



**DULUTH TRANSIT AUTHORITY
REQUEST FOR PROPOSALS
ELECTRIC TRANSIT BUSES**

**Duluth Transit Authority
Request for Proposals
Electric Transit Buses**

The Duluth Transit Authority is requesting sealed Proposals for the manufacture and delivery of two 40-foot Battery Electric Transit Buses.

Background information, description of the project scope of work and submission requirements may be obtained by calling, emailing or writing nbrown@duluthtransit.com, or 218-623-4329. Proposal packages will be mailed or emailed to all interested parties.

Proposals must be received no later than **2:00 p.m. on Thursday, July 11, 2024**.

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 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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

Table of Contents		Page
Section 1	Introduction	4
Section 2	General Conditions	5
	Qualification Requirements	13
	Acceptance/Rejection of Proposal	15
	Pre-award and Post Delivery Buy America	15
	Conditions, Exceptions, Reservations or Understandings	16
	Significant Dates of Procurement	16
Section 3	Federal Transit Administration Contract Clauses	17
Section 4	Contract (example for Proposal purposes)	33
Section 5	Special Specifications	41
	Resident Inspections	43
	Contractor Inspections	44
	Delivery	45
	Acceptance Tests	46
	Warranty Provisions	47
	Fleet Defects	54
	Battery Warranty Provisions	54
	Parts Availability Guarantee	55
	Diagnostic Equipment, Maintenance Manuals, Training	55
	Optional Spare Parts Purchase	60
	Consumable Spare Parts	60
	Liquidated Damages	60
Section 6	Submittal Requirements, Evaluation	62
	Proposer's Statement of Qualifications	62
	Cost Proposal, Optional Equipment	62
	Evaluation Procedures	62
	Proposal Evaluation Criteria	65
Section 7	Vehicle Information	68
	Conditions, Exceptions, Reservations or Understandings	69
Section 8	Proposal Sheets	70
	Required Certificates	73-81
Section 9	Request for Clarification or Approved Equal Form	82
	Request for Approved Deviation Form	83
Chart B	Pricing Worksheet	
Technical Specifications, Attachment A		

Section 1 Introduction

A. Introduction

1. The Duluth Transit Authority (“DTA”) is seeking Proposals from original manufacturers for two 40-foot battery electric transit buses for service in Duluth, Minnesota and Superior Wisconsin.

3. DTA invites qualified firms that can meet those objectives to submit proposals in response to this RFP for the production and delivery of two 40-foot battery electric buses and associated equipment.

4. Any Contract resulting from this RFP is subject in part to a financial assistance contract between DTA and the Federal Transit Administration (“FTA”) and/or the Minnesota Department of Transportation (“MN DOT”). Any obligations of DTA are contingent upon receipt of adequate funding.

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

Section 2 GENERAL CONDITIONS

1. REQUEST FOR PROPOSALS

- a) Proposals are requested for procurement of two 40-foot battery electric transit buses.
- 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 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) Proposals are due at **2:00 p.m. on Thursday, July 11, 2024**, at the DTA offices via email only.
- 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) DTA reserves the right to correct inaccurate awards.
- h) DTA will hold a **pre-proposal conference** on **Thursday, May 16, 2024 at 2:00 p.m.** in the DTA office, 2402 W. Michigan Street, Duluth, MN 55806. Attendance is not mandatory, but strongly encouraged. DTA allows electronic participation and in-person attendance. Please contact Nancy Brown at nbrown@duluthtransit.com for electronic meeting information.
- i) DTA intends to award the contract to the responsible Proposer(s) as early as **August 24, 2024**.
- 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 cost participation, FTA Section 5307 for this Contract; the potential Federal Assistance Listings include, but may not be limited to, 20.500, “Federal Transit Capital Investment Grants”, and/or 20.529, “Bus and Bus Facilities Formula Program”, 20.539, Low or No Emissions.
- l) Award of this Contract is subject to the approval of the DTA Board of Directors.

2. DEFINITIONS

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

- a) DTA, Agency or Operator shall mean the Duluth Transit Authority.
- b) Manufacturer, Proposer, Offeror, Vendor or Contractor shall mean the responsible firm or firms subsequently receiving a Contract award from DTA as a supplier of the buses and associated equipment as detailed in these specifications.
- c) “Bus” or “buses” shall mean a low-emission battery electric 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.

3. **INQUIRIES**

All inquiries and other correspondence relating to this RFP shall be with the DTA Director of Administration and addressed via email to Nancy Brown, nbrown@duluthtransit.com, or mail to Duluth Transit Authority, attention Director of Administration, 2402 W. Michigan Street, Duluth, MN 55806.

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 DTA 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 DTA is equal to that designated.

DTA 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 Director of Administration in writing no later than **2:00 p.m. on Thursday, June 20, 2024**. Any request for an 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. All requests must be submitted via email (preferred) or US Mail unless otherwise approved by the DTA in writing.

d) The replies to request under paragraph c) above will be posted in the form of an addendum on the DTA website, www.duluthtransit.com.

5. NOTIFICATION OF CHANGES TO RFP:

a. The DTA shall not be held responsible to notify prospective Contractors of changes to this RFP. All recipients of this RFP should monitor the DTA website at www.duluthtransit.com where any changes or addenda to this RFP will be posted. All proposals must include acknowledgement of addendums as provided herein.

b) Requests for deviation will be considered by DTA in advance of the RFP due date. Deviations must be submitted via email 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 **June 30, 2024** to the DTA Director of Administration via email at nbrown@duluthtransit.com. Responses to requests for deviation will be posted in the form of an addendum on the DTA website at www.duluthtransit.com.

c) 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 DTA 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.

6. 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 DTA technical specifications and list in order by Section number any deviations in their proposal and the DTA Specification.
- c) The entire Proposal may be submitted electronically, no hard copies are necessary but allowed.

7. CONSIDERATION OF PROPOSAL

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 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.

8. PREPARATION OF PROPOSAL

a. Proposals must be submitted on the forms attached. All blanks in the Proposal form must be completed with ink or typewritten. 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.

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

c. Proposals must be submitted no later than **2:00 p.m.** central time on **July 11, 2024**. Proposals received beforehand will not be reviewed until after the deadline. Proposals received after the specified time and date will not be considered. Time means local time in Duluth, Minnesota. Proposals received after such time will not be considered.

d. All proposals must be submitted emailed to nbrown@duluthtransit.com.

e. 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.

9. **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 received by the DTA prior to the time for the opening of Proposals.

10. **PROPOSAL REQUIREMENTS, FORMAT, REQUIRED CONTENT:**

The following elements will be considered the minimum contents of a proposal and must be submitted in the order listed. Failure to do so may be considered non-responsive. See the Proposal Format section for page limitations and proposal requirements. Proposals must detail implementation schedule with phases in proposal document.

Please note: Proposers must submit each proposal document as separate .pdf files.

Furthermore, Proposers should not mention price in the Technical Proposal document of their proposal. Price should only be mentioned in the Cost Proposal document of their proposal.

11. **PROPOSAL FORMAT:**

Proposals should adhere to the following format requirements:

- Proposals must be submitted as .PDF documents.
- The Proposer's submittal must adhere to the page limitations and formatting requirements identified in the table below. If a document exceeds the page limits, the excess pages may not be reviewed regardless of content.
- Submit the technical proposal and cost proposal as separate .PDFs. Documents may be submitted in the same email.
- Files should be named using the following format:
 - Technical proposal – "(Company Name) "Electric Bus Technical Proposal"; example: *OEM Bus Associates, Electric Bus Technical Proposal*
 - Cost proposal – "(Company Name)_Electric Bus Cost Proposal"; example: *OEM Bus Associates Electric Bus Cost Proposal*

12. CONTRACT FORM AND CHANGES

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

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

13. 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 these 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.

14. 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.

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 Director of Administration, 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 making such award. FTA preserves the right not to participate in such procurement.

If award is made, the Director Administration 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 Director of Administration within five days immediately following the award. The Director of Administration 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 Director of Administration 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.

DECISION ON PROTEST

The General Manager shall render his/her decision in writing within 14 days from 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.

15. **ORGANIZATIONAL CONFLICTS OF INTEREST**

- a. 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 ATE Management of Duluth SBC, 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 or ATE Management of Duluth SBC, Inc.
- b. The Contractor is responsible for maintaining and providing up to date conflict of interest information to the DTA's Project Manager via an email to nbrown@duluthtransit.com with the subject matter, "Conflict of Interest." 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 Project Manager via email to nbrown@duluthtransit.com.
- c. 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 Project Manager in analyzing the situation.
- d. The Contractor has the responsibility of formulating and forwarding a proposed mitigation plan to the DTA's Project Manager 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 Project Manager.
- e. If DTA's Project Manager, 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, DTA's Project Manager 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 Administration has the discretion to terminate the contract for default. No determination by 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.
- f. 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.

16. TAXES

DTA is exempt from payment of the Federal excise, transportation tax and Minnesota State sales tax. DTA 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).

17. **GOVERNMENT INSPECTIONS**

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 reasonably 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. DTA intends to contract with a bus assembly inspection firm for this procurement.

18. **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 battery electric transit buses and associated equipment.

19. **DISPOSITION OF RESPONSES**

All materials submitted in response to this RFP will become the property of 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.

20. **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:

- 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 DTA from any judgments or damages awarded against DTA in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives 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 DTA. 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, DTA reserves the right to release information in compliance with the Minnesota Government Data Practices Act.

21. 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.

22. MINNESOTA NONDISCRIMINATION REQUIREMENTS

In accordance with Minnesota §181.59, "DISCRIMINATION 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:

- (a) 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;
- (b) 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;
- (c) that a violation of this section is a misdemeanor; and
- (d) 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 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.

23. SINGLE RESPONSE

If only one Proposal is received in response to this RFP and it is found by 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 Officer 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.

24. QUALIFICATION REQUIREMENTS

- a. 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:

- i. **Proposer's financial statements** prepared in accordance with United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either the DTA or the Proposer.
 - ii. 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.
 - iii. 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.
 - iv. 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.
- b. Evidence that the human and physical resources are sufficient to perform the Contract as specified and assure delivery of all equipment within the time specified in the Contract, to include:
- i. 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.
 - ii. Adequate manufacturing facilities sufficient to produce and factory-test the estimated maximum number of vehicles requested in this RFP, 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.
- c. 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.
- d. Evidence of complying with all applicable Federal regulations including the submission of a test report from the Altoona testing facility in accordance with 49 CFR 655.

The above information may be requested by the DTA and used in consideration of Proposals.

25. ACCEPTANCE/REJECTION OF PROPOSALS

- a. This is a best value competitive procurement. DTA reserves the right to select the Proposal in the best interests of DTA by evaluating and comparing factors in addition to cost and price such that DTA may acquire the product that best meets 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 DTA believes offers the best value. The term "best value" also means the expected outcome of an acquisition that, in 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.
- b. DTA reserves 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 DTA, price and other evaluation criteria considered. The 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.
- c. 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.
- d. DTA may reject a Proposal that includes unacceptable deviations as provided in "Conditions, Exceptions, Reservations or Understandings".
- e. Proposals are not opened in public and all submittals become the property of DTA and will not be returned.
- f. DTA reserves the right to correct inaccurate awards.

26. PREAWARD AND POST DELIVERY AUDIT REQUIREMENTS. 49 U.S.C. 5323; 49 CFR PART 663

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

- 2.) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- ii. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- iii. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit:
 - 1.) manufacturer's FMVSS self- certification sticker information that the vehicle complies with relevant FMVSS or
 - 2.) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

27. 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. 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	May 2, 2024	1:00 p.m.
Presubmittal Meeting	May 16, 2024	2:00 p.m.
Questions/Requested Equals Due	June 20,2024	2:00 p.m.
Deviations	June 30, 2024	2:00 p.m.
Proposal Opening	July 11, 2024	2:00 p.m.
Interviews (if requested by DTA)	TBD	As required
Award	August 24, 2024	

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 require 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.

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: _____

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.

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 re 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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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

Clause Language

It is the policy of the Duluth Transit Authority, and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), 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 DBE's 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 the 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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

The contractor must promptly notify the 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 **the Duluth Transit Authority**.

A.10 EMPLOYEE PROTECTIONS

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

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 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

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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 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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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.

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.

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 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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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, 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) ("13(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

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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

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 procurement

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 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

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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.

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 flows down to all third-party contractors and their contracts at every tier.

Rights and Remedies of the Duluth Transit Authority

The Duluth Transit Authority shall have the following rights in the event that the Duluth Transit Authority 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, the Contractor expressly agrees that no default, act or omission of the Duluth Transit Authority shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority directs Contractor to do so) or to suspend or abandon performance.

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 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 takes action contemplated herein, the Duluth Transit Authority will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority 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's 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 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 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 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 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

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 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.

A. 27) PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the DTA on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

A.28) Repealed

A. 29) Notice of Legal Agreement or Litigation

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

Contractor shall promptly notify the Duluth Transit Authority of any current or prospective legal matter that may affect the Duluth Transit Authority or the Federal Government. Legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Duluth Transit Authority or the Federal Government as a party to litigation or any legal agreement in any forum for any reason. This notification provision applies to instances of false claims under the False Claims Act, or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Contractor is subject to this Agreement between the Contractor and the Duluth Transit Authority or the Federal Transit Administration, or an agreement involving a principal, officer, employee, agent or subcontractor of the Contractor. Knowledge, as it is used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer to information without delay and without change.

The Contractor agrees to include the above clause 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.

A30) FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION

FTA MA(29) February 7, 2022 Sec (G)

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

- (A) Does not have any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (B) Was not convicted of the felony criminal violation under any federal law within the preceding 24 months.

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

A31) TRAFFICKING IN PERSONS

FTA MA(19) February 7, 2022, Sec (F)

Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA) 22 U.S.C. §7104(g) and 2 C.F.R. Part 175

The Contractor will inform the Duluth Transit Authority immediately if any information it receives from any source alleging a violation of the prohibitions listed in this section.

Prohibition:

The Contractor agrees that it, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Contractor's award may not:

- (A) Engage in severe forms of trafficking in persons during the period of time that the Contractor's underlying agreement is in effect;
- (B) Procure a commercial sex act during the period of time that the Contractor's Underlying Agreement is in effect; or
- (C) Use forced labor in the performance of the Contractor's Underlying Agreement or sub agreements.

Contract Example for Proposal Submission

Electric Transit Buses

Section 4 Contract Example for Proposal Purposes

For purposes of this Contract example, the Contract is designated between the contractor and the Duluth Transit Authority.

This Contract, made as of _____, 2024 by and between _____, a _____ (LLC, corporation, etc.) located at _____, hereafter referred to as "Contractor", and the Duluth Transit Authority 2402 W. Michigan Street, Duluth, MN 55806, hereafter referred to as "DTA". 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 #041-024-0023.0 and any amendments thereto; Request for Proposals dated May 2, 2024, 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 PAYMENTS TO CONTRACTOR

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 of \$ _____ as accepted herein, subject to changes approved by DTA and Contractor.

Terms of payment shall be fifty percent (50%) of the purchase price due and payable five (5) days after arrival of the vehicle at the DTA Operations center, and the remaining fifty percent (50%) due and payable five (5) days after acceptance of the bus, or five (5) days after the vehicle is placed into revenue service, whichever is sooner. Payment does not imply acceptance of work. The granting of any progress payment or payments by DTA, or the receipt thereof by the Contractor, 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. DTA may withhold payment where the products or services or any claimed reimbursable expenses are not documented or warranted, or when the product does not meet the specifications herein or service was not performed in accordance with the terms of the Contract Documents.

Pay applications must be forwarded to the DTA Project Manager for review and approval.

ARTICLE 4 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 5 TERMINATION OF SERVICE

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 up to and including the date of written notice of termination of this Contract. Contractor must provide documentation satisfactory to the DTA General Manager, demonstrating actual costs authorized and incurred by Contractor, including overhead and profit at the documented same percentage rate as the Contractor's original proposal.

ARTICLE 6 CHANGES TO THE CONTRACT

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 DTA and the Contractor, shall be incorporated in written amendments to the Contract.

ARTICLE 7 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

To the extent permitted by law, Contractor shall ensure that at any time during normal business hours and as often as DTA may deem necessary, there shall be made available to DTA for examination, all of its records with respect to all matters covered by this Contract. Contractor will also permit 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 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 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.

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 DTA upon completion or termination of the services of Contractor or at such earlier time as requested by DTA. DTA shall maintain ownership of all data, formatting scripts, design templates and domain where they are not already an open-source product.

ARTICLE 8 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor agrees that it shall defend, indemnify, and hold harmless the DTA and ATE Management of Duluth SBC, its officers, employees, and agents, from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by Contractor or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the DTA and ATE Management of Duluth SBC in all matters where claims of liability against the DTA and/or ATE Management of Duluth SBC arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of the Contractor, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Contractor, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against DTA and/or ATE Management of Duluth SBC. On ten days' written notice from the DTA and/or ATE Management of Duluth SBC, the Contractor shall appear and defend all lawsuits against the DTA and/or ATE Management of Duluth SBC growing out of such injuries or damages. Contractor shall not be required to indemnify DTA and/or ATE Management of Duluth SBC for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omission of the DTA and/or ATE Management of Duluth SBC. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Contractor. Nothing in this provision shall affect the limitations of liability of the DTA and ATE Management of Duluth SBC as set forth in Minnesota Statutes Chapter 466.

The Contractor understands this provision may affect its rights and may shift liability and specifically agrees to the same.

ARTICLE 9 INSURANCE

- a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and the DTA and ATE Management of Duluth SBC from all liability described in the paragraph above.
 - (1) Workers' compensation in accordance with the laws of the state of Minnesota.
 - (2) Commercial General Liability and Automobile Liability Insurance with limits not less than \$2,000,000 Single Limit or \$1,000,000 single limit with a \$1,000,000 umbrella policy, in a company approved by the DTA.
 - (3) DTA and ATE Management of Duluth SBC, Inc. shall be named as an **Additional Insured** under the Commercial General Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the DTA and ATE Management of Duluth SBC. Contractor

shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the DTA and ATE Management of Duluth SBC as an additional insured.*

- b. The insurance required herein shall be maintained in full force and effect during the life of this Contract and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Contract.
- c. Certificates showing that Contractor is carrying the above-described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.

ARTICLE 10 RULES AND REGULATIONS

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

ARTICLE 11 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 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 DTA, its officers, agents, contractors and employees shall in no way be the responsibility of 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, 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.

ARTICLE 12 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 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 13 DELAYS

Contractor shall notify DTA Director of Administration 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 14 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 15 STATE, FEDERAL 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 16 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 17 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 18 WAIVER

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

ARTICLE 19 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

ARTICLE 20 PROPRIETARY RIGHTS

- a. 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.
- b. 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.
- c. License to use "Subject Data." All "Subject Data", including specifications, technical data, records and reports, engineering drawings (including shop drawings and working drawings), manuals and instruction materials and computers or microprocessor software that is delivered or specified to be delivered under this Contract shall remain the property of the Contractor, provided however, DTA shall have a royalty-free, non-exclusive, non-transferrable and irrevocable license to use such Subject Data.
- d. The provisions of this Article shall survive the termination of this Contract.

ARTICLE 21 EXTENT OF AGREEMENT

The Contract document represents the entire and integrated agreement between 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 22 SUBCONTRACTING AND ASSIGNMENTS

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

ARTICLE 23 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 24 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.

ARTICLE 25 PRICE ADJUSTMENT

Notwithstanding anything else to the contrary contained herein, in the event that a price adjustment is required in respect of changes that are mandatory as a result of legislation or regulations that become effective after the date of tender transmission, such price adjustment may be granted at the sole discretion of the DTA provided Contractor provides documentation satisfactory to the DTA General Manager documenting the actual cost of the increase that is directly related to the legislation or regulation. Contractor may not increase the ratio of overhead costs allocated to the Contract or the percentage of profit as a result of the legislation or regulation.

ARTICLE 26 DATA ACCESS

To the extent DTA is legally and contractually permitted, and to the extent that DTA practicably has access thereto, DTA grants Contractor the right to inspect, examine, download, and otherwise obtain

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

any information or data available from components provided by Contractor, including, but not limited to, any electronic control modules or other data collection devices, to the extent necessary to enable the DTA or the Contractor to perform reliability maintenance analysis, corrective action and/or other engineering type work for the buses.

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

Duluth Transit Authority

Contractor:

General Manager

Its _____

ATTEST:

Its _____

Its _____

SPECIAL SPECIFICATIONS FOR BATTERY ELECTRIC BUSES

SECTION 5 SPECIAL SPECIFICATIONS

A. SPECIAL SPECIFICATIONS

1. The Proposer shall furnish written evidence satisfactory to the DTA that the Proposer can supply electric transit buses and associated equipment 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.
3. Proposer shall submit with the Proposal the following:
 - i. Results of fire safety tests conducted on the Contractor's standard 40-foot battery electric bus
 - ii. Results of emissions tests conducted on the Contractor's standard 40-foot battery electric bus
 - iii. The Contractor will submit a completed Vendor Safety Compliance Matrix incorporated herein by reference, along with an explanation of any safety systems and features that are unique to the standard 40-foot battery electric bus that are not covered in the Safety Compliance Matrix.
 - iv. The Contractor shall submit a completed Vendor Warranty Compliance Matrix incorporated herein by reference, along with a copy of warranty terms and conditions applicable to the buses under this RFP.
 - v. The Contractor shall submit a completed Vendor Compliance Matrix on the general features of the buses.
4. 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 purchase Contract for 40-foot battery electric buses. Meetings may be conducted via telephone or electronic means, at the discretion of DTA. The cost of remote electronic meetings will be borne by the Contractor. If an in-person meeting is requested by DTA, DTA will bear the cost of the meeting, which shall be agreed upon in advance.
5. 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 any 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.
6. 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 the DTA.

7. 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.

8. Modification of Contract: The DTA Director of Administration 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 Director of Administration may order Contractor to proceed with the work under protest.

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 Director of Administration. Any changes to the Contract must be agreed upon by DTA and Contractor.

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

10. Certificate of Origin. The selected Contractor must furnish a Certificate of Origin ("COI") to the DTA upon delivery. The COI must be mailed or delivered to the DTA Director of Administration, 2402 W. Michigan Street, Duluth, MN 55806. The information on the COI must be complete and accurate. Failure to provide the proper COI will result in delay of payment.

B. RESIDENT INSPECTIONS

1. The DTA will be represented at the Contractor's plant by the 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 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 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 Director of Administration, notwithstanding that it may have been previously overlooked or passed by an inspector.

C. 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 pre-delivery inspections and testing by the Contractor, and inspecting and testing by DTA 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 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.
 - b. Operation of all components, doors, kneeling, lights, signals, 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.

D. DELIVERY

1. Delivery. Unless otherwise specified, the buses shall be delivered to DTA during normal business hours, 7:00 a.m. to 3:00 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 Duluth Transit Authority, 2402 W. Michigan Street, Duluth, MN 55806.

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, which will be completed no less than twenty-one (21) days after arrival or upon placing the vehicle(s) into revenue service, whichever occurs sooner. Prior to acceptance by 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
- Cooling system checked
- Exterior and interior cleaned and washed

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 show where added equipment was electrically attached to the factory electric power shall be delivered to the DTA 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 DTA upon delivery and acceptance of the vehicle. Contractor shall have the risk of loss of the bus prior to delivery; DTA will assume the risk of loss of the bus upon arrival at the place of delivery.
 5. 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 Director of Administration 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
 - e. Summary detail of each test performed on the bus or any part of the bus
 - f. Complete record of inspection findings

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

E. ACCEPTANCE TESTS

1. DTA shall have twenty-one (21) 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 the 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, 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. 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. The defects detected during these tests shall be repaired in accordance with the process and timing for acceptance set forth herein until DTA accepts the bus.

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. 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 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 DTA does not accept, conditionally accepts, or rejects a bus within twenty one (21) days after delivery of such bus to DTA, or in the event 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 DTA conditionally accepts a bus, 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 the 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 DTA, acting reasonably.

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 the 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 DTA's order.

F. WARRANTY PROVISIONS

1. Warranties in this document are in addition to any statutory implied warranties, remedies, or warranties imposed on the Contractor. Consistent with this requirement, 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.

2. In the event that production or delivery of the buses are delayed under a Force Majeure event prior to all of the buses being completed and delivered, the Warranty period for the partial bus delivery shall begin upon acceptance of the last bus delivered or on the date each bus is placed into revenue service, whichever comes first. When production and delivery restarts after a Force Majeure event, the Warranty period for the remaining buses to be delivered shall be when the last bus is delivered or the date when each bus is placed into revenue service, whichever comes first.

3. The Contractor will complete the attached Vendor Compliance Matrix 3, Warranty, with its Proposal detailing specific Warranty options.

4. The Contractor is responsible for all Warranty-covered repair work. 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 the DTA except as provided for herein.

5. 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.

6. 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.

7. 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. Upon a determination by DTA and accepted by the Contractor, 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 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.

8. It is understood that this Warranty 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.

9. The Warranty 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.

10. DTA requires that the Contractor supply new parts for Warranty-covered repairs being performed by DTA. DTA may, at its sole discretion, accept remanufactured parts that have the exact 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 handling charge to the DTA. For parts that require a longer lead time or engineer review, Contractor shall provide a written estimated timeline within three days of DTA's request for the repair. These parts shall not be subject to a handling charge to DTA.

11. **Reimbursement for Parts.** DTA will be reimbursed by the Contractor for defective parts and for parts that must be replaced to correct the defect. The reimbursement will be at the invoice cost of the part(s) at the time of repair and will include taxes where applicable and 15 percent handling costs. If Contractor requests that parts covered by the Warranty be returned to the manufacturing plant, the freight cost for will be paid for by the Contractor, or alternatively, Contractor may reimburse DTA up to \$100 per claim, provided the Contractor pays shipping for DTA to return the parts to the nearest parts distribution center.

12. **Warranty After Replacement/Repairs.** If any component, unit, or subsystem is rebuilt or replaced by the Contractor or by DTA's personnel, with the concurrence of the Contractor, the subsystem will have the unexpired warranty period of the original subsystem.

13. **Repairs By Contractor.** When Warranty repairs are required, within five days after notification, DTA and the Contractor's representative will agree on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the Warranty. The Contractor's representative must begin the work necessary to make the repairs, within 10 working days after receiving notification of a defect from the DTA. DTA will make the bus available to complete repairs timely with the Contractor repair schedule. If no agreement is reached within the 10-day period, DTA reserves the right to commence the repairs in accordance with the specifications herein.

14. 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 DTA 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.
15. DTA will not take responsibility to correct Defects, except to replace defective parts as instructed by the Contractor and agreed to by DTA. DTA may, at its sole discretion, elect to perform warranty repairs with reimbursement from the Contractor.
16. The Contractor will provide, at its own expense, all spare parts, tools and space required to complete repairs. At DTA's option, the Contractor may be required to complete repairs. At DTA's option, the Contractor may be required to remove the bus from DTA's property while repairs are being effected. If the bus is removed from DTA's property, repair procedures must be diligently pursued by the Contractor's representative.
17. DTA will provide shop space for Contractor or an authorized subcontractor to complete Warranty repairs for work that will not take longer than 10 days to complete. Work estimated to exceed 10 days must be completed at the Contractor's designated facility, which may be a third-party provider, unless otherwise agreed to by DTA Director of Maintenance or designee.
18. At its option, DTA or its designated representative may require the Contractor or its designated representative, including an equipment supplier or designated authorized dealer, to perform Warranty covered repairs that are clearly beyond the scope of DTA's capabilities. The work may be done by DTA's personnel with reimbursement by the Contractor.
19. The 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. 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.
20. 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.
21. A Contractor's customer warranty dashboard or portal is an accepted process for documenting warranty repairs on Contractor's vehicles.

22. **Reimbursement for Labor.** DTA will be reimbursed by the Contractor for labor. The amount will be determined by multiplying the number of labor - hours actually required to correct the defect by the current per hour, straight wage rate, plus actual fringe benefits adjusted for DTA's most recently published rate in effect at the time the work is performed. The 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 if such action was mechanically necessary and if the bus was in the normal service area.

23. Upon advance written agreement between DTA and the Contractor, the Contractor may use its Standard Repair Time for reimbursing the DTA for labor. If the actual, documented time spent for repairs performed by DTA exceeds the Standard Repair Time by more than 20% of the Contractor's Standard Repair Time and is not due to errors or omissions by DTA, actual hours shall be used unless otherwise agreed to by DTA.

24. **Labor Rates.** DTA's Warranty rate charged will be actual wage rate plus average fringe rate of \$57.02 as determined under FTA reporting standards.

25. 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 freight costs and towing, as applicable, if the repairs require 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.

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

27. **Complete Bus.** 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 DTA's locale.

28. **Components.** Body, body structure, structural elements of the suspension and battery compartment consisting of components that are mechanically fastened or adhesively bonded or glued as part of the structure are warranted to be free from defects and related defects for three years or 150,000 miles, whichever comes first.

29. **Structure and Suspension.** 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. If the frame or suspension fails or shows indication of imminent failure, DTA will immediately notify the Contractor of the said defect. Within ten calendar days, the Contractor will inform the DTA on how the Contractor will repair the bus. Repair of frame and suspension failures will

be the responsibility of the Contractor. Within 25 calendar days from notification of the defect, the Contractor will begin the repair of the frame and suspension defects. If the bus with the reported frame and suspension defect is out of revenue service for 35 or more calendar days because of the reported defect, the Contractor will directly reimburse DTA for the cost of leasing a substitute vehicle. The maximum daily reimbursement will be \$250.00. The contractor will continue to provide a substitute vehicle(s) or reimburse DTA until the defect is completely repaired.

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

- Traction Motors
- Inverters
- Brake system
- Destination signs
- Heating, venting
- A/C unit and compressor
- Door systems
- Air compressor
- Air dryer
- Wheelchair lift and ramp system
- Charge air cooler
- Fire suppression
- Power steering hydraulic or electric systems
- Cooling systems
- Radiator
- Transmission cooler
- Passenger seating (excluding fabric)
- Surveillance system, including cameras and video recorders
- Communications equipment
- Propulsion system, including battery storage and controls
- Beltless alternator
- Paint and decal provisions
- Corrosion protection
- Electric fan system
- Multiplex system

HVAC, Destination Signs, Low Voltage Batteries and Video Surveillance System may be a pass-through warranty from the subcontractor. DTA will submit warranty claims directly to the respective manufacturer.

31. **Extended Warranty.** An extended warranty for select components may be purchased at an additional cost. Contractor will provide an itemized list of components eligible for an extended warranty and the terms and cost for each component.

32. The DTA Project Manager shall have the option 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 propulsion system components, axles, etc. Costs for extended warranties shall be itemized at the time of Proposal.

33. 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 Contractor will work with DTA to obtain from the OEM an extension to the warranty period equal to the delay period.

34. The Warranties shall not apply to scheduled maintenance items, normal wear-out items and items furnished by DTA such as fare collection equipment, except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

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

36. 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.

37. 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 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.

38. Should subcontractors be used to provide or perform Warranty repairs, the Offeror agrees and understands that they are solely responsible for the subcontractor's full compliance with these specifications. The Offeror further agrees that the DTA is the final determining authority as to what defects are covered by warranty subject to protest and appeal procedures contained in these specifications and voiding of warranty.

39. **Voiding Of Warranty.** The Warranty will not apply to any part or component of the bus that has been subject to misuse, negligence, accident, or that has been repaired or altered in any way so as to affect adversely its performance or reliability, except insofar as such repairs were in accordance with the contractor's maintenance manuals and the workmanship was in accordance with the recognized standards of the industry. The Warranty will also be void if DTA fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the contractor's maintenance manuals. Maintenance records will be available during normal working hours.

40. **Warranty Expiration.** Upon warranty expiration, the DTA reserves the right to diagnose, service, maintain and repair all components of the bus. The Contractor shall make available field service level diagnostic tools and capabilities, spare parts, and repair instructions available to the DTA and permit

DTA to make repairs on components after the warranty period and throughout the life of the bus without delays, additional fees or service contracts. Upon request from the DTA, Contractor shall provide information on aftermarket tool companies with the same functional characteristics as the OEM tools.

41. Detection Of Defects. If DTA detects a defect with the Warranty periods. it will promptly notify the Contractor's representative. Within five working days after receipt of notification, the Contractor's representative will either agree that the defect is in fact covered by Warranty, or reserve judgement until the subsystem or component is inspected by the Contractor's representative or is removed and examined at DTA's property. At that time, the status of Warranty coverage on the subsystem or component will be mutually resolved between DTA and the Contractor. Work necessary to effect the repairs will commence within five working days after receipt of notification by the Contractor.

42. Fleet Defects. A Fleet Defect is defined as cumulative failures in the same components in the same or similar applications covered by the warranty and occurring in the Warranty period in both buses delivered.

43. Warranty, Fleet Defects. The Contractor will correct a Fleet Defect under the Warranty provisions herein. After correcting the Defect, the Contractor will promptly undertake and complete a work program reasonably designed to prevent the occurrence of the same defect in all other buses purchased under this Contract. The work program will include inspection and/or correction of the potential or defective parts in all of the buses.

The Warranty on items determined to be Fleet Defects will be for the remaining term of the original Warranty.

44. Voiding of Warranty Provisions. The Fleet Defect provisions will not apply to bus defects caused by non-compliance with the Contractor's recommended normal maintenance practices and procedures.

45. Exceptions to Warranty Provisions Fleet Defect Warranty provisions will not apply to damage that is a result of normal wear and tear in service to such items as seats, lights, and interior trim, Propulsion System components, including traction systems, inverters, controllers, and HVAC equipment.

G. HIGH VOLTAGE BATTERY WARRANTY

1. The high-voltage battery system will be warranted for a minimum of six years from the time the bus is placed into service, or when the warrantable end of life reaches 80%, whichever occurs first. The high voltage battery Warrantable End of Life (WEOL) is a measure of battery degradation determined as the point at which the batteries can no longer provide the energy or power required to meet the design operating profile. It is expressed as a percentage of remaining battery capacity as compared to gross capacity at the beginning of useful life. For purposes of this specification, WEOL shall be a measure of the useful and intended life of the energy storage device. This measure shall be a percentage of remaining useful capacity based on degradation from the beginning capacity, i.e. kW/hr and is used in the overall calculation of mileage range. WEOL shall be used as a condition for battery replacement and to potentially initiate Warranty claims.

2. The Proposer shall submit its Battery Warranty terms and conditions at the time of Proposal submittal. DTA reserves the right to negotiate terms and conditions of Proposed Warranty.

3. DTA, may, at its discretion, engage a third-party consultant or expert to evaluate the Battery State of Health (“SOH”) when determining the WEOL. The consultant will be required to use industry best practices and all available standards to determine an accurate WEOL. If the WEOL varies by more than 5% from the Contractor’s or Battery Manufacturer’s WEOL, the DTA, the Contractor, and the third-party consultant will meet to discuss measurement data and agree on a common measurement for declaring the WEOL.

H. 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 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 person’s makes for all specified parts not received by DTA.

5. Where the Contractor fails to honor this parts guaranty or parts ordered by 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 supplier’s 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 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.

I. 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 separate from the base bus bid and added to the order at the DTA’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.

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

- 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 propulsion system and OEM chassis as well as a complete parts manual for each 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 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	Pneumatic System	AC Maintenance
Driver's Orientation	Battery Thermal Management	Warranty

4. Draft detailed maintenance, parts and operator manuals covering all items built on the buses shall be supplied by the Contractor prior to acceptance of the first bus and final manuals shall be delivered to DTA within 30 days after 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
Operators Manuals	5 for every bus
Parts Manuals	3
Parts Price List	3
OEM Destination Sign Manuals	3
OEM Video System Manuals	3
Bus Electrical Schematics	5
Bus Pneumatics Schematics	5

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 propulsion components, 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 bus 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 bus 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.
- 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:

- All major subcomponents of the propulsion system
- A/C compressor and condenser/evaporator unit
- Drive axle
- Power steering unit
- Auxiliary heater
- Air compressor
- Mobility device/wheelchair ramp
- Radiator
- Hydraulic pump
- Steering box
- Front/rear axle
- Axle bunk right/left
- Overhead driver keyboard
- Driver's seat
- Roof panel front/rear

7. The Contractor shall provide updated serial numbers resulting from warranty campaigns.

8. Maintenance and parts manuals must be updated to include all changes made to the bus 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 communicated in writing to DTA 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 bus. Upon request from DTA, revised parts price lists will be supplied for future parts purchases. 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 bus.

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 provide a separate price for maintenance training for the 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 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

- i. Visuals of the production of the bus
- ii. Compartment by compartment tour of the bus
- iii. Special components or features

b. Electrical and Electronics

- i. Location of all key electrical components
- ii. Explanation of the wiring diagrams and wiring codes
- iii. Explanation of the charging system and basic troubleshooting
- iv. Explanation of the exterior and interior lighting systems along with basic troubleshooting
- v. Explanation of the safety shutdown system, including warning indicators and troubleshooting
- vi. Operation of the multiplex system
- vii. Electric cooling fan system
- viii. Decals of electrical schematics on all electrical panels

c. Air Conditioning

- i. Explanation of the air conditioning system and location of key components
- ii. Explanation of the air conditioning electrical system
- iii. Explanation of the air conditioning compressor along with troubleshooting and preventative maintenance
- iv. Troubleshooting the air conditioning system
- v. Preventative maintenance of the air conditioning system

d. Wheelchair ramp/securement

- i. Explanation of the ramp/securement system, and location of all components
- ii. Explanation of the ramp/securement electrical system
- iii. Proper ramp/securement adjustment procedure
- iv. Troubleshooting of the ramp/securement system

- e. Brakes
 - i. Explanation of the brake system
 - ii. Basic brake system repair, including brake adjustment
 - iii. ABS & traction control

- f. Air System
 - i. Explanation of the air system, location of system components
 - ii. Troubleshooting the air system
 - iii. Preventative maintenance of the air system

- g. Suspension, Steering and Axles
 - i. Explanation of the suspension system
 - ii. Basic repairs to the suspension system
 - iii. Trouble shooting of the suspension system
 - iv. Explanation of the steering system
 - v. Troubleshooting of the steering system
 - vi. Explanation of the axles
 - vii. Ride height adjustment procedures

- h. Body
 - i. Explanation of the body and attachment method of exterior body panels
 - ii. Basic repair of the exterior panels

- i. Door system
 - i. Explanation of the doors system and components
 - ii. Explanation of the door electrical system
 - iii. Proper door adjustment procedures
 - iv. Rebuilding door motors
 - v. Troubleshooting the door systems

- j. Parts (this module is at DTA's option)
 - i. Explanation of the parts manual
 - ii. Explanation of the parts numbering system
 - iii. Orientation to the bus and components
 - iv. Practice finding parts in the manual
 - v. Explanation and training on the warranty

- k. Bus operation overview for maintenance employees (this module is at the DTA's option)
 - 1. Operator Compartment
 - i. Controls and switches
 - ii. Warning indicators and switches
 - iii. Seat adjustment
 - iv. Door control
 - 2. Walk around inspection
 - i. Compartment by compartment explanation
 - ii. Mirror adjustment

- iii. Climate control system
- 3. Driving Information
 - i. Turns
 - ii. Brakes
 - iii. Transmission shifting patterns and driving with the retarder
 - iv. Backing

12. The Contractor will provide 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

J. OPTIONAL SPARE PARTS PURCHASE

DTA reserves the right to negotiate final spare parts package, including final quantities and costs at the time of Contract award. Upon delivery of the first bus, the Contractor shall provide pricing for major parts and components that may be purchased for spare parts. Thereafter, prices for spare parts will be provided by Contractor to DTA upon request.

K. 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.

L. 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 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 DTT 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 DTA 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.

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 Director of Administration 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 Electric 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 DTA 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.

The maximum amount of Liquidated Damages that may be assessed to the Contractor by DTA under this provision is \$200,000 per bus order.

b. If, after DTA accepts the Contractor's timeline and delivery or performance is so delayed, the DTA Director of Administration 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 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

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

the difference or the entire amount, whichever may be the case, within thirty (30) calendar days after receipt of a written demand by the DTA 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.

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 transit systems operating with similar type vehicles in the United States. Proposer's standard list of references is acceptable.
- i. 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. Prices quoted for optional equipment shall remain firm for 180 days from when the first buses are delivered to the DTA. 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 DTA. 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 the DTA 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, if 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 list that as an exception. As the BAFO process proceeds, it is also helpful to note if that part is integral to the vehicle design.

3. A Proposal may be considered non-responsive and may be rejected unless the 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 DTA based on consideration of the evaluation "Proposal Evaluation Criteria".

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".

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 the DTA to be either a defect that the 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. The 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. The 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 the DTA finds to be within the competitive range.
 - d. Rankings and spreads of the Proposal against the Evaluation Criteria will then be made by the 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 the DTA as not in the competitive range, and cannot be reasonably made to be within the competitive range, will be notified in writing. The DTA will attempt to give notice promptly after Contract award. The 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 the 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 the 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, the 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 the DTA to find such Proposal to be outside the competitive range.

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 the 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.** The 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 the DTA's 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 a Proposer in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by the DTA according to the same requirements and criteria as the initial Proposals' "Proposal Selection Process". The 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 the DTA and considered according to the relative degrees of importance of the criteria defined in the "Proposal Evaluation Criteria."

11. The 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 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 =30%)

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
- Battery system capacity, ability to meet service requirements
- 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
- Powertrain and non-mandatory options
- Overall durability
- Vehicle Questionnaire response
- Vehicle Safety Questionnaire response
- Warranty provisions

b. Price (Weight = 25%)

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 the DTA. Best Value may be used as part of this criteria.

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

- a. Able to meet the intended use
- 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.

Battery replacement plan

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;

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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 Vehicle Information 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.

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 DTA of any 40-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.

C. Conditions, Exceptions, Reservations, or Understandings

Please start with the General Conditions section and end with the Technical Specifications. List the Section Number, Paragraph Number, and then your Conditions, Exceptions, Reservations, or Understandings.

Section Number	Paragraph Number	Conditions, Exceptions, Reservations, or Understandings

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

SECTION 8 Proposal Sheet

Formal Request for Proposals

Duluth Transit Authority
Electric Transit Buses

Proposer shall submit its Proposal in accordance with the specifications herein.

Firm Name _____	Addendum	Acknowledgment:
Mailing _____	Number _____	Date Received _____
Address _____	_____	_____
_____	_____	_____
City _____	_____	_____
State _____	_____	_____
Zip Code _____	_____	_____

BY _____
(Print) Title

Signature

Email Address: _____

Phone Number _____

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? _____
7. System for Award Management Unique ID: _____

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 types 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

Duluth Transit Authority
Request for Proposals
Electric Transit Buses

#041-024-0023.0

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.

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 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__

REQUIRED CERTIFICATES

Certificate A. **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

Certificate B. **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 C. 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 _____

Certificate D. 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 E. 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: _____

Certificate F. 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

Certificate G – 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's (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

Certificate H. 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 I. 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 _____

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 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 nbrownb@duluthtransit.com is 2:00 pm on June 20, 2024.**

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 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 June 30, 2024.**

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:
