimum/maximum buses per year starting in 2020 and ending in 2025.
5. Each Participating Agency has formed an Evaluation Committee that will review all Proposals. The DTA committee consists of the following individuals which may be changed at the DTA General Manager's discretion: the Directors of Finance, Operations, and IT, the Director and Assistant Director of Maintenance, the Procurement Manager, and the General Manager.
6. Participating Agencies shall have the same rights and privileges under this Contract as the DTA whether or not they are specifically named after or along with DTA in these specifications.
7. Any Contract resulting from this RFP is subject in part to a financial assistance contract between the DTA or the Participating Agency and the Federal Transit Administration (~~%FTA+~~) and/or the Minnesota Department of Transportation (~~%MN DOT+~~), other states and each Participating Agency. Any obligations of the DTA and Participating Agencies are contingent upon receipt of adequate funding.
8. The Contractor shall comply with all applicable Federal, State and Local regulations. The buses shall meet all applicable Federal Motor Vehicle Safety Standards (~~%FMVSS+~~) and shall accommodate all applicable Federal Motor Carrier Safety Regulations (~~%FMCSR+~~) in effect at the date of manufacture, or the date of delivery, as applicable. Contractor will comply with

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the then current FTA Buy America rules and regulations at the date of delivery, as applicable, for all purchases under this Contract.

9. Separate awards for different types of vehicles are possible under this RFP.

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Section 2

**GENERAL CONDITIONS
REQUEST FOR PROPOSALS**

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- a) Proposals are requested for a joint procurement of 30-foot, 35-foot, 40-foot, 45 foot heavy duty transit buses for the Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806 and Participating Agencies. Proposers are not obligated to Propose on all bus sizes, styles or fuel types.
- b) Proposals shall be on the proposed rates and costs for the vehicles under the requirements and conditions set forth herein, which shall be considered an essential part of the Contract Documents. Any quantities set forth in this RFP are estimated quantities and in no way represent a commitment or intent to purchase any particular amount.
- c) The Proposer is responsible for all precontractual expenses, including expenses for preparing or submitting a Proposal in response to this request, negotiating with the DTA and/or Participating Agencies on any matter related to this Proposal, and/or other expenses incurred by the Proposer prior to the date of award.
- d) Any price offerings from Proposer must be valid for a period of one hundred and eighty (180) days from the due date of the Proposal or Best and Final Offer (~~BAFO~~), whichever is later.
- e) Sealed Proposals are due at **2:00 p.m. on Thursday, October 22, 2020** at the DTA offices. 2402 West Michigan Street, Duluth, MN 55806.
- f) The DTA reserves the right to cancel, amend, modify or otherwise change this RFP at any time it deems it to be in the best interest of the DTA to do so.
- g) The DTA reserves the right to correct inaccurate awards.
- h) The DTA will hold a **pre-proposal conference** on **Thursday, September 17, 2020** at **10:00 a.m.** in the DTA office, 2402 West Michigan Street, Duluth, MN 55806. Attendance is not mandatory, but strongly encouraged. DTA prefers electronic participation, but in-person attendance is permitted. In person attendees are limited to eight people. Masks must be work at all times while in DTA offices. Please contact the Procurement Manager at 218-623-4329 for conference call information.
- i) The DTA intends to award the contract to the responsible Proposer(s) as early as **November 25, 2020**.
- j) Throughout these specifications the words ~~equipment~~, ~~materials~~, and ~~work~~ can be interpreted as interchangeable.
- k) The Federal Transit Administration is or will be providing 80% cost participation, FTA Section 5307 for this Contract; the potential Catalog of Federal Domestic Assistance (CFDA) numbers funding these purchases include, but may not be limited to, 20.500, ~~Federal Transit Capital Investment Grants~~, and/or 20.529, ~~Bus and Bus Facilities Formula Program~~.
- l) Award of this Contract is subject to the approval of the DTA Board of Directors. Award by the Participating Agencies may also be subject to their respective oversight Board.

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DEFINITIONS

Whenever the following terms are used in these proposal specifications, the intent and meaning of them shall be interpreted as follows:

- a) DTA, Authority or Operator shall mean the Duluth Transit Authority.

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- b) ~~Participating Agency~~ shall mean those transit agencies seeking to purchase heavy duty buses in this joint procurement and listed herein.
- c) Manufacturer, Proposer, Offeror, Vendor or Contractor shall mean the responsible firm or firms subsequently receiving a Contract award from the DTA as a supplier of Heavy Duty buses as detailed in these specifications.
- d) ~~Bus~~ or ~~buses~~ shall mean a Heavy Duty transit bus designed to operate in a rugged environment with heavy duty parts and materials as described in the technical specifications and in compliance with the FTA twelve- year bus testing standards.

G-3 INQUIRIES

All inquiries and other correspondence relating to this RFP shall be with the Procurement Manager and addressed via email, nbrown@duluthtransit.com, or regular mail, Duluth Transit Authority, attention Procurement Manager, 2402 West Michigan Street, Duluth, MN 55806.

G-4 SUBSTITUTIONS AND OR EQUAL

- a) Where proprietary names are used in these specifications, it is understood that they are followed by the words "or equal". Reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality, and shall not be construed as limiting competition unless limited by the term ~~no~~ substitute. It is understood that specifying a brand name or specific types of components and/or equal equipment in these specifications shall not relieve the Proposer from its responsibility to furnish the end product in accordance with the warranty and Contract requirements. A Proposer may, at its option, use any equipment, material, article, or process, which, in the judgment of the DTA or other Participating Agency, is equal to that designated. To do so, a Proposer shall furnish, at its own expense, all test results, technical data and background information required by the DTA in making the determination as to whether the proposed equipment, material or article or process, in the judgment of the DTA or Participating Agency is equal to that designated.

DTA and/or the Participating Agency shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, materials or process and its decision shall be final.

- b) Prime contractors and /or subcontractors may make appointments to discuss these specifications. This, however, does not relieve them from the written, documented request required by paragraph c) below. Where prior approval is called or in the specifications it means prior to Proposal opening. All discussions and questions and answers will be recorded in an addendum to these specifications.
- c) Requests for approved equals, clarifications of specifications, and protest of specifications must be received by the Procurement Manager in writing no later than **October 5, 2020**. Any request for an approved equal must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specifications that pertain to an item

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under consideration. All requests must be submitted via email or US Mail unless otherwise approved by DTA in writing. A request for approved equal 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 this RFP, without substantial increase in cost, time or ongoing maintenance costs. If the Proposer does not indicate that the article offered is other than as specified, it will be understood that the Proposer is offering the article exactly as specified.

d) The replies to request under paragraph c) above will be emailed, mailed or faxed out on **October 9, 2020** to all prospective Proposers.

e) Changes to the specifications, including approved equals, will be made only by written addendum. Addenda will be posted on the DTA website at www.duluthtransit.com. It is the Proposer's responsibility to obtain all documents, including all addenda available for this procurement.

f) Requests for deviation will be considered by the DTA and/or Participating Agencies in advance of the RFP due date. Deviations must be submitted on the attached form and fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement. Deviations must be submitted no later than **October 5, 2020** to the DTA Procurement manager via email or regular mail. Responses to requests for deviation will be mailed, emailed or faxed out on **October 9, 2020**, in the form of an addendum.

g) Failure to submit the request for approved equals or approved deviations may result in rejection of the Proposal. Failure to properly submit a Deviation Request form in accordance with this Section, or a denial+response from the DTA and/or Participating Agencies to any requested deviation during negotiations will constitute a Proposer's acknowledgement and acceptance of all terms, conditions, specifications, or provisions contained in the Contract Documents. All terms, conditions, specifications or provisions of this RFP, or as may be amended by written Addendum issued by the DTA are binding on Proposers.

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PROPOSAL PACKAGE

- a) The Proposal package will contain all of the information herein requested for review. Any omissions may be considered as a failure to comply.
- b) Proposers shall also review the DTA specifications and list in order by DTA Section number any deviations in their proposal and the DTA Specification.
- c) Proposals must have one original unbound, single sided in 12-point font, two copies (one not bound), and six (6) electronic copies on either a CD or USB memory stick. The entire Proposal should be in one electronic file.

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CONSIDERATION OF PROPOSAL

The DTA reserves the right, in the determination of the most responsive and responsible Proposer, to consider the ultimate economy of the Proposal within the guidelines of these specifications, the best interests of the DTA and such other factors

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as may be reasonably determined to affect the ultimate economy of the award as stipulated in the Technical Specifications.

The Evaluation Committee may not necessarily make a recommendation to award to the Proposer with the highest technical ranking nor make a recommendation to award to the Proposer with the lowest price proposal, if doing so would not be in the best interest of the DTA.

G-7 PREPARATION OF PROPOSAL

Proposals must be submitted on the forms attached. All blanks in the Proposal form must be completed with ink or typewriter. Proposals containing alterations or erasures may be rejected unless the alteration or erasure is corrected by crossing out the error, inserting the correction adjacent thereto with ink or typewriter and initialing the correction in ink by the person signing the Proposal. In the event any price term is expressed by the proposer in both written and numerical form, the written representation shall govern in the event of an inconsistency.

Proposals and other documents submitted by the Proposer shall not stipulate any condition not contained in the specifications.

Each Proposal and all papers bound and attached thereto and shall be placed and securely sealed in an envelope marked "**Heavy Duty Buses**" and mailed or delivered to:

Procurement Manager
Duluth Transit Authority
2402 West Michigan Street
Duluth MN 55806

Proposals must be received by the Proposal deadline. Time means local time in Duluth, Minnesota. Proposals received after such time will not be considered. The DTA reserves the right to accept or reject any and/or all Proposals in the best interest of the DTA.

No Proposal may be modified after submission except by written modification physically received by the DTA prior to the time set for the opening of Proposals. Modifications must be signed by the person submitting the Proposal or accompanied by an explanation as to why it is not, and must indicate that it modifies the original Proposal. Modifications shall be submitted in a securely sealed envelope marked as indicated on the Proposal Form.

G-8 WITHDRAWAL OF PROPOSALS

A Proposer may withdraw its Proposal at any time before the time set for the opening of the Proposals only by written notice addressed to the Proposal opening marked "WITHDRAWAL OF PROPOSAL" and physically received by the DTA prior to the time for the opening of Proposals.

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G-9 CONTRACT FORM AND CHANGES

The chosen Proposer, within thirty (30) days after the award of the Contract from the DTA shall sign the formal Contract.

A sample Contract is included in this RFP for the Heavy Duty Buses. Any proposed change in this Contract shall be submitted to the DTA for its approval prior to submission of the Proposal. Only written change orders, amendments or addenda, signed by the General Manager of the DTA, shall be binding upon the DTA.

G-10 BONDING REQUIREMENTS

No bonds are required.

G-11 PRICE COMPLETE

The price quoted in any Proposal submitted shall include all items of services, labor, material, alterations, tools, equipment and other costs necessary to fully complete the production and delivery of the equipment or services pursuant to these specifications. It is the intention of these specifications to provide and require complete equipment and/or services of the type prescribed herein. Any items omitted from the specifications which are clearly necessary for the performance of the Contract shall be considered included in the Proposal specifications although not directly specified or called for in these specifications. No advantage shall be taken by the Proposer in the omission of any part or detail which goes to make the equipment complete and ready for service or use, or to perform the services as herein required.

G-12 PROTEST PROCEDURES

Protests will only be accepted from prospective Proposers whose direct economic interest would be affected by the award of a contract or refusal to award a contract. The General Manager will consider all such protests, whether submitted before or after the award of a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protest must include at least the following information:

- " Name, address, and telephone number of protestor
- " Identification of the solicitation or contract number
- " A detailed statement of the legal and factual grounds of protest including copies of relevant documents
- " A statement as to what relief is requested

All protest documents received by the General Manager shall be stamped with date and time received and logged into a protest file folder with a copy to the Master File.

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PROTESTS BEFORE AWARD

Protests before award must be submitted within the time as specified herein. If the written protest is not received by the time specified, the evaluation process shall continue in the normal manner unless the Finance Director, upon investigation, finds that remedial action is desirable, in which event such action shall be taken.

The protests addressing the adequacy of the Request for Proposal, including, without limitation, the pre-award procedure, the Instructions to Proposers, General Terms and Conditions, Technical Specifications and Scope of Work, must be filed at the Finance Department no later than three days before the scheduled opening date of the proposal. Thereafter, such issues are deemed waived by all interested parties.

Notice of protest and the basis therefor shall be given to all bidders or proposers. In addition, when a protest against the making of an award is received and the Finance Director determines to withhold the award pending disposition of the protest, proposers whose proposals might become eligible for award shall be requested, before expiration of the time for acceptance of their proposals, to extend the time for acceptance (with consent of sureties, if any) to avoid the need for readvertising.

When a written protest against the making of an award is received, award shall not be made until five days after the matter is resolved, unless the General Manager determines that:

- ~ the items to be procured are urgently required; or
 - ~ delivery or performance will be unduly delayed by failure to make the award promptly;
- or
- ~ failure to make prompt award will otherwise cause undue harm to DTA or the State or the Federal Government.

In the event the General Manager determines that the award is to be made during the five-day period or during the pendency of protest, he/she shall notify the FTA prior to make such award. FTA preserves the right not to participate in such procurement.

If award is made, the Finance Director shall document the file to explain the need for an award, and shall give written notice of the decision to proceed with the award to the protestor and, as appropriate, to others concerned.

PROTESTS AFTER AWARD

Protests against award must be filed at the Finance Department within five days immediately following the award. The Finance Director shall review the protests. The contractor shall be furnished with the notice of protest and the basis therefor. Also, when it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to DTA's interest, the Finance Director shall inform the contractor that DTA will not be responsible if the award is set aside and that the contractor proceeds with performance at his/her own risk.

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DECISION ON PROTEST

The General Manager shall render his/her decision in writing within 14 days from the receipt of the written protest and shall provide written notice of such decision to all interested parties.

Following an adverse decision by the General Manager, the protestor may file a protest with FTA. For details, see FTA Circular 4220.1F, as amended, which states that FTA will only review protests regarding the alleged failure of a grantee (here, the DTA) to have written protest procedures or alleged failure to follow such procedures.

G-13 ORGANIZATIONAL CONFLICTS OF INTEREST

1. An organizational conflict of interest means that because of other activities or relationships with other persons or entities, a Contractor is unable, or potentially unable to render impartial assistance or advice to the DTA, or the Contractor's objectivity in performing the Contract work is, or might be otherwise impaired, or the Contractor has an unfair competitive advantage. Organizational conflict of interest includes situations where the capacity of a Contractor (including the Contractor's executives, directors, consultants, subsidiaries, parent companies or subcontractors) to give impartial, technically sound advice or objective assistance is or may be impaired or may otherwise result in a biased work product because of any past, present or planned interest, financial or otherwise, in the DTA.

2. The Contractor is responsible for maintaining and providing up to date conflict of interest information to the DTA's Director of Finance. If, after award of this contract or task order, the Contractor discovers a conflict of interest with respect to this contract or task order which could not reasonably have been known prior to award, or if any additional conflicts or potential conflicts arise after award, the Contractor shall give written notice to the DTA's Director of Finance as set forth below.

3. The Contractor's notice called for in paragraph 2 above shall describe the actual, apparent or potential conflict of interest, the action(s) the Contractor has taken or proposes to take to avoid or mitigate any conflict, and shall set forth any other information which the Contractor believes would be helpful to the DTA's Director of Finance in analyzing the situation.

4. The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the DTA's Director of Finance for review and consideration. This responsibility arises when the Contractor first learns of an actual, apparent, or potential conflict of interest. Corporate counsel review of the proposed mitigation plan is necessary to ensure a timely review and final determination by the DTA's Director of Finance.

5. If the DTA's Director of Finance, in his/her discretion, determines that the Contractor's actual, apparent or potential conflict of interest remains, or the measures proposed are insufficient to avoid or mitigate the conflict, the DTA's Director of Finance will direct a course of action to the Contractor designed to avoid, neutralize, or mitigate the conflict of interest. If the parties fail to reach agreement on a course of action, or if having reached such agreement the Contractor fails to strictly adhere to such agreement during the remaining period of contract performance, the DTA's Director of Finance has the discretion to terminate the contract for default. No determination by the DTA's Director of Finance under this clause shall be reviewable under FAR Clause 52.233-1, Disputes Clause (May 2014), which is also incorporated by reference herein.

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6. The Contractor's misrepresentation of facts in connection with a conflict of interest reported or a Contractor's failure to disclose a conflict of interest as required shall be a basis for default termination of this contract.

G-14 TAXES

The DTA is exempt from payment of the Federal excise, transportation tax, Minnesota State sales tax and City of Duluth City sales tax. **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 for this Contract and the delivery date of the vehicle(s).**

G-15 GOVERNMENT INSPECTIONS

The DTA and the Federal Government shall have the right but not the obligation to enter all areas where work is being performed under the Contract at all reasonable times. Contractor shall provide such assistance to the DTA, the Federal Government, and their designated agents as shall be reasonable required to conduct such inspections. Such inspections or the failure to make such inspections shall in no manner or form whatsoever relieve the Contractor of its obligations under the Contract. The DTA intends to contract with a bus construction inspection firm for this procurement.

G-16 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

All buses and components procured under this Contract shall comply with all applicable provisions of the Americans with Disabilities Act, as may be amended from time to time, for heavy duty low floor transit buses.

G-17 PUBLIC AGENCY PARTICIPATION/ASSIGNABILITY

In the event that the DTA or any Participating Agency does not purchase its maximum bus allotment due to unforeseen circumstances, lack of funding, or other causes, each Participating Agency may assign the remainder of its bus allotment (up to its maximum requirements set forth herein) to another Participating Agency. This right of assignment shall remain in force over the Contract term. This right of assignment will not change the quantity or types of buses that may be ordered pursuant to this RFP. The DTA shall not incur any financial responsibility or other liability in connection with the purchases entered into between the Contractor(s) and any other agency. The Participating Agency is solely responsible for placing orders or making payments to the Contractor for any purchase order issued against this Contract.

G-18 DISPOSITION OF RESPONSES

All materials submitted in response to this RFP will become the property of the DTA and will become public record in accordance with Minnesota Statutes §13.591 after the evaluation process is completed. Pursuant to the Statute, completion of the evaluation process occurs when the DTA has completed negotiating the contract with the selected Contractor.

G-19 CONFIDENTIALITY OF RESPONSES

If a Proposer submits information in response to this RFP that it believes to be trade secret materials as defined by the Minnesota Data Practices Act, Minnesota Statutes §13.37, the Proposer must:

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- a. Clearly mark all trade secret materials in its Proposal at the time the Proposal is submitted;
- b. Include a statement with its Proposal justifying the trade secret designation for each item; and
- c. Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota from any judgments or damages awarded against the DTA in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the DTA's award of a Contract. In submitting a Proposal in response to this RFP, the Proposer agrees that this indemnification survives as long as the trade secret materials are in possession of the DTA. The DTA is required to keep all the basic documents related to its contracts, including responses to RFP for a minimum of six years, and longer for vehicles in service.
- d. The DTA will not consider prices submitted by the Proposer to be proprietary or trade secret materials.

Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not ensure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

Notwithstanding the above, the DTA reserves the right to release information in compliance with the Minnesota Government Data Practices Act.

G-20 DBE REQUIREMENTS FOR TRANSIT VEHICLE MANUFACTURERS

Pursuant to Title 49 C.F.R. Part 26.49, a Proposer, as a condition of being authorized to respond to this solicitation, must certify by completing the Transit Vehicle Manufacturer's (TVM) Certification (Certificate D) that it has on file with the FTA an approved or not disapproved DBE subcontracting participation goal.

G-21 MINNESOTA NONDISCRIMINATION REQUIREMENTS

In accordance with Minnesota §181.59, **NONDISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT+**

The Contractor hereby agrees and shall cause this provision to be inserted in every subcontract the following:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) that a violation of this section is a misdemeanor; and
- (4) that this Contract may be canceled or terminated by the state, county, city, or the Duluth Transit Authority, or any other person authorized to grant the contracts for employment, and

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all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

G-22 SINGLE RESPONSE

If only one Proposal is received in response to this RFP and it is found by the DTA to be acceptable, a detailed cost/price analysis may be requested of the Proposer. A cost analysis or price analysis and evaluation, and/or audit of the cost may be performed in order to determine if the price is fair and reasonable. If the DTA Procurement Manager determines a cost analysis is required, the Proposer must be prepared to provide, upon request, cost summaries of estimated costs (i.e. labor, equipment, supplies, overhead, etc.) and documentation supporting all cost elements.

B. QUALIFICATION REQUIREMENTS

1. 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. Proposers that the Evaluation Committee finds not to meet these requirements, and cannot be made to meet these requirements, may be determined not to be responsible and its Proposal rejected. The requirements are as follows:

Sufficient financial strength and resources and capability to finance the work to be performed and complete the Contract in a satisfactory manner as measured by:

- a. **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 DTA or the Proposer.
 - b. 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.
 - c. Ability to obtain insurance with coverage values as stated in these specifications, **evidenced by a letter from an underwriter** confirming that the Proposer is insured for the required amount. A Responder's Proposal must clearly note any exceptions desired to the insurance requirements herein, or the Proposer will be deemed to have accepted such requirements and waived any request for exception.
 - d. The selected Proposer(s) must provide a certificate of insurance showing that they have each type of insurance coverage required herein. The certificate must be filed with the DTA Procurement Manger prior to the execution of the Contract and prior to commencing work under the Contract. The selected Proposer(s) must maintain such insurance in full force and effect throughout the term of the Contract.
2. 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:

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- a. Engineering, management and service organizations with sufficient personnel and requisite disciplines, licenses, skills, experience, and equipment to complete the Contract as required and satisfy any engineering or service problems that may arise during the warranty period.
 - b. Adequate manufacturing facilities sufficient to produce and factory-test equipment **the estimated maximum number of vehicles per year on schedule A, and includes 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.
3. 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 provided by the Proposer for vehicles delivered within the past two (2) years.
 4. Evidence of complying with all applicable Federal regulations including the submission of a test report from the Altoona testing facility in accordance with 49CFR655.

The above information must be submitted at the time of Proposal.

C. ACCEPTANCE/REJECTION OF PROPOSALS

1. This is a best value competitive procurement. The DTA reserves the right to select the Proposal in the best interests of the DTA by evaluating and comparing factors in addition to cost and price such that the DTA may acquire the product that best meets the DTA's needs, even if it means paying a premium price. A ~~premium~~ is the difference between the price of the lowest priced Proposal and the one that the DTA believes offers the best value. The term ~~best value~~ also means the expected outcome of an acquisition that, in the DTA's estimation, provides the greatest overall benefit in response to its material requirements. Evaluation factors include technical design, length of delivery schedules, quality of proposed product, past performance, and other items deemed required by the DTA Evaluation Committee in support of the purpose of the Federal public transportation program.
2. DTA as well as all Participating Agencies reserve the right to undertake discussions with one or more Proposers, and to accept that Proposal or modified Proposal which, in its judgment, will be in the best interests of the DTA, price and other evaluation criteria considered. DTA 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.
3. If there is any evidence indicating that one or more Proposers are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the Proposals of all such Proposers may be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by DTA.
4. DTA may reject a Proposal that includes unacceptable deviations as provided in ~~Conditions, Exceptions, Reservations or Understandings~~.

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5. Proposals are not opened in public, and all submittals become the property of the DTA and will not be returned.

6. The DTA reserves the right to correct inaccurate awards.

D. Preaward and Post Delivery Audit Requirements. 49 U.S.C. 5323; 49 CFR Part 663

1. This Contract is subject to the Buy America requirements of 49 USC 5323(j) and FTA's implementing regulation 49 CFR 661 and 49 CFR 663 as may be amended from time to time, and all applicable federal and state regulations. Proposers who submit incorrect or an incomplete Buy America certification may be deemed non-responsive. Proposers shall submit the following certifications:

a. Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

i.) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and

ii.) 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: Contractor shall submit evidence that it will be capable of meeting the bid specifications.

c. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit:

i.) manufacturer's FMVSS self- certification sticker information that the vehicle complies with relevant FMVSS or

ii.) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

E. Conditions, Exceptions, Reservations or Understandings

Proposers are cautioned to limit exceptions, conditions and limitations to the provisions of this RFP, as they may be determined to be so fundamental as to cause rejection of the Proposal for not responding to the requirements of the RFP. Any and all Deviations must be explicitly, fully and separately stated in the Proposal by completing the attached form for Proposal Deviation, setting forth at a minimum the specific reasons for each Deviation so that it can be fully considered and, if appropriate, evaluated by the DTA and Participating Agencies. All Deviations shall be evaluated in accordance with the appropriate evaluation criteria and procedures and may result in the Proposer receiving a less favorable evaluation than without the Deviation.

SIGNIFICANT DATES OF PROCUREMENT

Item	Date	Time
Date of Release	August 28, 2020	
Request for Clarifications	October 5, 2020	3:00 pm
Responses for Clarifications	October 9, 2020	3:00 pm
Proposal Opening	October 22, 2020	2:00 pm
Award	November 25, 2020	

Section 3 FEDERAL TRANSIT ADMINISTRATION

Contract Clauses

A.1 ACCESS TO RECORDS 49 U.S.C. § 5325(g)

Applicability to Contracts

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and subcontract at every tier.

Flow Down

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

- a. Records Retention. The Contractor will retain, and will requires its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract; including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

A.2 BONDING REQUIREMENTS 2 CFR §200.325, 31 CFR Part 223 Does not apply to this procurement

A.3 BUS TESTING 49 U.S.C. 5318(E), 49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

Flow Down

There is no flow down requirement for Bus Testing.

Clause Language

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language is required, recipients can draw on the following language for inclusion in their federally funded procurements.

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Bus Testing

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

A.4 BUY AMERICA REQUIREMENTS
49 U.S.C. 5323 (J), 49 CFR Part 661

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: The Federal Transit Administration's Buy America website.

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Clause Language

Buy America

The Contractor agrees to comply with 49 U.S.C. 5323 (j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless all steel, iron and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. §661.11.

The Bidder or Offeror must submit to the Duluth Transit Authority the appropriate Buy America certification below with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

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A.5 CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. §55.05
46 C.F.R. Part 381**

Applicability to Contracts

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference - Use of United States-Flag Vessels

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

A.6 CHARTER SERVICE

49 U.S.C.5323(d) and (r)
49 C.F.R. Part 604

Does not apply to this procurement

A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

**49 U.S.C §§7401-7671q
33 U.S.C §§1251-1387
2 C.F.R. Part 200, Appendix II (G)**

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000.

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third-party contractors and their contracts at every tier and subrecipients and subcontracts at every tier.

Clause Language

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA List of Violating Facilities;+
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387.)

A.8 CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

Federal Civil Rights laws and regulations apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third-party contractors and their contract at every tier.

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Clause Language**Civil Rights and Equal Opportunity**

The Duluth Transit Authority is an Equal Opportunity Employer. As such, the Duluth Transit Authority agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Duluth Transit Authority agrees to comply with the requirements of 49 U.S.C. §5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 C.F.R. Chapter 60, and Executive Order No. 11246, Equal Employment Opportunity in Federal Employment, September 24, 1965, 42 U.S.C. §2000e note, as amended by any later Ex Order that amends or supersedes it, referenced in 42 U.S.C. §2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, Age Discrimination in Employment Act, 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6101 *et. Seq.*, U.S. Health and Human Services regulations, Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for the reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et. Seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et. Seq.*, and Federal transit law at 49 U.S.C. §4332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26**

Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

Federal Transit Administration website Disadvantaged Business Enterprise page

Department of Transportation website Disadvantaged Business Enterprise Program

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Clause Language

It is the policy of the Duluth Transit Authority and the Participating Agencies to this RFP, and the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBEs), as defined herein and in the Federal regulations published at 49 C.F.R. Part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the Duluth Transit Authority to:

1. ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Duluth Transit Authority shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the Duluth Transit Authority may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror/s documented history of non-compliance with DBE requirements on previous contracts with the Duluth Transit Authority.

Contractor Assurance

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Duluth Transit Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

DBE Participation

For purposes of this Contract, the Duluth Transit Authority will only accept DBEs who are:

1. Certified at the time of the bid opening or proposal evaluation by the Unified Certification Program; or
2. An out of state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the Duluth Transit Authority.

DBE Participation Goal

There is no DBE participation goal for this Contract.

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the Duluth Transit Authority or in accordance with state statutes, whichever if more restrictive. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify Duluth Transit Authority, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Duluth Transit Authority.

A.10 EMPLOYEE PROTECTIONS

49 U.S.C. §5333(a), 40 U.S.C. §§3141-3148

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29 C.F.R. Part 5, 18 U.S.C. §874
29 C.F.R. Part 3, 40 U.S.C. §§3701-3708, 29 C.F.R. Part 1926

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier. The Davis-Bacon Act and the Copeland %Anti-Kickback+Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Clause Language

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, %Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),+29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of

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each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

A.11 ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 622, Subpart C

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier.

Clause Language

Energy Conservation . The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

A.12 FLY AMERICA

49 U.S.C. §40118, 41 C.F.R. Part 301-10

48 C.F.R. Part 47.4

Does not apply to this procurement

A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. Part 180, 2 C.F.R. Part 1200, 2 C.F.R. §200.213

2 C.F.R. Part 200, Appendix II (I)

Executive Order 12549, Executive Order 12689

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Clause Language

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the

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Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A. 14 LOBBYING RESTRICTIONS

31 U.S.C. 1352, 2 CFR §200.450

2 C.F.R. Part 200 Appendix II (J), 49 C.F.R. Part 20

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, %Disclosure Form to Report Lobbying,+in accordance with its instructions.

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Clause Language

Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, %Disclosure Form to Report Lobbying,+in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third-party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

No Federal Government Obligation to Third Parties.

The DTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the DTA, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

A.16 PATENT RIGHTS AND RIGHTS IN DATA

2 C.F.R. part 200, Appendix II (F)

37 C.F.R. part 401

Does not apply to this procurement

A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

49 U.S.C. 5323 (m), 49 C.F.R. Part 663

Clause Language

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001, 49 C.F.R. part 31

Applicability to Contracts

The Program Fraud clause applies to all third-party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification,

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the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) (3)(c), 29 C.F.R. part 215

Does not apply to this procurement

A.20 RECYCLED PRODUCTS

42 U.S.C. § 6962 , 40 C.F.R. part 247

2 C.F.R. part § 200.322

Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Clause Language

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), Comprehensive Procurement Guideline for Products Containing Recovered Materials, 40 C.F.R. part 247.

A.21 SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402, Executive Order No. 13043

Executive Order No. 13513, U.S. DOT Order No. 3902.10

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, Increasing Seat Belt Use in the United States, April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

Safe Operation of Motor Vehicles

Seat Belt Use

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The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms %company-owned+and %company-leased+refer to vehicles owned or leased either by the Contractor or the Duluth Transit Authority.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

A.22 SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f), 49 C.F.R. part 605

Does not apply to this procurement

A.23 SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41

Executive Order (E.O.) 12699

Does not apply to this procurement

A.24 SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331, 49 C.F.R. part 655

49 C.F.R. part 40

Does not apply to this contract

A.25 TERMINATION

2 C.F.R. § 200.339, 2 C.F.R. part 200, Appendix II (B)

Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Clause Language

Termination for Convenience (General Provision)

The Duluth Transit Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Duluth Transit Authority's and/or the Participating Agencies' best interests. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Duluth Transit Authority to be paid the Contractor. If the Contractor has any property in its possession belonging to the Duluth Transit Authority, the Contractor will account for the same, and dispose of it in the manner the Duluth Transit Authority directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Duluth Transit Authority may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Duluth Transit Authority that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Duluth Transit Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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Opportunity to Cure (General Provision)

The Duluth Transit Authority, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions to cure the defect.

If Contractor fails to remedy to the Duluth Transit Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the Duluth Transit Authority setting forth the nature of said breach or default, the Duluth Transit Authority shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Duluth Transit Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Duluth Transit Authority may terminate this contract for default. The Duluth Transit Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Duluth Transit Authority.

A.26 VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A)

Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Rights and Remedies of the Duluth Transit Authority

The Duluth Transit Authority and/or the Participating Agencies to this RFP shall have the following rights in the event that the Duluth Transit Authority and/or the Participating Agencies to this RFP deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract, the Contractor expressly agrees that no default, act or omission of the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority and or the Participating Agency or Agencies directs Contractor to do so) or to suspend or abandon performance.

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Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract takes action contemplated herein, the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority and/or the Participating Agency or Agencies considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

~ **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Duluth Transit Authority's Procurement Officer. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Duluth Transit Authority General Manager. 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 General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

~ **Example 2:** The Duluth Transit Authority and/or the Participating Agency or Agencies to this contract and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Duluth Transit Authority and/or the Participating Agency or Agencies to this contract acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Duluth Transit Authority's and/or Participating Agency or Agencies to this contract direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by the Duluth Transit Authority, 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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefor 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 Duluth Transit Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Duluth Transit Authority is located.

Rights and Remedies

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The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder 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 Duluth Transit Authority and/or the Participating Agency or Agencies to this contract 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 thereunder, except as may be specifically agreed in writing.

DULUTH TRANSIT AUTHORITY

CONTRACT (example for Proposal Purposes)

HEAVY DUTY BUSES

XXXX, 2020

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Section 4 Contract Example for Proposal Purposes

For purposes of this Contract example, the Contract is designated between the contractor and the DTA. Each Participating Agency will enter into a separate contract with the Contractor using this general format.

This Contract, made as of _____, 20__ by and between _____, a _____ (LLC, corporation, etc.) located at _____, hereafter referred to as ~~%Contractor+~~ and the Duluth Transit Authority, 2402 W. Michigan St., Duluth, MN, hereafter referred to as ~~%DTA+~~. The DTA and the Contractor are parties (~~%Parties+~~) to this contract (~~%Contract+~~).

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents in priority order consist of the FTA Contract Clauses, this Contract and any amendments thereto; Request for Proposals (Procurement # 041-19-0304.3) dated XXXX, 2020, General, Special and Technical Specifications, and all appendix attached hereto, all addenda and modifications thereto issued prior to the execution of the Contract; the Contractor's Proposal including required certificates; Contractor's Best and Final Offer as applicable, warranty documents and/or extended warranty documents, bus testing reports as applicable, all as fully a part of the Contract as if attached to this Contract or repeated herein.

ARTICLE 2 THE WORK

Contractor will perform the work required by the Contract Documents attached hereto and made a part hereof, in accordance with the generally accepted standards of the profession for services of this type. In the event of any conflict between the terms of the Proposal and this Contract, the terms and conditions of this Contract shall be deemed controlling.

ARTICLE 3 TERM OF CONTRACT

The Term of this Contract shall be for a period of five (5) years commencing on the date of ~~%Notice to Proceed+~~ and terminating five (5) years after such Notice to Proceed unless otherwise extended by written amendment mutually agreed upon by the Contractor and the DTA. Notwithstanding the foregoing or anything to the contrary herein, in no event shall the commencement date be deemed to have occurred and none of the obligations of DTA or Contractor under this Contract shall be deemed to have accrued until DTA has issued to Contractor under this Contract a Notice to Proceed.

ARTICLE 4 PAYMENTS TO CONTRACTOR

The DTA shall pay the Contractor in current funds for the performance of the work, subject to the additions and deductions by Change Orders as provided in the Contract Documents in the amount accepted.

Terms of payment shall be thirty (30) days net from the conclusion of the month for which payment is due, unless a discount for earlier payment is solicited by the DTA and offered by the Contractor. Payment does not imply acceptance of work. The granting of any progress payment or payments by DTA and/or Participating Agencies, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made. Materials, components or workmanship which does not conform to the instruction of these Contract requirements and specifications or are not equal to the samples submitted to and approved by the DTA Project Manager will be rejected and shall be replaced by the Contractor without delay. The DTA may withhold payment for Contractor's services where the services are in dispute, where the services or any claimed reimbursable expenses are not documented or warranted, or when the service was not performed in accordance with the terms of the Contract Documents.

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Pay applications must be forwarded to the DTA Finance Director, 2402 West Michigan Street, Duluth, MN 55806.

ARTICLE 5 ASSIGNABILITY

Contractor shall not in any way assign or transfer any of its rights or interests under this Contract in any way whatsoever without the prior written consent of the Duluth Transit Authority General Manager.

ARTICLE 6 TERMINATION OF SERVICE

The DTA may, by giving written notice specifying the effective date thereof, terminate this Contract in whole or in part without cause. Contractor shall be entitled to compensation for services properly performed by it to and including the date written notice of termination of this Contract, including reimbursable expenses.

ARTICLE 7 CHANGES TO THE CONTRACT

The DTA or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the DTA and the Contractor, shall be incorporated in written amendments to the Contract.

ARTICLE 8 RECORDS AND INSPECTIONS

a. Establishment and Maintenance of Records

Records shall be maintained by the Contractor in accordance with the requirements prescribed by the DTA and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this project.

b. Documentation of Costs.

Contractor will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

c. Reports and information.

Contractor shall be responsible for furnishing to the DTA records, data and information as the DTA may require, pertaining to matters covered by this Contract.

d. Audits and Inspections

Contractor shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Contract. Contractor will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

e. Confidentiality of Information

Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release data referred to in this clause, Contractor must immediately notify the DTA and consult with them as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law. Confidentiality provisions may be different for Participating agencies outside of Minnesota. Contractor shall abide by the applicable laws of each participating agency.

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f. **Ownership of Data**

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of DTA when prepared and shall be delivered to the DTA and/or Participating Agencies upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA and/or Participating Agencies. The DTA and/or Participating Agencies shall maintain ownership of all data, formatting scripts, design templates and domain where they are not already an open source product.

~~ARTICLE 9 INDEMNIFICATION~~

~~The Contractor shall defend, indemnify and save the DTA, ATE Management of Duluth, First Transit, Inc., and the State of Minnesota, harmless from all costs, charges, damages, and loss of any kind 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 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.~~

~~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 attorneys' 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.~~

~~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~~

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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;

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- 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.

ARTICLE 10 INSURANCE

- a. The Prior to the execution of the Contract, the Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota, with an ~~AM~~ BEST+rating of A-(minus), Financial Size Category (FSC) VII or better, which insurance shall indemnify Contractor and DTA, ATE Management of Duluth, First Transit, Inc., the State of Minnesota, and Participating Agencies to this Contract from all liability described in the paragraph above.

- (1) Except as provided below, the Contractor will provide Workersq Compensation insurance for all of its employees, and in case of any work subcontracted, will require its subcontractor(s) to provide Workersq Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employerq Liability. Insurance minimum limits are as follows:

- \$100,000 Bodily Injury by Disease per employee
- \$500,000 Bodily Injury by Disease aggregate
- \$100,000 Bodily Injury by Accident

If Minnesota Statutes §176.041 exempts the Contractor from Workersq Compensation insurance requirements, or if such Contractor has no employees in the State of Minnesota, the Contractor will provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the Contractor from the Minnesota Workersq Compensation insurance requirements. If, during the course of the Contract, the Contractor becomes subject to the Workersq Compensation Insurance requirements, the Contractor must then comply with such requirement and provide the DTA with a Certificate of Insurance evidencing such coverage.

- (2) Commercial General Liability Insurance: the Contractor will maintain insurance protecting the Contractor from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor pursuant to the Contract. Minimum limits shall be:
- \$1,500,000 per occurrence
 - \$3,000,000 annual aggregate

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-\$3,000,000 annual aggregate, Products/Completed Operations

The following coverages must be included:

- Premises and Operations, Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Duluth Transit Authority, ATE Management of Duluth, First Transit, Inc., the State of Minnesota, to this Contract shall be named as Additional Insured.

- (3) a. Commercial Automobile Liability Insurance: The Contractor shall be required to maintain insurance protecting the Contractor from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned vehicles which may arise from operations under the Contract, and in case any work is subcontracted, the Contractor must require the subcontractor to provide Commercial Automobile Liability insurance. Insurance minimum limits shall be \$2,000,000 per occurrence, Combined Single limit for Bodily Injury and Property Damage. Owned, Hired and Non-Owned Vehicle must also be included. Duluth Transit Authority, ATE Management of Duluth, First Transit, Inc., the State of Minnesota, to this Contract shall be named as Additional Insured.

b. Contractor to provide Certificate of Insurance evidencing Commercial General Liability and Commercial Automobile Insurance coverages. Such coverage will include 30-days notice of cancellation, non-renewal or material change provisions. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

- ~~(4) Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance. The Contractor will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the Contractor's professional services performed under this Contract. The Contractor will carry the following minimum limits:~~
- ~~-\$1,500,000 per occurrence~~
 - ~~-\$3,000,000 annual aggregate~~

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the DTA General Manager. If the Contractor desires authority from the DTA for a higher deductible amount, the Contractor shall make such request in writing, specifying the amount of the desired deductible and provide financial documentation acceptable to the DTA General Manager from its own resources. The DTA will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act.

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**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the DTA, ATE Management, Inc., First Transit Inc., and the State of Minnesota as an additional insured.*

- b. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA.
- c. Additional Insurance Conditions:
- The Contractor's policy(ies) will be primary insurance to any other valid and collectible insurance available to the DTA, ATE Management of Duluth, First Transit, Inc. and the State of Minnesota with respect to any claim arising out of the Contractor's performance under this Contract.
 - The Contractor is responsible for payment of Contract related insurance premiums and deductibles;
 - If the Contractor is self-insured, a Certificate of Self Insurance must be provided to the DTA;
 - The Contractor's policy(ies) must include legal defense fees in addition to its liability policy limits with the exception of Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.
 - An umbrella or Excess Liability insurance policy may be used to supplement the Contractor's limit to satisfy the full policy limits required by this Contract.
- d. Right to Terminate. The DTA reserves the right to immediately terminate this Contract if the Contractor is not in compliance with the insurance requirements and DTA retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the DTA and copies of policies must be submitted to the DTA Procurement Manager upon written request.

ARTICLE 11 RULES AND REGULATIONS

Contractor agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the DTA, the City of Duluth, and their respective agencies which are applicable to its activities under this Contract.

ARTICLE 12 INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto or of constituting the Contractor as an agent, representative or employee of the DTA for any purpose or in any manner whatsoever. Contractor and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Contractor arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Contractor and its officers, agents, contractors and employees shall not be entitled to any compensation rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the DTA shall not in any way, be responsible to defend, indemnify or save harmless Contractor from liability or judgments arising out of the intentional or negligent acts or omissions of Contractor or any team member while performing the work specified by this Contract.

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ARTICLE 13 RIGHTS AND REMEDIES

The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Failure of the DTA to act shall in no way constitute a waiver of any right or duty afforded to it under the Contract, nor shall any such action or failure to act constitute an approval of or an acquiescence in any breach of this Contract, except as may be specifically agreed to by the DTA.

ARTICLE 14 DELAYS

Contractor shall notify DTA in writing of any delays, including all relevant details, immediately upon encountering any difficulties which threaten to delay the timely performance of this Contract, and may at that time or subsequently request an extension of the delivery date or schedule. However, such notification or request or acceptance of delinquent equipment shall not constitute acceptance of the delay, or request for extension, without written acceptance by DTA as a change in the Contract.

ARTICLE 15 CIVIL RIGHTS ASSURANCES

Contractor, for itself and its officers, agents, servants and employees, as part of this consideration of this Contract, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability, shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Contract.

- B. That all activities conducted pursuant to this Contract shall be conducted in accordance with the Minnesota Human Rights Act of 1974 as amended (Chapter 363), Title 7 of the U.S. Code, and any other regulations and executive orders which may be affected with regard hereto.

ARTICLE 16 STATE, FEDERAL, OSHA SAFETY REQUIREMENTS

All work performed under this Contract shall conform to all latest local, state and federal safety requirements, and shall, in all cases, meet all applicable OSHA and/or FMVSS requirements. It shall be the Contractor's responsibility to ensure complete compliance with these requirements.

ARTICLE 17 FORCE MAJEURE

The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the Contract and without the fault and negligence of the Contractor. Such causes must be clearly documented to the satisfaction of the DTA General Manager, and may include, but are not restricted to Acts of God or the public enemy, acts of the U.S. Government in its sovereign capacity or the DTA in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

ARTICLE 18 SEVERABILITY

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Contract.

ARTICLE 19 WAIVER

Any waiver by either party of any provision of this Contract shall not imply a subsequent waiver of that nor any other provision.

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ARTICLE 20 COMMUNICATIONS

Communications in connection with this Contract shall be in writing and shall be delivered personally; by e-mail, facsimile, or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of the DTA 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.

Designation for DTA

Designation for Contractor

Jim Caywood, Director of Maintenance

ARTICLE 21 PROPRIETARY RIGHTS

1. The DTA acknowledges that in the course of performing the services in this Contract, the Contractor may use software and related processes, instructions, methods and techniques that have been previously developed by the Contractor (collectively the "Pre-existing Materials", which shall include services) and that the same shall remain the sole and exclusive property of the Contractor.
2. No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to confidential information or Pre-Existing Materials. Nothing in this Contract shall be construed to grant either party any ownership or other interest in confidential information or Pre-existing Materials, except as may be provided under a license specifically applicable to such confidential information or Pre-existing Materials.
3. The provisions of this Article shall survive the termination of this Contract.

ARTICLE 22 EXTENT OF AGREEMENT

The Contract document represents the entire and integrated agreement between the DTA and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract documents may be amended only by written instrument signed by both DTA and Contractor.

ARTICLE 23 SUBCONTRACTING AND ASSIGNMENTS

Contractor shall not subcontract or assign this Contract or any portion thereof without the prior written approval of the Project Manager or as documented and accepted in their proposal.

ARTICLE 24 GOVERNING LAW

Unless otherwise specified, this Contract shall be governed by the applicable laws of the City of Duluth and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located in St. Louis County, Minnesota. However, litigation in Federal Courts involving the parties shall be in the appropriate federal court in the State of Minnesota.

ARTICLE 25 CANCELLATION

The DTA shall have the right to cancel this Contract if the DTA's governing body does not appropriate moneys to the department or agency in an amount equal to the cost of this Contract.

This Contract entered into as of the day and year first written above.

Duluth Transit Authority

Contractor:

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General Manager

Its _____

SPECIAL SPECIFICATIONS FOR HEAVY DUTY BUSES

SECTION 4 SPECIAL SPECIFICATIONS

IT SHALL BE UNDERSTOOD THAT REFERENCES TO THE “DTA” INCLUDES PARTICIPATING AGENCIES.

A. SPECIAL SPECIFICATIONS

1. The Proposer shall furnish written evidence satisfactory to the DTA that they Proposer can supply heavy duty transit buses in accordance with the specifications herein.
2. Proposer shall submit reports, reference materials, specification sheets, brochures, diagrams, and other written materials to enable a complete evaluation of the Proposed vehicle, including a STURAA 12-year and 500,000 mile test for each bus model Proposed, along with the vehicle weight and fuel economy reports.
3. Preproduction and Design Review Meetings. The selected Contractor must participate in at least one Preproduction and Design Review meeting with DTA representatives upon submission of a heavy duty bus purchase Contract. Meetings may be conducted via telephone or electronic means, at the discretion of the Agency placing the order. **The cost of remote electronic meetings will be borne by the Contractor. If an in-person meeting is requested by the Agency, the Agency will bear the cost of the meeting, which shall be agreed upon in advance.**
4. The Contractor shall be responsible for all materials and workmanship in the construction of the buses and all accessories used, whether the same are manufactured by the Contractor or purchased from supplier and as subject to the Warranty provisions set forth in this Contract. This provision excludes fare boxes, radios, and equipment supplied by the DTA, unless such equipment is damaged by the failure of a part or component for which Contractor is responsible, or if the damage to such equipment is solely caused by the Contractor during the manufacture of the bus.
5. Compliance with specifications: Deviations from the specifications must be listed in the Proposal. Major deviations may be sufficient to consider a Proposer as non-responsive. The DTA Project Manager reserves the right to waive any and all requirements of this contract or specification when deemed to be in the best interest of DTA.
6. Conditional proposals: Conditional Proposals or those which take exception to the specification may be considered non-responsive and may be rejected. Exceptions to the specifications must be noted on the Proposal response.
7. Modification of Contract: the DTA Project Manager may order changes in the work herein required, and may delete materials within the performance of the Contract, and the Contractor shall promptly comply with such order except that:
 - a. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part the work and an agreement on price is not reached, the DTA Project Manager may order Contractor to proceed with the work under protest.

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b. No order for any alteration, modification or extra work which shall increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the DTA Procurement Manager. Any changes to the Contract must be agreed upon by with the DTA and Contractor.

8. Interpretation of Contract: DTA determination of true meaning and intent of any ambiguities in this Contract shall be final and conclusive.

9. Certificate of Origin. The selected Contractor must furnish a Certificate of Origin (~~COI~~) to the DTA or Participating Agency placing the order. The COI must be mailed or delivered to the DTA Director of Finance, 2402 West Michigan Street, Duluth, MN 55806, or the designated contact person for the Participating Agency, as applicable. The information on the COI must be complete and accurate. Failure to provide the proper COI will result in delay of payment.

B. PRICE ESCALATION/ECONOMIC PRICE ADJUSTMENT

1. DTA and/or Participating Agencies reserves the right to order buses and equipment over the five (5) year period beginning upon the day of Contract award. The base price for buses furnished shall be the price agreed upon by the parties on the award date. The prices shall remain firm/fixed for any orders issued by DTA and/or Participating Agencies within a period of 365 days of Contract award. The price(s) of any buses/equipment ordered by DTA and/or Participating Agencies after the initial 365 days firm/fixed price period shall be the agreed upon base price adjusted to reflect any change which will be calculated based on the percentage change in the PPI Commodity Data for ~~Transportation Equipment-Truck Truck tractors, and buses chassis (chassis of own manufacturer, 33,001 lbs. or more, not seasonally adjusted, (WPU141106842)~~ **Series No. 1413**. The percentage change in this price index shall be used to adjust the Base Order Prices. However, in no event will the price(s) for any purchase order be adjusted by more than five percent (5%) of the price(s) that would have been in effect twelve (12) months prior to the date of the release, in accordance with the terms and conditions set forth above. If non-cardinal modifications are made to the technical specifications, the parties will enter into negotiations to determine the final unit price for subsequent orders.

In lieu of proposing adjustments to future years, Proposer may Propose set prices for years 2-5.

C. RESIDENT INSPECTIONS

1. The DTA will be represented at the Contractor's plant by DTA's resident inspectors who will monitor, in the Contractor's plant, the manufacture of transit buses built under this Contract. The resident inspectors will be authorized to approve the predelivery acceptance tests, and to release the buses for delivery. Upon request to the Contractor's quality assurance manager/supervisor, the DTA's resident inspectors will have access to the Contractor's quality assurance files related to this Contract. These files will include drawings, material standards, parts lists, inspection processing and reports, and records of defects.

2. No less than thirty (30) days before the beginning of bus manufacture, the resident inspectors will meet with the Contractor's quality assurance manager/supervisor to review the inspection procedures

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and checklists. The resident inspectors may begin monitoring bus construction activities two (2) weeks before the start of bus fabrication.

3. The DTA Project Manager reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing or installment process; provided, however, it is under no duty to make such inspection, and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, Contract requirements and specifications.

4. The contractor will provide office space for the DTA's resident inspectors in close proximity to the final assembly area. This office space will be equipped with desks, outside and inside telephones, file cabinet, chairs and clothing lockers sufficient to accommodate the resident inspector staff. The office space will be properly heated and air-conditioned.

5. The presence of these DTA's resident inspectors in the plant will not relieve the Contractor of its responsibility to meet all of the requirements of this Contract.

6. Any work or material found to be in any way defective shall be corrected or replaced by the Contractor at its own expense at the order of the DTA Procurement Manager, notwithstanding that it may have been previously overlooked or passed by an inspector.

D. CONTRACTOR INSPECTIONS

1. Fully documented tests shall be conducted by the Contractor on each bus following manufacture to determine its compliance with the terms and conditions herein. These acceptance tests shall include predelivery inspections and testing by the Contractor, and inspecting and testing by the DTA and/or the Participating Agency after the buses have been delivered. These tests are those quality assurance standard checks as well as specific tests called for under this Contract.

2. The Contractor's pre-delivery tests and inspections of all buses shall be performed at or near the Contractor's plant/facility, and they shall be witnessed by the DTA's inspector(s). These pre-delivery tests shall include visual and measured inspections, as well as testing the total bus operation. Test results shall be provided to the DTA upon completion.

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

4. Pre-delivery tests may include, but not be limited to:

a. A water test inspection to confirm the integrity of the vehicle's body seams, window frame seals, and other exterior components for their ability to keep rainwater, road splash, melting snow and slush and other exterior water from entering the inside of the vehicle. The vehicle interior is inspected for signs of water intrusion. The interior inspection will be performed with the side panels and access doors open for moisture detection.

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- b. Operation of all components, doors, kneeling, lights, signals, fareboxes, signs and other bus systems.
 - c. Operation of all IT components and systems, including AVL, annunciator, cameras, TSP, and other systems as applicable.
 - d. All other systems installed on the bus, as applicable.
5. Total bus operation must be evaluated during road tests. The purpose of the road tests is to observe and verify the operation of the bus as a system and to verify the functional operation of the subsystems that can be operated only while the bus is in motion.
6. Each bus shall be driven a minimum of fifteen (15) miles during the road tests. Observed defects shall be recorded on test forms. The buses shall be retested when defects are corrected and adjustments are made. The process shall continue until defects or required adjustments are no longer detected.
7. Additional tests may be conducted at the Contractor's discretion to ensure that the completed bus has attained the desired quality and have met the requirements of the Contract. DTA may, prior to commencement of production, demand that the Contractor demonstrate compliance with any requirement herein if there is evidence that prior tests have been invalidated by Contractor's change of supplier or change in manufacturing process. Such demonstration shall be by actual test or by supplying a report of a previously performed test on similar or like components and configuration. Any additional testing shall be recorded on appropriate test forms provided by the Contractor and shall be conducted before acceptance of the bus.
8. Delivery of the bus shall require written authorization of the DTA primary resident inspector. Such written authorization shall be supplied by the Contractor for signature.

E. DELIVERY

1. Delivery. Unless otherwise specified, the buses shall be delivered to the DTA and/or Participating Agencies during normal business hours, 7:00 a.m. to 3:30 p.m. local time, Monday through Friday. Alternate days and times may be approved by the DTA Project Manager in advance of delivery. Delivery shall be to the DTA Operating Center located at 2402 West Michigan Street, Duluth, MN 55806 or the Participating Agency, as applicable.
2. Vehicles will not be considered delivered if they have arrived in a condition that does not meet the Proposal specifications and ordered options. 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 vehicle(s) into revenue service, whichever occurs sooner**. Prior to acceptance by the DTA, the Contractor shall service and adjust each vehicle in preparation for regular transit service. This process will include, but not be limited to:
- All accessories properly adjusted
 - Electrical systems, brake and suspension systems inspected
 - A four-wheel alignment completed in compliance with manufacturer's specifications
 - Battery fully charged
 - All lubricants at OEM recommended levels

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- Cooling system checked
- Exterior and interior cleaned and washed
- ~~-A sixty-day temporary tag must be delivered for each vehicle.~~

3. The following documents are required at time of delivery:
 - a. Certificate of origin
 - b. Dealer invoice
 - c. Damage disclosure
 - d. Operator's manual for vehicle and add-on equipment
 - e. Maintenance and inspection schedule incorporating the required maintenance and inspection of the basic vehicle and its sub-systems.
 - f. Warranty information for chassis, body and additional equipment.
 - g. Altoona Test Report for this vehicle (as applicable).
 - h. Buy America documentation, as applicable.
 - 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 the delivery date of the bus.**
4. FOB Point and Freight. Delivery and passage of title under this Contract shall be as follows:
 - a. Delivery will be F.O.B. Destination to Duluth, MN.
 - b. Title will pass to the DTA upon delivery.
 - c. Buses shall be delivered with a reasonably full tank of gas.
5. The DTA reserves the right to refuse delivery if the vehicle does not appear to meet the standards herein, is damaged, or is not in good operating condition.
6. In the event any equipment or components delivered by the Contractor do not fulfill the intention of these specifications as expressed herein, or do not comply with the specification conditions and requirements as accepted by the Proposer, and were not listed as exceptions to the specifications, said equipment shall not be considered as being delivered, and the assessments for liquidated damages set forth herein shall apply and be enforced.
7. Further, if any equipment is delivered incomplete or contains any defective or damaged parts, said parts shall be removed and new parts shall be furnished. The new parts furnished, including the transportation charges for same shall be free of all costs to DTA. If DTA finds it necessary to perform any work on any equipment which should have been done by the Contractor within the intent of these specifications, the Contractor agrees to reimburse DTA all costs incident thereto, including material, labor and overhead.
8. The Contractor shall provide to the DTA Project Manager a history of each bus at the time of delivery that includes, at a minimum:
 - a. A list of defects noted and the disposition of each
 - b. List of all serial-numbered components
 - c. Shipping documents
 - d. Shipping exceptions and unresolved/open issues

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- e. Summary detail of each test performed on the bus or any part of the bus
- f. Complete record of inspection findings

At the DTA Project Manager's discretion, additional documentation may be added to the requirements of the bus history.

F. ACCEPTANCE TESTS

1. The DTA shall have thirty (30) days from the date of delivery of a bus to inspect and make an assessment of each bus delivered. The purpose of these tests is to identify defects that have become apparent between the time of bus release and delivery to DTA. The post-delivery shall include visual inspection and bus operations. No post-delivery test shall apply criteria that are different from criteria applied in an analogous pre-delivery test (if any).

2. Within such acceptance period, the DTA can:

- a. Accept the bus without identified deficiencies and place the bus into revenue service;
- b. Declare the bus to be substantially completed, requiring the correction of minor identified deficiencies, and shall conditionally accept such bus and withhold a portion of payment per below, or
- c. Declare the bus not to be acceptable, requiring the correction of major deficiencies and shall reject such bus.

3. Buses that fail to pass the post-delivery tests are subject to non-acceptance. The DTA shall record details of all defects on the appropriate test forms and shall notify the Contractor of non-acceptance of each bus within five (5) days after completion of the test. The defects detected during these tests shall be repaired by the Contractor at Contractor's sole expense.

4. Acceptance of any portion of the equipment prior to final acceptance of the system shall not release the Contractor from liability for faulty workmanship or materials or for the failure to fully comply with all of the terms of this contract.

5. ~~Pending acceptance of the equipment, it is owned by and is the responsibility of the Contractor.~~

The Contractor will be responsible for any losses incurred by DTA prior to acceptance due to improper performance, or failure to meet specifications or actions of the Contractor's employees or subcontractors. If a delay in acceptance results from poor performance of the equipment, DTA shall be not be liable for payment and there shall be no interpretation that the delay constitutes an unstated or constructive acceptance of the equipment.

6. In the event the DTA does not accept, conditionally accepts, or rejects a bus within thirty (30) days after delivery of such bus to DTA, or in the event the DTA places a bus into revenue service, DTA shall be deemed to have accepted such bus, unless written notice is otherwise provided to Contractor. In the event the DTA conditionally accepts a bus, the DTA shall pay the purchase price to the Contractor in respect of such conditionally accepted bus, but shall be entitled to withhold from the purchase price therefor an amount equal to the cost of rectifying the identified deficiencies as mutually agreed by DTA and the Contractor, acting reasonably. DTA shall be entitled to withhold such amount until the deficiency relating to such withheld amount is corrected to the satisfaction of the DTA, acting reasonably.

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7. Retention of sums charged against Contractor: When, under any provision of the Contract, the DTA Project Manager shall charge any sum of money against the Contractor, the amount of such charge shall be deducted and retained by DTA from the amount of the next succeeding payment or from any other monies due or that may become due the Contractor on account of the Contract. If, on completion or termination of the Contract, monies due DTA are found insufficient to cover DTA charges against the Contractor, the DTA Project Manager shall have the right to recover the balance from the Contractor or its sureties. **Retention of sums charged against the Contractor shall not exceed 5% of the total of the respective Participating Agency's order.**

G. WARRANTY GUARANTEE

1. The Contractor hereby warrants to the DTA Project Manager that all of the equipment furnished under the procurement shall be free from defects in material and workmanship under normal operating use and service. The Contractor shall provide such a Warranty beginning at the time of final acceptance of the buses and continuing for a period as specified on all equipment. **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.**

The Warranty shall cover all parts and labor costs during the Warranty period. The remedial work to correct any of the potential deficiencies shall include the repair or replacement, at the Contractor's option, of equipment, components, devices and/or material. It is expressly understood that this Warranty covers all parts and labor costs necessary and that all cost for the necessary labor and material during the Warranty period shall be borne by the Contractor and not by DTA except as provided for herein.

2. The Contractor also agrees to provide all labor and material to replace, during the period of this Warranty, without expense to DTA any and all parts which may be damaged due to defects in, or failure of such parts or of any other part or parts of the equipment furnished under the Contract. DTA shall maintain the equipment in accordance with the Contractor's instructions in order to maintain this Warranty, and the Contractor shall be responsible for all shipping charges.

3. Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the construction of the equipment and for adequate installation and connection of all equipment, accessories, specialties and components. Under no condition shall Contractor delegate this responsibility to suppliers or other sources.

4. Any apparatus, device or material which, in the sole opinion of DTA, requires excessive service during its operation, shall be brought to the attention of the Contractor by the DTA Procurement Manager prior to the expiration of the Warranty. The Contractor shall be required to repair or replace the apparatus, device or material at no expense to DTA. Should a "class failure" be involved, the Contractor may be required by the DTA Procurement Manager to extend the Warranty on that item

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until the requirement for excessive service is eliminated. Excessive service is defined as three (3) failures (an event or failure of a given device and/or component in a unit or units which renders the unit or units inoperative and/or unsuitable for the intended purpose) or malfunctions (an event or failure of a given device and/or component in a unit or units which causes a degraded performance of the equipment, but does not render the equipment inoperative) during the warranty period. A "class failure" is a failure of a given component and/or device in two buses provided during the warranty period. The determination of a "class failure" shall assume that all equipment within its respective category has these defects and shall ultimately experience these same failures.

5. In the event the Contractor fails to comply within ten (10) working days to a request by the DTA Project Manager to repair, replace or correct damaged or defective work, materials, specialties, equipment and accessories, the DTA Project Manager shall, upon written notice to the Contractor, have authority to deduct the cost of labor and material incurred by DTA itself in making such repairs from any compensation due or to become due the Contractor. In the event the Contractor has been paid, the Contractor agrees to reimburse DTA for the cost thereof. **Where additional time may be required, within ten 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 for long-lead parts or components as needed. Contractor shall maintain a sufficient stock of high usage parts to prevent unnecessary delays.** It is understood, however, that the said Warranty or Guarantee will not apply to any equipment which has been repaired or altered without the knowledge or consent of the Contractor and which repair or altering affected its stability and/or reliability; nor will said Warranty or Guarantee apply if the equipment has been subjected to other than normal use under conditions which prevail in DTA service. The burden of proof for any negligence on the part of DTA shall rest with the Contractor. Temperature, humidity, bus vibration and ambient electric conditions shall be considered normal operating conditions for this equipment. The Warranty shall not cover the replacement and maintenance items (such as light bulbs) made in connection with normal maintenance service.

6. Labor costs for DTA to diagnose and to exchange faulty components, subassemblies or equipment and the shipping costs to return such items to a service location nominated by the Contractor for repair or replacement as provided for herein shall be at the expense of the Contractor. The shipping costs, including packing and insurance, to ship repaired or replaced items to DTA shall be at the expense of the Contractor.

The above Warranties are in addition to any statutory implied warranties or remedies imposed on the Contractor.

7. The DTA Project Manager or the Participating Agency shall have the option, exercisable within one (1) year subsequent to award of the Contract, to extend the above Warranty for one (1) or two (2) years beyond the one year as noted in the above paragraph, at an additional cost to be quoted by the manufacturer as part of its Proposal submission. **This extension is applicable to items covered under the Manufacturer's Warranty, and or any individual major component manufacturer warranty, such as engine, transmission, axles, etc. Costs for extended warranties shall be itemized at the time of Proposal.**

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H. WARRANTY PROVISIONS

1. The complete bus, propulsion system, components, major subsystems and body and chassis structure are to be warranted free from defects and related defects for twelve months or 50,000 miles, whichever comes first, beginning on the date of revenue service, or thirty (30) days after acceptance, whichever is earlier. The Warranty is based on regular operation of the bus under operating conditions prevailing in the DTA's locale.
2. The Contractor is responsible for all warranty-covered repair work. To the extent practicable, DTA will allow the Contractor or its designated representative to perform such work. At its discretion, DTA may perform such work if it determines it needs to do so based on transit service or other requirements. Such work shall be reimbursed by the Contractor.
3. If DTA performs the warranty-covered repairs, it shall correct or repair the defect and any related defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, DTA may use Contractor-specified parts available from its own stock if deemed in its best interests.
4. 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.**
5. The Contractor may request that parts covered by the Warranty be returned to the manufacturing plant. The freight cost for this action shall be paid by the Contractor.
6. DTA shall be reimbursed by the Contractor for labor. The amount shall be determined by DTA for a technician at a straight time wage rate plus fringe benefits and overhead adjusted for DTA's most recently published rate in effect at the time the work is performed, ~~plus the cost of towing the bus if such action was necessary and if the bus was in the normal service area.~~ These wage and fringe benefit rates shall not exceed the rates in effect in DTA's service garage at the time the defect correction is made.
7. The Contractor shall reimburse/respond to the Warranty claim with an accept/reject decision including necessary failure analysis no later than sixty (60) days after DTA submits the claim and defective part(s) **are received by the Contractor** when requested. The Warranty reimbursement shall include towing, travel and all related expenses, as applicable, if the repairs required the bus to be towed to and from an OEM repair shop outside of the DTA service area. The parties should reconcile all outstanding warranty claims at least once per quarter throughout the entire warranty period.
8. If any component, unit or subsystem is repaired, rebuilt or replaced by the Contractor or by DTA with the concurrence of the Contractor, the component, unit or subsystem shall have the unexpired warranty period of the original. Repairs shall not be warranted if Contractor-provided or authorized

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parts are not used for the repair, unless the Contractor has failed to respond within five (5) working days.

9. Body, body structure, structural elements of the suspension and engine cradle are warranted to be free from defects and related defects for three (3) years or 150,000 miles, whichever comes first.

10. Primary load-carrying members of the bus structure, including structural elements of the suspension are warranted against corrosion failure and/or fatigue sufficient to cause a Class 1 or Class 2 failure for a period of twelve (12) years or 500,000 miles, whichever comes first.

11. Propulsion system components, specifically the engine, transmission, or drive motors, and generators (for hybrid technology) and drive and non-drive axles shall be warranted to be free from defects and related defects for the standard two (2) years or 100,000 miles, whichever comes first.

12. An extended warranty to a maximum of five (5) years or 300,000 miles, whichever comes first, may be purchased at an additional cost. ~~The warranty shall include all towing, travel and all related expenses.~~

13. Contractor warrants the ECS for five (5) years or ~~150,000~~ 100,000 miles, whichever comes first. The ECS shall include, but is not limited to, the following components:

- Complete exhaust system, including catalytic converter (if required)
- After treatment device
- Components identified as emission control devices

14. Major subsystems shall be warranted to be free from defects and related defects for a period of two (2) years or 100,000 miles, whichever comes first. Items included as major subsystems include:

- Brake system
- Destinate signs
- Heating, venting
- A/C unit and compressor
- Door systems
- Air compressor
- Air dryer
- Wheelchair lift and ramp system
- Starter
- Alternator
- Charge air cooler
- Fire suppression
- Power plan driven or mounted fan driven and power steering hydraulic or electric systems
- Cooling systems
- Radiator
- Transmission cooler
- Passenger seating (excluding fabric)
- Fuel system and delivery system
- Surveillance system, including cameras and video recorders

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Communications equipment
Hybrid drive system, including battery storage and controls
Beltless alternator
Paint and decal provisions
Corrosion protection
Electric fan system
Multiplex system

15. If, during the Warranty period, repairs or modifications on any bus are necessary due to defective design, materials, or workmanship, and such repairs or modifications are not completed within thirty (30) calendar days, ~~the applicable warranty period shall be extended by the number of days equal to the delay period~~ **the Contractor will work with the DTA to obtain from the OEM an extension to the warranty period equal to the delay period.**

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

17. The Warranties shall not apply to the following items: scheduled maintenance items, normal wear-out items and items furnished by DTA.

18. The Contractor shall, at its own expense, have a competent engineering service representative(s) available on request to assist the DTA's staff in the solution of engineering or design problems within the scope of the specifications that may arise during the Warranty period.

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

20. DTA shall submit Warranty claims within 30 days of the date the failure, unless the nature of the failure requires additional time to diagnose and evaluate the scope of the failure. If the DTA requires additional time to process a claim, the DTA will notify the Contractor within 30 days of the date of the failure of the pending claim. Contractor will allow an extension of an additional 30 days from the date of the failure to file the Warranty claim.

I. FLEET DEFECTS

1. A Fleet Defect is defined as cumulative failures of **25 percent (25%)** in the same components in the same or similar application where such items are covered by Warranty **in orders of ten or more buses**. A Fleet Defect shall only apply to the Warranty period.

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2. For the purpose of Fleet Defects, each option order shall be treated as a separate bus fleet. In addition, should there be a change in a major component within either the base order or an option order, the buses containing the new major component shall become a separate bus fleet for the purposes of Fleet Defect.
3. The Contractor shall correct a Fleet Defect under the Warranty provisions defined in this document. **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.** After correcting the Defect, DTA and the Contractor shall mutually agree to and the Contractor shall promptly undertake and complete a work program reasonably designed to prevent the occurrence of the same Defect in all other buses and spare parts purchased under this Contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the work program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the work program shall include inspection and/or correction of all of the buses in the fleet via a mutually agreed-to arrangement.
4. The Fleet Defect warranty provisions shall not apply to DTA-supplied items, such as radios, fare collection equipment, communication systems and tires. In addition, Fleet Defects shall not apply to interior and exterior finishes, hoses, fittings and fabric.
5. If DTA detects a Defect within the Warranty period, it shall, within twenty (20) working days, notify the Contractor's representative. The Contractor or its designated representative shall if requested, begin work on Warranty-covered repairs within five (5) working days after receiving notification of a Defect from DTA. DTA shall make the bus available to complete repairs timely with the Contractor's repair schedule. **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.**
6. The Contractor shall provide at its own expense all spare parts, tools and space required to complete repairs. At the option of DTA, the Contractor may be required to remove the bus from the property of DTA while repairs are being affected. If the bus is removed from DTA property, repair procedures must be diligently pursued by the Contractor's representative.
7. The Contractor shall, upon request of DTA, provide failure analysis of Fleet Defect or safety-related parts, or major components, removed from buses under the terms of the Warranty that could affect fleet operation. Such reports shall be delivered within sixty (60) days of the receipt of failed parts.
8. If an item is declared to be a Fleet Defect, the Warranty holds with the declaration of the Fleet Defect. Once the Fleet Defect is corrected, the item(s) shall have remaining time and/or miles of the original Warranty. This remaining Warranty period shall begin on the repair/replacement date for corrected items on each bus if the repairs are completed by the Contractor or on the date the Contractor provides all parts to DTA.

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J. PARTS AVAILABILITY GUARANTEE

1. 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 award.
2. Parts will be interchangeable with the original equipment and be manufactured in accordance with the quality assurance provisions of this Contract.
3. Prices will not exceed the Contractor's then current published catalog prices.
4. Where the parts ordered by the DTA 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 lack of said ordered parts, then the Contractor will provide the DTA, within ~~eight (8)~~ 24 hours of DTA's verbal or written request, the original suppliers' and/or manufacturers' parts numbers, company names, addresses, telephone addresses, telephone numbers and contact persons' names for all specified parts not received by DTA.
5. Where the Contractor fails to honor this parts guaranty or parts ordered by the DTA are not received within thirty (30) days of the agreed upon delivery date, then the Contractor will provide to DTA, within seven (7) days of DTA's verbal or written request, the design and manufacturing documentation for those parts manufactured by the Contractor and original suppliers' and /or manufacturers' parts numbers, company name, addresses, telephone numbers, and contact persons' names for all of the specific parts not received by the DTA. Contractor's design and manufacturing documentation provided to the DTA will be for its sole use with regard to the buses procured hereunder, and for no other purpose. If parts are not received, warranty on the bus will be extended for the period of the delay in received parts.

K. DIAGNOSTIC EQUIPMENT, MAINTENANCE MANUALS, TRAINING

1. Contractor shall provide all maintenance diagnostic equipment for the vehicles, including personal computers, software, cables, readers, list of codes, tools, and other items to enable maintenance staff to fully utilize the available diagnostics. Cost for the diagnostic tools shall be ~~included in the purchase price of the vehicle~~ **separate from the base bus bid and added to the order at the Participating Agency's discretion.**
2. The following shall be provided at the time of delivery. The information shall be organized in a three-ring binder format with each section clearly identified.
 - a. A complete set of operating instructions, troubleshooting guide, inspection and service guide.
 - b. A detailed manufacturer's parts list.
 - c. A complete ~~as-built~~ electrical wiring diagram covering all electrical equipment and electrical circuits installed, complete with wiring codes for each vehicle ordered **within four weeks of delivery of the last vehicle of the order.**
 - d. The Contractor shall have available complete bus maintenance manuals to include the engine, transmission and OEM chassis as well as a complete parts manual for each

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component. The Contractor shall keep manuals up to date and available to the DTA for a period of three (3) years after the date of acceptance of the vehicle. **Contractor may provide sample manuals at the time of Proposal submittal.**

3. **Within thirty days of the first production bus,** the Contractor shall deliver the following training videos **and/or PowerPoint presentation** to the DTA and/or Participating Agencies on CD or DVD with periodic updates and changes to all manuals:

Front Suspension	Rear Suspension	Entrance Door Operation
Air Brake System	Electric System	HVAC Diagnostic Reader
Multiplex System	Engine Troubleshooting	Transmission Troubleshooting
Pneumatic System	AC Maintenance	Driver's Orientation
Hybrid Beltless Alternator (option)		Warranty

4. Detailed maintenance, parts and operator manuals covering all items built on the coach shall be supplied by the Contractor prior to acceptance of the first bus to be delivered at the property issuing the purchase order **within 30 days of the last bus of the order is delivered.** Manuals shall be delivered in three-ring binders with the sections separated as follows:

Maintenance Manuals	3 per property
Operators Manuals	5 for every bus
Parts Manuals	3 per property
Parts Price List	3 per property
OEM Destination Sign Manuals	3 per property
OEM Video System Manuals	3 per property
OEM Engine Manuals	4 per property
OEM Transmission Manuals	4 per property
Bus Electrical Schematics	5 per property
Bus Pneumatics Schematics	5 per property

5. Manuals shall contain data required for preventive and corrective maintenance of all parts of the buses including but not limited to the following:

~ Operating and Repair Publications

~ General vehicle information and specifications.

~ A complete, well-developed troubleshooting guide covering all mechanical, electrical and electronic components, including engine, transmission, and HVAC units.

~ All preventive maintenance, lubrication and adjustment requirements.

~ Complete wiring and schematic diagrams and schedules for wire and cable sizes and ratings including actual cable lay-out, plus locations in the coach of all electric and electronic components.

~ All CAN wiring diagrams.

~ All ground points control area network.

~ Complete air and hydraulic diagrams showing locations in the coach of all air and hydraulic components. The air system diagram shall be 11 in. x 17 in. CAD drawing with color coding, using actual printed colors to match systems.

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"Illustrative drawings, such as isometrics, exploded views or photographs identifying components in relationship to each other as mounted in the buses.

"Components shown in exploded views with all parts clearly identified including Contractor part number.

"Rebuilding procedures for all rebuildable components

"Detailed, well-illustrated procedures for component change-out plus servicing, adjusting, testing, and run-in information as required.

"Body and structural information and material specifications for major accident repair.

"Seating and stanchion layouts and window diagrams.

"11 in. x 17 in. scale drawing of driver's compartment, detailing all driver switches, controls, control panels and equipment locations (to be approved by NTD).

"Repair and calibration instructions and values.

"List of special test equipment and tools required to maintain and repair systems down to the component level including part number and supplier source.

"Three-dimensional drawings of bus and graphics and part number for all graphics.

6. Serial Numbers

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

"Engine

"Transmission

"All major subcomponents of the hybrid drive system (Option)

"Alternator

"Starter

"A/C compressor and condenser/evaporator unit

"Drive axle

"Power steering unit

"Fuel cylinders (if applicable)

"Air compressor

"Mobility device/wheelchair ramp

"Engine electronic control module

"Transmission electronic control unit

"Radiator

"Muffler

"Hydraulic pump

"Steering box

"Front/rear axle

"Axle bunk right/left

"Overhead driver keyboard

"Driver's seat

"Roof panel front/rear

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7. The Contractor shall provide updated serial numbers resulting from warranty campaigns. ~~The format of the list shall be approved by the National Transit Database (NTD) prior to delivery of the first production bus. Illustrated parts manuals shall contain exploded views that show all parts used on buses as built under this contract, and no other parts. The exploded views will show all fasteners and miscellaneous hardware. The manuals shall contain data arranged so that part numbers can be readily found and identified in the illustration for each system and subsystem component, assembly, subassembly or piece part from an orderly breakdown of the complete coach. It shall contain a ready reference part number index and part name index and be sufficiently well illustrated to identify items requiring repair, replacement, and storage for use in the maintenance of the buses. All subassemblies (such as wiper motors, starter moors, etc.) shall have the original manufacturer's part number displayed at the beginning the appropriate parts listing section. Lists shall include at least the following information for all parts as built:~~

~~"Generic description and specifications~~

~~"Contractor part number~~

~~"Brand name, where applicable~~

~~"Original manufacturer's part number (provide in separate cross reference binder)~~

~~"Indication if the part is custom manufactured only on request~~

~~"Standard hardware described by size, type, material and grade~~

~~"All original manufacturer names and addresses, all special tools, test and diagnostic equipment and their original manufacturer names and addresses.~~

8. Maintenance and parts manuals must be updated to include all changes made to the coach during production and post-delivery retrofits authorized or requested by the Contractor and to correct all errors and omissions found by NTD. Changes required to the parts and maintenance manuals due to warranty and/or post-delivery retrofits shall be completed within ninety (90) days from the date of modification approval. Manuals shall be available from the Contractor for fifteen (15) years following acceptance of the last coach. Revised parts price lists will also be supplied as price changes. 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.

9. Software updates to maintenance and parts manuals shall be available for fifteen (15) years following acceptance of the last coach.

10. 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.

11. The Contractor shall ~~include a minimum of eighty (80) hours provide a separate price for~~ maintenance training for DTA technicians within 180 calendar days of the delivery of the first bus on vehicle components and maintenance requirements. Training shall be provided at the DTA Operations

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Center on the days and times agreed to by the DTA Project Manager. The training program should include, but not be limited to, the following:

- a. Orientation
 1. Visuals of the production of the bus
 2. Compartment by compartment tour of the bus
 3. Special components or features
- b. Electrical and Electronics
 1. Location of all key electrical components
 2. Explanation of the wiring diagrams and wiring codes
 3. Explanation of the charging system and basic troubleshooting
 4. Explanation of the exterior and interior lighting systems along with basic troubleshooting
 5. Explanation of the safety shutdown system, including warning indicators and troubleshooting
 6. Operation of the multiplex system
 7. Hybrid beltless alternator (option)
 8. Electric cooling fan system
 9. Decals of electrical schematics on all electrical panels
- c. Engine and Accessories
 1. Explanation of the engine and location of key components
 2. Explanation of the engine driven accessories
 3. Explanation of the fuel, air and water system
 4. Explanation of the engine tune up procedures
 5. Basic troubleshooting procedures for the engine
 6. Engine overhaul/rebuilding
 7. Hybrid drive propulsion system (option)
- d. Transmission and Controls
 1. Explanation of the transmission or hybrid drive unit (option)
 2. Explanation of the electronic control system
 3. Basic troubleshooting of the transmission
 4. Transmission overhauling/rebuilding
- e. Air Conditioning
 1. Explanation of the air conditioning system and location of key components
 2. Explanation of the air conditioning electrical system
 3. Explanation of the air conditioning compressor along with troubleshooting and preventative maintenance
 4. Troubleshooting the air conditioning system
 5. Preventative maintenance of the air conditioning system
- f. Wheelchair ramp/lift
 1. Explanation of the ramp/lift system, and location of all components
 2. Explanation of the ramp/lift electrical system
 3. Proper ramp/lift adjustment procedure

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4. Troubleshooting of the ramp/lift system
- g. Brakes
 1. Explanation of the brake system
 2. Basic brake system repair, including brake adjustment
 3. ABS & traction control
- h. Air System
 1. Explanation of the air system, location of system components
 2. Troubleshooting the air system
 3. Preventative maintenance of the air system
- i. Suspension, Steering and Axles
 1. Explanation of the suspension system
 2. Basic repairs to the suspension system
 3. Trouble shooting of the suspension system
 4. Explanation of the steering system
 5. Troubleshooting of the steering system
 6. Explanation of the axles
 7. Ride height adjustment procedures
- j. Body
 1. Explanation of the body and attachment method of exterior body panels
 2. Basic repair of the exterior panels
- k. Door system
 1. Explanation of the doors system and components
 2. Explanation of the door electrical system
 3. Proper door adjustment procedures
 4. Rebuilding door motors
 5. Troubleshooting the door systems
- l. Parts (this module is at the DTA\$ option)
 1. Explanation of the parts manual
 2. Explanation of the parts numbering system
 3. Orientation to the bus and components
 4. Practice finding parts in the manual
 5. Explanation and training on the warranty
- m. Bus operation overview for maintenance employees (this module is at the DTA\$ option)
 1. Operator Compartment
 - i. Controls and switches
 - ii. Warning indicators and switches
 - iii. Seat adjustment
 - iv. Door control

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2. Walk around inspection
 - i. Compartment by compartment explanation
 - ii. Mirror adjustment
 - iii. Climate control system
3. Driving ~~instruction~~ **Information**
 - i. Turns
 - ii. Brakes
 - iii. Transmission shifting patterns and driving with the retarder
 - iv. Backing

12. The Contractor will provide ~~with the delivery of the first coach to the DTA~~ a **separate price for a** training session for the designated Train the Trainer Supervisors who will in turn orient Bus Operators on how to inspect, safely drive the bus, and operate all subsystems on the bus. The training session for the Trainers will include classroom and driving sessions as necessary. The training shall include, but not be limited to:

- a. Operator Compartment
 - i. Controls and switches
 - ii. Warning indicators and gauges
 - iii. Seat adjustment
 - iv. Door control
- b. Walk around inspection
 - i. compartment by compartment explanation
 - ii. mirror adjustments
 - iii. Climate control system
- c. Driving instruction
 - i. Turns
 - ii. Braking
 - iii. Transmission shifting patterns
 - iv. Backing

M. OPTIONAL SPARE PARTS PURCHASE

The Contractor shall provide pricing of major parts and components that may be purchased during the Contract period. The DTA and/or Participating Agencies reserve the right to negotiate final spare parts package, including final quantities and costs at the time of Contract award.

N. CONSUMABLE SPARE PARTS

The Contractor shall submit at the time of Proposal a list of recommended Consumable Spare Parts necessary within six (6) months after buses are placed in revenue service. The list must detail parts to maintain the fleet, identifying the vendor's name and address, vendor part number, full part description, unit cost, anticipated lead time, and estimated annual usage and include both inventory and non-inventory items.

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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.

O. LIQUIDATED DAMAGES

1. 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 the Contract or any extension thereof, DTA will be damaged thereby. Therefore, Contractor understands and agrees that the DTA may hold the Contractor responsible for damages in the amount hereinafter fixed for each and every day during which delivery, installation and complete operation of the equipment, service, or supply is delayed beyond the expiration date of the time fixed for delivery or such extensions of time as have been allowed in writing by the DTA Project Manager.
2. There shall be deducted from any money due or to become due to the Contractor subsequent to such time fixed for delivery, installation and complete operation and extensions of time allowed, a sum representing the accrued Liquidated Damages. Such deduction shall not be considered a penalty, but as the agreed monetary damages sustained by the DTA because the Contractor failed to deliver, install and have operating the equipment, or provide the service(s) within the time fixed for delivery or within such extensions of time allowed.
3. For supplies, services, or research and development, including training sessions or receipts of parts:
 - a. If the Contractor fails to deliver the supplies, maintenance manuals or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the DTA or Participating Agency a fixed, agreed, and liquidated damages, for each working day (this does not include weekends or holidays) of delay the sum of \$25.00 per item per weekday. Please note 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.
4. For Training Sessions or receipt of maintenance manuals:
 - a. In the event that either training sessions or receipt of maintenance manuals are delayed beyond the dates and schedules specified, the DTA Procurement Manager shall assess as Liquidated Damages the sum or twenty five dollars (\$25.00) per weekday per item (item is defined as all parts manuals or maintenance manuals, not each manual) not delivered.
5. For Heavy Duty Buses:
 - a. If the Contractor fails to deliver the buses within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the DTA or Participating Agency a fixed, agreed, and liquidated damages, for each working day (this does not include weekends or holidays) of delay the sum or one hundred fifty dollars (\$150.00) per bus per weekday. Please note 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.

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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 receipt of the signed order from the Participating Agency. 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, it must be communicated in the cost summary and it shall be at the Participating Agency's discretion 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 that may be assessed to the Contractor by any Participating Agency 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 under this Contract only for their respective bus order(s). Assessment of Liquidated Damages for any one order does not limit Liquidated Damages on future orders under this Contract.

- b. If, after the Participating Agency accepts the Contractor's timeline and delivery or performance is so delayed, the DTA Project Manager may terminate this Contract in whole or in part under the Default clause in this Contract and in that event, the Contractor shall be liable for fixed, agreed, and Liquidated Damages accruing until the time the DTA may reasonably obtain delivery or performance of similar supplies or services. The Liquidated Damages shall be in addition to excess costs under the Termination clause.
6. The Contractor shall not be charged with liquidated damages when the delay, delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Force Majeure clause in this Contract.
7. The Contractor hereby agrees to pay the afore stated amounts as fixed, agreed and Liquidated Damages, and not by way of penalty, to DTA and further authorizes DTA 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 DTA the difference or the entire amount, whichever may be the case, within thirty (30) calendar days after receipt of a written demand by the Procurement Manager.
8. The payment of aforesaid fixed, agreed and Liquidated damage 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 DTA arising at any time from the failure of the Contractor to fulfill the obligations referenced in this clause in a timely manner.

Section 6. SUBMITTAL REQUIREMENTS, EVALUATION

A. PROPOSER'S STATEMENT OF QUALIFICATION

1. **This paragraph is also attached to the proposal sheet for the convenience of the Proposer (we do not require two).**

- i. The DTA reserves the right to award the Contract based on the negotiated procurement process. The Proposer may be required upon request to prove to the satisfaction of the DTA that the Proposer has the skill and experience and the necessary facilities and financial resources to perform the Contract in a responsible, timely, and satisfactory manner.
- ii. Proposer shall submit a **representative** list of ~~all~~ fleets operating with similar type vehicles in the United States. **Proposer's standard list of references is acceptable.**
- iii. Proposers are required to submit with their Proposal one parts manual, one maintenance manual, and one operating manual. Manuals may be electronic.

B. COST PROPOSAL, OPTIONAL EQUIPMENT

1. The Proposer will submit on a separate form, a listing of available optional equipment with unit prices for the buses offered in the Proposal. Participating Agencies will notify the Contractor of any desired options when placing bus orders. Prices quoted for optional equipment shall remain firm for 180 days from when the first buses are delivered to the DTA or Participating Agency. Such optional equipment costs will not be used in the Cost Proposal Evaluation described above.

2. A Cost analysis may be performed as appropriate by the awarding Participating Agency. In order to assist the agency with such analysis, the successful Proposer agrees to provide required documentation in support of its quoted prices. The final contract award and pricing for the buses may be negotiated by each Participating Agency and or Participating Agency to include available optional equipment as it deems necessary.

C. EVALUATION PROCEDURES

1. 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.

2. Minimum acceptable technical specifications are contained in the section Technical Specifications. This is a BAFO process with clarifications as needed. For example, the DTA in the Technical Specification lists a specific part and the proposed vehicle works best with a part from a different manufacturer or manufactured in-house. The proposer should just list that as an exception. As we proceed through the BAFO process it is also helpful to note if that part is integral to the vehicle design.

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3. A Proposal may be considered non-responsive and may be rejected unless DTA determines in its sole discretion that it is in its best interest to accept the irregularity and none of the following has occurred: (1) the authorized Proposal form or format furnished is not used or is altered; (2) the completed Proposal form contains any unauthorized additions, deletions, alternatives, or conditions except those listed in the exceptions; (3) Proposer adds provisions reserving the right to reject or accept the award or enter into the Contract; (4) the Proposal form is not properly executed; (5) the Proposal form is incomplete or conditional; (6) a member of a joint venture and the joint venture submit Proposals for the same project (if such an instance, both Proposals may be rejected); (7) Proposal form entries are not made in ink or typed; or (8) other reasons deemed material to DTA.

4. Proposals will be analyzed for conformance with the instructions and requirements of the Proposal 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. DTA 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 form and organization specified. Therefore, Proposers shall pay close attention to and strictly follow all instructions.

5. 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 on the forms and according to the instructions of ~~Form for Proposal Deviation+~~. 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+~~.

6. Evaluations will be made in strict accordance with all of the evaluation criteria and procedures specified in ~~Proposal Evaluation Criteria+~~. DTA will select for any award the highest ranked proposal from a responsible Proposer, qualified under ~~Qualification Requirements+~~ which does not render this procurement financially infeasible and is judged to be in the best interest of the DTA based on consideration of the evaluation ~~Proposal Evaluation Criteria+~~. Each of the Participating Agencies will do the same.

D. Evaluations of Competitive Proposals

1. **Qualification of Responsible Proposers.** Proposals will be evaluated in accordance with requirements of ~~Qualification Requirements+~~ to determine the responsibility of Proposers. Any Proposals from Proposers whom DTA 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 DTA, information submitted in a BAFO and information resulting from DTA inquiry of Proposer's references and its own knowledge of the Proposer. Should a Proposer offer a significantly better first Proposal the DTA can opt to award without the BAFO process.

2. **Detailed Evaluation of Proposals and Determination of Competitive Range.** Each Proposal will be evaluated in accordance with the requirements and criteria specified in ~~Proposal Evaluation Criteria+~~.

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

- a. Proposer is initially evaluated as responsible in accordance with the requirements of %Qualification Requirements+, or DTA finds it is reasonable that said Proposal can be modified to meet said requirements. Final determination of responsibility will be made with final evaluations.
- b. Proposer has followed the instructions of the Proposal and included sufficient detail information such that the Proposal can be evaluated. Any deficiencies in this regard must be determined by DTA to be either a defect that DTA will waive or that the Proposal can be sufficiently modified to meet these requirements.
- c. Proposal price would not render this procurement financially infeasible, or it is reasonable that such Proposal price might be reduced to render the procurement financially feasible. DTA will carry out and document its evaluations in accordance with these specifications. Any extreme proposal deficiencies that may render a proposal unacceptable will be documented. DTA will make specific note of questions, issues, concerns and areas requiring clarification by Proposers and to be discussed in any meetings with Proposers that DTA finds to be within the competitive range.
- d. Rankings and spreads of the Proposal against the Evaluation Criteria will then be made by DTA 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.

3. Proposals not within Competitive Range. Proposers of any Proposals that have been determined by DTA as not in the competitive range, and cannot be reasonably made to be within the competitive range, will be notified in writing. DTA will attempt to give notice promptly after Contract award. DTA's failure to give notice shall not be deemed to affect the validity of the Contract.

4. Discussions with Proposers in the Competitive Range. The Proposers whose Proposals are found by DTA 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 DTA to discuss answers to written or oral questions, clarifications, and any facet of its proposal.

5. In the event that a Proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in %Form for Proposal Deviation+, said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, DTA 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 DTA to find such Proposal to be outside the competitive range.

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6. 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 the 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.

7. Proposer(s) within the competitive range may be required to provide a demonstration vehicle similar in design requested to DTA's location on a date(s) specified by the DTA for inspection by DTA officials or make other arrangements agreed upon by both parties for inspection of a demonstration vehicle.

8. Factory and Site Visits. DTA reserves the right to conduct factory visits to inspect the Proposer's facilities and/or other transit systems from which the Proposer has supplied the same or similar equipment.

9. Best and Final Offers (BAFO). After determination of those Proposers within competitive range have been completed, each of the Proposers in the competitive range may be afforded the opportunity to amend its Proposal and make its BAFO based on Participating Agency requests. If a BAFO is requested, it shall include:

- a. Notice that discussions/negotiations are concluded;
- b. Notice that this is the opportunity for submission of a BAFO;
- c. A common date and time for submission of all written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs;
- d. Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs signed by the person who submitted the BAFO or accompanied by an explanation as to why it is not, and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal;
- e. Notice that if Proposers do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Proposal will be construed as their BAFO.

10. Any modifications to the initial Proposals made by an Proposer in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by the Participating Agencies according to the same requirements and criteria as the initial Proposals. DTA will make appropriate adjustments to the initial scores for any criteria which have been affected by any Proposal modifications made by the BAFOs. These final scores and rankings within each criterion will again be evaluated by DTA as well as each Participating Agency and considered according to the relative degrees of importance of the criteria defined in the Proposal Evaluation Criteria.

11. DTA reserves the right to make an award to a Proposer whose proposal it judges to be in the DTA's best interests based upon the Evaluation Criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs

E. Proposal Evaluation Criteria

1. The following are the complete criteria, listed by their relative degree of importance, by which responsive and responsible Proposals will be evaluated and ranked for the purposes of determining any

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competitive range and to make any selection of a Proposal for a potential award. Any exceptions, conditions, reservations or understandings explicitly, fully and separately stated on the Form for Proposal Deviation+which do not cause the DTA to consider a Proposal to be outside the competitive range, will be evaluated according to the respective evaluation criteria.

2. The award of this Contract shall be made to the firm or firms whose Proposal, in the opinion of the DTA, best meets the established criteria listed herein. Price shall be a factor in the award decision, although the award may not be necessarily made to the Proposal with the lowest price. Technical superiority, delivery time, service support and training, as well as price and technical aspects in order of priority are as follows:

a. Vehicle Characteristics (Weight =35%)

Evaluation of the vehicle characteristics includes, but is not limited to, the following:

- General conformance with technical specifications
- Vehicle construction and system design, including drawings
- Vehicle weight and fuel economy
- Seating capacity and interior layout
- ADA equipment, overall accessibility
- Accessibility for maintenance
- Maintainability, serviceability of components
- Suspension system, chassis materials, durability
- Operating characteristics
- HVAC system, capacity, cold weather provisions
- Exterior and interior noise levels
- Powertrain and non-mandatory options
- Weight and fuel economy
- Compatibility with DTA operating requirements
- Overall durability
- Vehicle Questionnaire response

b. Price (Weight = 30%)

Price is an important determinant for award, but not the sole consideration. Price shall be evaluated on its overall relationship to being most advantageous and favorable for each Participating Agency. Best Value may be used as part of this criteria.

c. Documented reliability of the Proposed Vehicle (Weight = 20%)

- a. Preventative maintenance schedule of the proposed vehicle
- b. Vehicle corrosion protection
- c. History of performance of the Proposed vehicle
- d. Test Results, safety and maintenance factors
- e. Cost and availability of spare parts

d. Service Support and Training (Weight = 10%)

Quality and availability of after-market field service support and quick replacement parts.
Availability of current price catalogs

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Freight costs for parts
Availability and qualifications of the field service support staff and engineering staff.
Training for new components, availability of refresher training, online course materials, etc.

Completeness, clarity and format of maintenance, parts and operating manuals, price lists, drawings and other technical materials.

e. History, References (Weight = 10%)

Evaluation of Proposer's responsibility includes, but is not limited to:

References

The Proposer's performance on similar contracts;

The Proposer's demonstrated commitment and capability to satisfy warranty, repair and parts supply requirements on other contracts;

The amount of effort required by other transit properties to secure satisfactory performance from the Proposer;

The character, reputation and engineering capabilities of the Proposer;

The Proposer's economic standing in the industry and the strength of its financial resources.

f. Other: (Weight = 5%)

a. Completeness and clarity of Proposal

b. Other items deemed necessary

Section 7 VEHICLE INFORMATION

A, Vehicle Information Questionnaire

1. The following questionnaire is required to be completed and returned with the Proposer's response to the technical specifications. The DTA will not respond to any Proposer's response(s) or request for approval or exception unless this questionnaire is completed and returned. This vehicle information questionnaire must be re-submitted with the Proposer's Proposal.

A. MANUFACTURER

- 1. Name _____
- 2. Address _____
- 3. Project Manager _____
- 4. Telephone Number _____
- 5. Email Address _____

B. BUS MODEL NUMBER

C. MAXIMUM WARRANTED SPEEDS

- 1. Main Drive Engine
 - Full load _____ RPM
 - No Load _____ RPM
- 2. Generator _____ RPM
- 3. Propulsion Engine Fan RPM _____
- 4. Power Steering Pump RPM _____
- 5. Transmission _____ RPM
- 6. A/C Compressor _____ RPM
- 7. Vehicle Speed _____ MPH

D. GENERAL DIMENSIONS

- 1. Overall Length
 - Over Bumpers _____ IN.
 - Over Body _____ IN.
- 2. Overall Width _____ IN.
- 3. Overall Height, Front

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Empty _____ IN.
With Gross Load _____ IN.

4. Overall Height, rear

Empty _____ IN.
With Gross Load _____ IN.

5. Wheelbase _____ IN.

6. Overhang, Center of Axle Over Bumper

Front _____ IN.
Rear _____ IN.

7. Height, Floor to Ceiling

Above Front axle _____ IN.
Above Rear Axle _____ IN.

8. Width of Aisle

At seat back _____ IN.

9. Floor height/height of aisle floor at any door with the air suspension operating on properly inflated tires _____ IN.

10. Height of door opening over first stop _____ IN.

11. Minimum road clearances

Front Axle _____ IN.
Rear Axle _____ IN.
Location at low point _____ IN.
Clearance _____ IN.

12. Grade Ability Angles

Approach angle _____ DEGS.
Departure angle _____ DEGS.
Ramp Breakover angle _____ DEGS.

13. WEIGHT

1. Curb weight _____ LBS.

2. Gross veh weight _____ LBS.

3. Main drive engine with accessories and
transmission ready for installation _____ LBS.

F. MAIN DRIVE ENGINE

1. Engine Manufacturer _____

2. Engine Model Number _____

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- 3. Number of Cylinders _____
- 4. Bore _____
- 5. Stroke _____
- 6. Displacement _____
- 7. Compensation Ratio _____
- 8. Local Service Rep. _____
- 9. Brake Horsepower _____ HP
At - _____ RPM
- 10. Crankcase Oil Capacity _____ QTS
New Engine Dry _____ QTS
New Engine Wet _____ QTS
- 11. Oil Filter Capacity
Full flow _____
By-pass _____
Manufacturer of By-pass filter _____
- 12. Idle speed _____ RPM
- 13. Fast idle speed _____ RPM

G. TRANSMISSION

- 1. Manufacturer _____
- 2. Transmission Model Number _____
- 3. Local Service Rep. _____
- 4. Ratio
1st _____
2nd _____
3rd _____
4th _____
- 5. Fluid Capacity _____
- 6. Electronic controls type and manufacturer. _____

H. AXLE FRONT

- 1. Manufacturer _____

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2. Model Number _____

3. Load Rating _____ LBS

I. REAR AXLE

1. Manufacturer _____

2. Model Number _____

3. Load Rating _____ LBS

4. Ratio _____

J. POWER STEERING

1. Pump Manufacturer _____

Model Number _____

Type _____

Relief Pressure _____

2. Steering Box Manufacturer _____

Model Number _____

K. BRAKES

1. Manufacturer of fundamental system _____

2. Brake Chambers Manufacturer and Size _____

Front _____

Rear _____

3. Automatic Slack Adjusters Manufacturer _____

Model Number _____

Front _____

Rear _____

4. Front Brakes

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Drum Size _____

Lining Size _____

Lining Type _____

5. Rear Brakes

Drum size _____

Lining size _____

Lining type _____

L. COOLING SYSTEM

1. Radiator Manufacturer _____

2. Radiator Model Number _____

3. Frontal area _____ SQ

4. Number of Radiator cores _____

5. Capacity of Cooling system _____ GALS

M. AIR CONDITIONING SYSTEM

1. Compressor Manufacturer _____

Model Number _____

Number of Cylinders _____

Cubic Displacement _____

Drive Ratio (to engine) _____

2. Condenser Manufacturer _____

Model Number _____

Number of Rows _____

Number of fins per inch _____

Fin thickness _____

3. Condenser Fan Manufacturer _____

Model Number _____

Fan Diameter _____

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Speed _____ RPM
Flow Rate _____ CFM

4. Evaporator Manufacturer _____

Model _____

Number of Rows _____

Type of Evaporator filters _____

Number of fins per inch _____

5. Expansion Valve Manufacturer _____

Model Number _____

Superheat setting _____

6. Drier Manufacturer _____

Model Number _____

N. AIR SYSTEM

1. Air Compressor Manufacturer _____

Model Number _____

Capacity _____

2. Air Governor Manufacturer _____

Model Number _____

3. Air Dryer Manufacturer _____

Model Number _____

O. ELECTRICAL SYSTEM

1. Generator Manufacturer _____

Model Number _____

Rating _____

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2. Batteries Manufacturer _____

Model Number _____

Number of Batteries _____

Rating at Maximum Engine RPM _____

Rating at Idle _____

3. Regulator Manufacturer _____

Model Number _____

P. Wheelchair Lift Manufacturer _____

Model Number _____

Q. Wheelchair Securement Device Manufacturer _____

Model Number _____

R. Frame Material & Grade: _____

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B. MAINTENANCE HISTORY

1. The Proposer will submit sufficient information to allow the DTA to evaluate the maintenance history of each of the Manufacturer's proposed buses. In particular, the DTA requires the following information:

a. Structural Defects

The Proposer will inform the DTA of any 30 to 60 foot transit buses manufactured by the Proposer in the past four (4) years which have experienced a structural defect. By structural defect, the DTA means any manufacturing or design defect in either the frame or body of the bus which has caused a bus to be removed from service. This definition includes failures in the floor, A-frame members, broken or loose mullions, and/or center frame of the bus. The Proposer will detail the name of the transit system experiencing the defect, the number of buses involved with the defect, the correction made, and the length of time the buses were out of service. Also, the Proposer will clearly state the time the defect was reported and the date the corrections were made.

b. If more than two percent (2%) of the buses manufactured in the past four (4) years have experienced a frame and/or body defect or if the Proposer has been in business for four or less years, the Proposer will be required by the DTA to post, at the time of Contract award, a ten year performance bond equal to twenty percent (20%) of the value of buses to guarantee that if frame and/or body defects occur, they will be promptly repaired.

2. Major Fleet Defects

The Proposer will state all fleet defects which have caused their transit buses manufactured in the past four (4) years to be removed from revenue service. The Proposer will provide specifics on the defects, state the number of buses experiencing the defects and the length of time the buses were out of service.

Submitted by: _____

Compiled by: _____

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SECTION 8 Proposal Pricing Sheet

Formal Request for Proposals

DTA Bus Purchase 2021

Duluth Transit Authority
2402 W. Michigan St.
Duluth, MN 55806
(218) 623-4329

NOTE: All proposals must be written, signed and transmitted in a sealed envelope, plainly marked with proposal number, subject matter and opening date.

Return Proposal in Duplicate with Duplicate Descriptive Literature

TAX: Federal Excise Tax Exemption Account # 41 74 0056 K

Item No.	Qty.	Description	Unit Cost
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2021 Order
Per the Attached Pricing Worksheet

2022 Order
Per the Attached Pricing Worksheet

<u>2023 Order</u>			PPI based on 2022 Price
0 to 5	30-foot Diesel buses	Adjustment from PPI plus or minus	_____
0 to 2	35-foot diesel BRT buses	Adjustment from PPI plus or Minus	_____
0 to 11	40-foot Diesel	Adjustment from PPI plus or minus	_____
0 to 11	40-foot BRT Diesel	Adjustment from PPI plus or minus	_____
0 to 8	45-foot Coach Buses	Adjustment from PPI plus or minus	_____

<u>2024 Order</u>			PPI based on 2023 Price
0 to 5	35-foot BRT Diesel buses	Adjustment from PPI plus or minus	_____
0 to 2	35-foot CNG Heavy Duty Bus	Adjustment from PPI plus or minus	_____

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0 to 12 40-foot Diesel Adjustment from PPI plus or minus _____

0 to 10 40-foot BRT Diesel Adjustment from PPI plus or minus _____

0 to 2 45-foot Coach Buses Adjustment from PPI plus or minus _____

2025 Order

PPI based on 2024 Price

0 to 2 35-foot diesel BRT buses Adjustment from PPI plus or minus _____

0 to 2 35-foot CNG Heavy Duty Bus Adjustment from PPI plus or Minus _____

0 to 7 40-foot BRT Diesel Adjustment from PPI plus or minus _____

0 to 4 45-foot Coach Buses Adjustment from PPI plus or minus _____

2026 Order

PPI based on 2025 Price

0 to 5 30-foot diesel buses Adjustment from PPI plus or minus _____

0 to 12 40-foot Diesel Adjustment from PPI plus or minus _____

0 to 11 40-foot BRT Diesel Adjustment from PPI plus or minus _____

Firm Name _____

Addendum

Mailing Address _____

Number _____

Acknowledgment:
Date Received

City State Zip Code Phone # _____

BY _____
(Print) Title

Signature _____

1. Proof of Responsibility Statement

The Duluth Transit Authority requires anyone submitting a bid or proposal to complete a sworn statement consisting of information relating to their capacity to complete the work requested, including financial stability, equipment, experience in the work prescribed, etc. If the Duluth Transit Authority is not satisfied with the sufficiency of the answers to the questionnaire and financial statement, it may reject the bid or disregard the same or require additional information. Attach separate sheets as necessary.

Statement of Bidder Qualifications and Responsibility

1. Name of Bidder or Proposer: _____
2. Address: _____
3. Legal form of company (partnership, corporation, joint venture, etc.) _____ (If a joint venture, identify the members of the joint venture and provide all information required in this section for each member.)
4. When Organized: _____
5. Where Incorporated (as applicable): _____
6. How many years has the firm or organization been engaged in the contracting business under the present firm name? _____

Questions 7-13: If the answer is Yes please provide details in a separate attachment.

7. Have you ever failed to complete any work awarded to you? No___ Yes___
8. Have you ever defaulted on a contract? No___ Yes___
9. Have you ever been sued for services you provided? No___ Yes___
10. Has your firm been charged with or convicted of, a violation of a wage schedule?
No___ Yes___
11. Does your organization possess all valid licenses, registrations and certifications required by federal, state, county or city law necessary for the work it seeks to perform? No___ Yes___
12. Has your organization had any type of business, contracting or trade license, certification or registration revoked or suspended in the last three years? No___ Yes___
13. Is your firm or organization a part of a multi-entity corporation, a wholly-owned subsidiary, or more than 51% owned by another firm or organization? No___ Yes___ If yes, provide documentation on the parent organization, audited statements of financial standing, working capital financing, authorization to enter into contracts, and other proof of responsibility.
14. Does your firm have experience in similar type of projects or work, and have sufficient equipment, personnel, expertise, and financial reserves to perform the work successfully? No___ Yes___ (If no, please explain on a separate sheet. If yes, please provide the names and contact information of three (3) references.)
15. Has your firm or organization been a debtor in a bankruptcy proceeding in the last ten years?
No___ Yes___ If yes, on a separate sheet of paper titled ~~Bankruptcy Information~~, state date, court of jurisdiction, amount of liabilities and amount of assets.
16. List the average range of annual gross receipts of the firm or organization for the past three years:

___ Less than \$500,000	___ \$500,000 to \$1 million
___ between \$1 million and \$5 million	___ between \$5 million and \$10 million
___ between \$10 million and \$15 million	___ above \$15 million
17. Identify any conditions (e.g., pending litigation, planned office closures, impending merger, etc.) that may impede the proposed firm or organization's ability to complete the work.

**Duluth Transit Authority
Heavy Duty Buses**

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18. Please provide a Proof of Responsibility Statement for each subcontractor or supplier providing goods or services in excess of fifty thousand dollars (\$50,000.00) listed in the bid or proposal.

Warranty:

The Contractor,

- (i) if it is a corporation, is duly incorporated, organized, validly existing and in good standing as a corporation under of the laws of the jurisdiction of its incorporation;
- (ii) if it is a partnership, non-profit organization, individual or sole proprietorship, is duly organized and validly existing under the laws of the jurisdiction in which it was organized;
- (iii) is duly qualified and in good standing under the laws of each jurisdiction where its existing ownership, lease, or operation of property in the conduct of its business requires, and
- (iv) has the power and legal right to conduct the business in which it is currently engaged and
- (v) attests that the execution, delivery and performance of the Contract does not and will not violate any provision of any applicable existing law, regulation or of any order, judgment, award or decree of any court or government applicable to the Contractor or the charter or by-laws of the Contractor or any mortgage, indenture, or other obligation.

Signed:

Title _____

Subscribed and sworn to before me this ____ day of _____, 20____

Notary Public

My Commission Expires _____, 20____

**Duluth Transit Authority
Heavy Duty Buses**

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2. Small or Disadvantaged Business Enterprise, Veteran-owned Business (including Service Disabled Veteran Business Enterprises)

- 1. Is the Contractor's firm or organization registered as a Small Business under the Small Business Administration's 8(a) Business Development Program, HUBZone business, or other development program through the SBA? No____ Yes____ (If yes, please provide a copy of the registration.)
- 2. Is the Contractor's firm or organization certified or registered as a Small Business, a Disadvantaged Business Enterprise, or a Veteran-owned business (including Service-Disabled Veteran-owned business) by a government agency authorized to certify or register the above noted entities?

No ____ Yes____ (If yes, please provide details and copies of the applicable registration or certification.)

The Contractor agrees to take all necessary steps to ensure that DBEs have the opportunity to compete for and perform work under this Contract.

The Contractor or Subcontractor shall not discriminate on basis of race, color, national origin or gender in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as the DTA deems appropriate.

Signed this ____ day of _____, 20____:

Title _____

3. Subcontractors and Suppliers Listing

List each subcontractor and/or supplier included in the bid or proposal. Include a Proof of Responsibility Statement for each subcontractor (of any tier) or supplier proposing to provide services or goods in excess of fifty thousand dollars (\$50,000. 00.) Subcontractors or Suppliers that are registered or certified S/DBEs must provide proof and the name of the certifying agency **prior to commencing work.**

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Subcontractor: _____ Type of work: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Supplier: _____ Type of supply: _____
S/DBE or Veteran owned? _____

Changes to this list must be in writing and approved by the Duluth Transit Authority **prior to the commencement of subcontractor or supplier's work.**

Signed: _____

Firm Name: _____

C. REQUIRED CERTIFICATES

**Duluth Transit Authority
Heavy Duty Buses**

Procurement # 041-20-0034.1

Certificate A. AFFIDAVIT OF NONCOLUSION

I hereby swear (or affirm) under penalty of perjury:

- 1. That I am the proposer (if the proposer is an individual), a partner of the proposer (if the proposer is a partnership), or an officer or employee of the proposing corporation, have authority to sign on its behalf (if the proposer is a corporation);
- 1. That the attached Proposal or Proposals have been arrived at by the Proposer independently, and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment, or services described in the invitation to Proposal, designed to limit independent proposing or competition;
- 3. That the contents of the Proposal or Proposals have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the Proposal or Proposals, and will not be communicated to any such person prior to the official opening of the Proposal or Proposals; and
- 4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Additionally;

The _____ hereby certifies it is /is not (circle one)
Company Name

included on the United States Comptroller General's consolidated list of persons or firms currently debarred for violations of various public contracts incorporating labor standards provisions.

Signed

Date

Duluth Transit Authority
Heavy Duty Buses

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Certificate B. **DEBARRED BIDDERS**

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters:

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the Duluth Transit Authority. If it is later determined by the Duluth Transit Authority that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Duluth Transit Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Print Name and Title

Signature

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

My Commission Expires _____, 20__

Certificate C. **Lobbying Restrictions**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, %Disclosure Form to Report Lobbying,+in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

CERTIFICATE D. TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION

Each Proposer for this Contract must certify that it complies with the requirements of 49 CFR Part 26.49 regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles.

Certification:

Certification:

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

BIDDER/COMPANY _____

Name of Bidder/Company _____

Signature of Representative _____

Type or Print Name _____

Title _____

Date _____

**Duluth Transit Authority
Heavy Duty Buses**

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Certificate E. Pre-Award and Post Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Certificate F Buy America

Proposals or Offers not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Complete only one certification, Certificate of Compliance or Certificate of Non-Compliance with Buy America Rolling Stock Requirements.

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

(Note: **Do not complete this Certificate if the above Buy America certification has been completed.**)

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

**Duluth Transit Authority
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Certificate G. Federal Motor Vehicle Safety Standards

As required by Title 49 of the CFR, Part 663, subpart D, the undersigned hereby certifies that the transit vehicle(s) to be provided through this contract meet all applicable Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration, if so required.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**Duluth Transit Authority
Heavy Duty Buses**

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Certificate H – Bus Testing Certification

The undersigned Contractor/Manufacturer certifies that the vehicle model or vehicle models offered in this Proposal submission complies with 49 CFR Part 665.

A copy of the test report (for each Proposed item) prepared by the Federal Transit Administration (FTA) Altoona, Pennsylvania Bus Testing Center or alternate testing facility approved by the FTA is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

**Duluth Transit Authority
Heavy Duty Buses**

Procurement # 041-20-0034.1

Certificate I. COMPLIANCE WITH SPECIFICATIONS

The proposer hereby states that it will comply with the technical specifications issued by the Duluth Transit Authority in all areas except those where approved equals were granted by the purchaser (s).

SIGNED _____

FIRM NAME _____

Certificate J. DTA Vendor Code of Ethics, Organizational Conflict of Interest

The respondent hereby states that it has read and will comply the DTA's Vendor Code of Ethics and Organizational Conflict of Interest (both on the DTA website) as well as the applicable Federal Clauses and Requirements contained herein.

SIGNED _____

FIRM NAME _____

Certificate K. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

Representation. The Offeror represents that-

(1) It ___ will ___ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds ~~%will+~~in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that-
It ___ does ___ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds ~~%does+~~in paragraph (d)(2) of this section.

(a) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded ~~%will+~~in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment-

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services-

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded ~~%does+~~in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment-

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services-

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

SIGNED _____

FIRM NAME _____

Certificate L ~~Combating Race and Sex Stereotyping~~

During the performance of this contract, the contractor agrees as follows:

1. ~~The contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating, including the concepts that (a) one race or sex is inherently superior to another race or sex; (b) an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; (c) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; (d) members of one race or sex cannot and should not attempt to treat others without respect to race or sex; (e) an individual's moral character is necessarily determined by his or her race or sex; (f) an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex; (g) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or (h) meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race. The term "race or sex stereotyping" means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex, and the term "race or sex scapegoating" means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.~~

2. ~~The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under the Executive Order of September 22, 2020, entitled Combating Race and Sex Stereotyping, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.~~

3. ~~In the event of the contractor's noncompliance with the requirements of paragraphs (1), (2), and (4), or with any rules, regulations, or orders that may be promulgated in accordance with the Executive Order of September 22, 2020, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided by any rules, regulations, or orders the Secretary of Labor has issued or adopted pursuant to Executive Order 11246, including subpart D of that order.~~

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~~4. The contractor will include the provisions of paragraphs (1) through (4) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.~~

Title: _____

**Duluth Transit Authority
Heavy Duty Buses**

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CONTACTS

Duluth Transit Authority

Nancy Brown

218-623-4329

nbrown@duluthtransit.com

Rochester

Bradley Bobbitt

507-328-2485

bbobbitt@rochestermn.gov**Fargo/Moorhead**

Lori Van Beek

Moorhead Transit Manager

Julie Bommelman

(701) 476-6686

IvanBeek@matbus.com

jbommelman@fargond.gov

Jordan Smith

(701)476-5940

jsmith@matbus.com

Mankato

Craig Rempp

crempp@mankatomn.gov

Minnesota Valley Transit Agency**MN DOT**

Darrell Washington

Jean Meyer

Kathy Fuller

Voni Vegar

Darrell.Washington@state.mn.us

Jean.Meyer@state.mn.us

Kathy.Fuller@state.mn.us

Voni.Vegar@state.mn.us

Sioux Falls

Scott Rust, Purchasing Manager 605-367-8836

srust@siouxfalls.org

Southwest Metro

Dave Jacobson

952-974-3110

djacobson@swtransit.org

St. Cloud

Gary Korneck

Procurement Mgr. 320-529-4488

gkorneck@stcloudmtc.com

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Chart A Schedule of Delivery

Attached and incorporated herein.

Potential for a total of 184 vehicles. Vehicles may be 30-foot, 35-foot or 40-foot diesel or CNG, with either conventional body style or BRT body style, or a 45-foot diesel commuter coach bus. Participating Agencies reserve the right to reduce the number of vehicles and/or change the type of vehicle (i.e. from a conventional body style to a BRT style or a diesel to a CNG), and/or to order buses from a different contract, as is deemed in the best interest of the agency. Participating Agencies may elect to purchase electric buses under a separate contract in lieu of diesel or CNG buses, at the sole discretion of the Agency (subject to available funding.)

Dates represent the year of the BUS ORDER. All buses must meet the then current FMVSS standards and Buy America requirements for the Delivery Year. ~~%~~Delivery Year+Is deemed 18-months following the date of the bus order.

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Request for Clarification or Approved Equal

This form is for informational purposes and does not modify the RFP. RFP modifications will only be made by means of issuing an addendum, not through this form. Proposers shall complete the areas above the DTA Use Only Section of this form and attach any supporting documentation to this form. Requests shall be numbered sequentially by the Proposer to uniquely identify each request. **The deadline for submitting requests electronically to nbrown@duluthtransit.com is 2:00 pm on October 5, 2020.**

Request Number: _____

Proposer: _____

Request for: _____ Approved Equal _____ More Information or Clarification

Specification or Requirement: RFP Section # _____ RFP Page # _____

Title: _____

Proposer's Request and Justification (list and attachments):

DTA Use Only

Date Received: _____ Date of Reply: _____

_____ Approved _____ Clarification

_____ Approved

_____ Approved Deviation _____ More information Required

Responses are due to DTA 10 days prior to due date or
Requests shall be considered denied

_____ Approved with Conditions shall be considered denied)

_____ Denied

_____ See Addendum # _____

Reasons, Conditions, or Clarification:

Request for Approved Deviation

This form is for informational purposes and does not modify the RFP. RFP modifications will only be made by means of issuing an addendum, not through this form. Proposers shall complete the areas above the DTA Use Only section of this form and attach any supporting documentation to this form. Requests shall be numbered sequentially by the Proposer to uniquely identify each request. **The deadline for submitting requests electronically to nbrown@duluthtransit.com is 2:00 pm on October 5 2020.**

Request Number: _____

Proposer: _____

Specification or Requirement: RFP Section # _____ RFP Page # _____

Title: _____

Proposer's Request and Justification (list and attachments):

DTA Use Only

Date Received: _____ Date of Reply: _____

- _____ Approved Deviation
- _____ Approved with Conditions (shall be considered denied)
- _____ More information Required
Responses are due to DTA 10 days prior to due date or
Requests shall be considered denied

Reasons, Conditions, or Clarification:
