

THIS PRINT COVERS CALENDAR ITEM NO. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Services

BRIEF DESCRIPTION:

Requesting authorization for the Director of Transportation to issue a Request for Proposals to previously qualified vendors for SFMTA Contract No. 2013-19: Procurement of New Light Rail Vehicles (LRV4), and taking action on the protest appeal submitted by AnsaldoBreda.

SUMMARY:

- The SFMTA has a fleet of 151 Light Rail Vehicles (LRVs). These vehicles have been in service since 1996 and are scheduled for retirement starting in 2021.
- SFMTA is seeking to procure up to 260 new light rail vehicles to serve all of LRV needs for the next 25 years including the Central Subway Project and projected ridership increases. The scope of work includes the design, manufacture, delivery and testing, together with associated services, spare parts, special tools, training and documentation.
- In March 2013, the SFMTA issued a Request for Qualifications (RFQ) to pre-qualify car builders who will be eligible to receive the Request for Proposals (RFP). Of the Statements of Qualifications (SOQ) submitted by four manufacturers, a selection panel found that three met the minimum score required to advance.
- The fourth manufacturer, AnsaldoBreda (AB), protested the panel's finding that their SOQ did not meet the minimum score required to advance. After reviewing the protest and subsequent appeal, as well as the record of the selection panel's work, the Director of Transportation recommends that the Board reject AB's appeal.
- Planned funding for the base portion of the contract will come from federal, state and local funds. Funding for the up to 85-LRV option has not yet been identified.

ENCLOSURES:

1. MTAB Resolution
2. Request for Proposal
3. Protest Correspondence

APPROVALS:

DATE

DIRECTOR _____ 9/12/13

SECRETARY _____ 9/12/13

ASSIGNED SFMTAB CALENDAR DATE: September 17, 2013

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PURPOSE:

The purpose is to issue a Request For Proposals to provide up to 260 Light Rail Vehicles. The procurement will provide vehicles for the Central Subway and other system growth as well as replace the existing fleet and provide additional expansion vehicles.

GOAL:

The goal of this project is to improve equipment availability and reliability in order to meet the following goal and objectives of the SFMTA's Strategic Plan:

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel

Objective No. 2.1: Improve customer service and communications

Objective No. 2.2: Improve transit performance

DESCRIPTION:

As part of its regular daily passenger transit service, the SFMTA has a fleet of 151 Light Rail Vehicles (LRVs). Vehicles in service operate 21 hours per day, 365 days a year, on the Muni Metro system. These vehicles typically have a lifespan of 25 years, and will be scheduled for retirement starting in 2021.

The planned procurement will provide up to 260 new LRVs together with associated services, spare parts, special tools, training and documentation. The need for LRVs falls into three categories: (1) 24 LRVs for increased service demand for the Central Subway Project and Mission Bay, and system-wide growth. These vehicles would be scheduled for delivery from 2016 through 2018; (2) the replacement of the existing fleet of 151 Breda LRVs with deliveries projected to start in 2021 and continue through 2028; and (3) up to 85 LRVs to meet additional projected growth in ridership and system capacity expansion needs through 2040.

The base quantity in the contract will be 175 vehicles, addressing the first two needs above. The 85 LRVs identified as the third need above will be reflected in an option. The schedule for delivery of these additional cars under the option is yet to be determined.

The new LRVs are expected to have a 25-year life, which includes a mid-life overhaul.

This procurement is following a two-phased approach to select a contractor. The first phase was the issuance of an RFQ in March 2013 to pre-qualify prospective car builders. The second phase is the issuance of this RFP to those car builders who were pre-qualified through the RFQ process.

SCOPE OF WORK:

In response to the RFQ, four companies submitted Statements of Qualifications (SOQs) in April 2013: CAF USA, Inc. (CAF), Siemens Industry Inc. (Siemens), AnsaldoBreda SpA (AnsaldoBreda), and Kawasaki Railcar Inc. (Kawasaki). The SOQs were evaluated by an evaluation panel composed of five people from inside and outside the SFMTA with expertise relevant to the project. Three car builders, CAF, Siemens and Kawasaki, scored in the competitive range (earning 50 or more points out of 100) and therefore were pre-qualified to receive the RFP. Scores are provided below.

Car builders	Scores	Less than 50 points deemed not in Competitive Range
Kawasaki	79	Competitive Range
Siemens	70	Competitive Range
CAF	60	Competitive Range
AnsaldoBreda	49	Not in Competitive Range

AnsaldoBreda submitted a protest that was rejected by SFMTA staff on August 23, 2013. On August 29, 2013, AnsaldoBreda appealed the Agency's determination to the Director of Transportation. On September 11, 2013, the Director of Transportation issued a recommendation that the SFMTA Board of Directors deny the appeal. Under the federally required protest procedures included in the RFQ, AnsaldoBreda is entitled to address the Board regarding the Director of Transportation's recommendation. The Board's decision on the appeal is final.

A contractor will be selected through a best value selection process according to negotiated procurement procedures developed by the Agency and used for procurement of rolling stock. Staff anticipates that the selection process will be completed in the spring of 2014.

The requirements are outlined in the Technical Specifications. The vehicle will be compatible with SFMTA's existing light rail system and any planned extensions.

The selected contractor will be required to supply all labor, inspections, engineering, tools, materials, parts, facilities, and apparatus required to design, build, test, and commission the new LRVs to provide a level of performance, safety, quality of materials, workmanship, and reliability sufficient to provide a 25-year minimum car service. The contractor will also prepare all required detailed drawings, design calculations, stress analysis, and other specified technical documentation.

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The work shall be performed at the contractor's facility, except for the qualification and acceptance testing.

ALTERNATIVES CONSIDERED:

The current fleet does not have the capacity to support the Central Subway Project or future needs due to the projected increase in ridership. The alternative considered was to procure only 24 LRVs to serve the immediate need for the service expansion associated with the Central Subway and near-term ridership growth and then conduct a second procurement for the replacement of the existing fleet. Procurement of 24 cars is a small quantity of vehicles that would be unlikely to result in sufficient competition or competitive pricing. In addition, if SFMTA procured a 24-car fleet, that fleet would be different from both the current fleet and the ultimate replacement fleet. Operating two separate fleets for an extended period would cause operation and maintenance challenges as well as increased costs associated with separate fleets.

With respect to the protest appeal submitted by AnsaldoBreda, notwithstanding the recommendation of the Director of Transportation, the Board could uphold the appeal and authorize AnsaldoBreda to receive the RFP. The Resolution provides alternate resolved clauses, and before voting to approve the Resolution, the Board should amend the Resolution to exclude one alternative or the other.

FUNDING IMPACT:

A funding plan for the base contract of 175 LRVs is in place. Funding for the initial 24 expansion cars for the Central Subway Project includes \$26M from the Central Subway project (FTA, Prop 1B State Bond, Prop K and other funds) and the balance from future SFMTA Revenue Bonds (subject to approval of the SFMTA Board).

Nearly 80% of the funding for the 151 replacement LRVs will come from future FTA formula grant funds programmed by the Metropolitan Transportation Commission (with the remaining 20% from local matching funds from a variety of sources including Prop K and future Revenue Bonds).

Funding for the up to 85-vehicle option has not yet been identified; the option will be exercised only in the event that funding is secured. Potential funding sources include developer contributions, Transit Impact Development Fees, Transit Sustainability Fees, FTA's Core Capacity Expansion Program, bridge toll funds, SFMTA Revenue Bonds, General Obligation bonds, local sales tax, and/or State funds. The use of SFMTA commercial paper or other gap financing is likely to be required to cover those periods during which budgeted funding is not accessible. Cash flow financing, which is currently not in place, will likely be required to pay for the contract.

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OTHER APPROVAL RECEIVED OR STILL REQUIRED:

The final contract will require approval from the SFMTA Board and the Board of Supervisors. The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION:

Staff recommends that the SFMTA Board deny the protest appeal from AnsaldoBreda and authorize the Director of Transportation to issue a Request for Proposals to the qualified car builders containing terms and requirements substantially similar to the Request for Proposals accompanying this calendar item for SFMTA Contract No. 2013-19 – Procurement of New Light Rail Vehicles (LRV4).

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (“SFMTA”) currently operates a fleet of 151 light rail vehicles (LRVs), which are scheduled for retirement starting in 2021; and,

WHEREAS, The start of revenue service for the Central Subway Extension will require an additional 24 light rail vehicles to be delivered by 2018; and,

WHEREAS, Ridership projections and planned service expansions indicate a need for an additional 85 light rail vehicles over the next ten years; and,

WHEREAS, The SFMTA needs to procure new LRVs to meet these anticipated needs; and,

WHEREAS, The SFMTA issued a Request for Qualifications in March, 2013 seeking Statements of Qualification (SOQs) from LRV car builders; and,

WHEREAS, The SFMTA convened a selection panel composed of five people from inside and outside the SFMTA with expertise relevant to the project; and,

WHEREAS, The SFMTA received SOQs from four car builders; and,

WHEREAS, the selection panel determined that the SOQs submitted by three of the car builders exceeded the minimum competitive score of 50 points and thus qualified those manufacturers to receive a Request for Proposals (“RFP”) for procurement of LRVs; and,

WHEREAS, The selection panel determined that the SOQ submitted by AnsaldoBreda did not meet the minimum competitive score of 50 points and therefore AnsaldoBreda did not qualify to receive the RFP; and,

WHEREAS, The SFMTA has developed an RFP for the procurement of up to 260 LRVs, with a scope of work that includes the design, manufacture, delivery and test of LRVs, together with associated services, spare parts, special tools, training and documentation as otherwise specified in the Technical Specifications included in the RFP; and,

WHEREAS, The base portion of the contract for 175 LRVs will be funded with federal, state and local funds; funding for the 85-LRV option to the base contract has not yet been identified; and,

WHEREAS, On August 12, 2013, AnsaldoBreda submitted a protest to the SFMTA, and by letter of August 23, 2013, the Contract Manager recommended that the protest be denied; and,

WHEREAS, On August 29, 2013, AnsaldoBreda appealed that determination to the Director of Transportation; and,

WHEREAS, The Director of Transportation reviewed the protest, the appeal, and the record related to the issues presented by AnsaldoBreda, and on September 11, 2013 the Director issued a recommendation that the SFMTA Board deny the appeal and informed AnsaldoBreda that it had a right to be heard on the matter before the SFMTA Board of Directors; now therefore be it

RESOLVED That the SFMTA Board of Directors authorizes the Director of Transportation to issue a Request for Proposals to all qualified car builders containing terms and requirements substantially similar to the Request for Proposals presented to this Board on September 17, 2013 for SFMTA Contract No. 2013-19, Procurement of New Light Rail Vehicles (LRV4); and be it further

RESOLVED, That the SFMTA Board of Directors denies the appeal by AnsaldoBreda from SFMTA's determination that the Statement of Qualifications submitted by AnsaldoBreda did not meet the minimum score enabling it to participate in the RFP phase of the procurement.

[OR]

RESOLVED, That the SFMTA Board of Directors upholds the appeal by AnsaldoBreda from SFMTA's determination that the Statement of Qualifications submitted by AnsaldoBreda did not meet the minimum score required to participate in the RFP phase and accordingly authorizes AnsaldoBreda to participate in the RFP phase of the procurement.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of September 17, 2013.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**CITY AND COUNTY OF SAN FRANCISCO
San Francisco Municipal Transportation Agency**

Request for Proposals

Procurement of New Light Rail Vehicles (LRV4)

CONTRACT No. SFMTA-2013-19

VOLUME 1

September 18, 2013

PRE-PROPOSAL CONFERENCE

DATE: TBD

SUBMISSION DEADLINE

TBD

Request for Proposals for

CONTRACT No. SFMTA-2013-19

Procurement of New Light Rail Vehicles (LRV4)

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Appendix 1 Price Forms

- 1A: FORM I – A Schedule of Prices
- 1B: FORM I – B Nominal Spare Parts and Optional Spare Parts
 - FORM I – B1: Nominal Spare Parts
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- 1C: FORM I – C Diagnostic Test Equipment/Special Tools

Appendix 2 Technical Forms

- 2A: Form II – A Technical Worksheets
- 2B: Form II – B Supplier Worksheet
- 2C: Form II – C Whole Life Cycle Cost

Appendix 3 Other Forms

- 3A: Certification Regarding Lobbying
- 3B: Attestation Of Compliance
- 3C: Buy America Certificate
- 3D: Confirmation of RFP Receipt
- 3E: Business Registration Certificate
- 3F: Declaration: Nondiscrimination in Benefits
- 3G: Financial Statement
- 3H: FTA DBE Requirements/Transit Vehicle Manufacturer Certification

Appendix 4 Referenced Documents

- 4A: Protest Procedure
- 4B: Sample Agreement
- 4C: Negotiated Procurement Procedure

I. NOTICE OF REQUEST FOR PROPOSALS

OFFICIAL NOTIFICATION

INSTRUCTION TO QUALIFIED PROPOSERS

The San Francisco Municipal Transportation Agency (“SFMTA”), desires to procure up to 260 Light Rail Vehicles (LRVs) (the “Project” or “LRV4”). SFMTA is using a two-phase selection process for the selection of a Vendor for the Project. SFMTA previously issued a Request for Qualifications (“RFQ”) for this procurement, and, based on its evaluation of the Statements of Qualifications received in response to the RFQ, has short-listed the Prospective Qualifiers. Only the Short-Listed Qualified Proposers (“Qualified Proposers”) will receive this Request for Proposals (“RFP”) and be allowed to submit a Proposal in response to this RFP.

Proposals submitted in response to this RFP should explain how the Proposer intends to meet the requirements of the RFP. Legibility, clarity, and completeness of the technical approach are essential. Statements merely indicating that the Proposer shall meet specific requirements are not sufficient. SFMTA expects all Proposals to be fully compliant and meet all requirements and conditions as set forth herein. The use of promotional or marketing information is discouraged unless specifically requested.

The Proposer shall respond to each of the sections described within this RFP in the specific order presented in the RFP and addressing each item individually. Proposers should avoid making references to other Proposal sections unless it is not practicable to convey the information in another manner. The Proposer shall identify specific elements planned for the new Light Rail Vehicle (LRV4), as well as the Proposer's experience with the proposed elements of the vehicle, and shall identify the names of proposed Subcontractors and Suppliers for each major vehicle subsystem describing in detail the interfaces and how the Proposer will manage each. The Proposer must demonstrate full responsibility for the execution of the Work, including management of all subcontractors, suppliers, and integration efforts that will be required. Proposals shall be written in the English language.

The contract shall be a firm fixed-price contract, with progress payments and liquidated damages in accordance with the terms of the Sample Agreement in Appendix 4B. The contract award is subject to approval by the Board of Directors of the SFMTA and the San Francisco Board of Supervisors, and is also subject to the concurrence of the Federal Transit Administration (FTA) of the U.S. Department of Transportation. Funding for the agreement is subject to receipt of financial assistance from the San Francisco County Transportation Authority, the Metropolitan Transportation Commission, and the FTA.

The Proposer selected to contract with SFMTA (“Selected Contractor”) will be required to comply with all applicable Federal, State and City laws and regulations. The Selected Contractor will also be required to comply with all applicable Equal Employment Opportunity laws and regulations and the terms and conditions set forth in the Nondiscrimination in Contracts and Benefits provisions of Chapter 12B of the San

Francisco Administrative Code.

The SFMTA notifies all Proposers that it will ensure that Small Business Enterprises (SBEs), including Disadvantaged Business Enterprises (DBEs), will be afforded full opportunity to submit proposals in response to this RFP and will not be discriminated against on the basis of race, color, sex, or national origin in consideration for an award. All Proposers will be required to comply with the FTA's DBE requirements found in 49 CFR Part 26.

A proposal bond (bid bond), a cashier's or certified check, or a money order in the amount of \$3,000,000 must accompany each Price Proposal. Prior to certification of the contract, the successful Proposer will be required to furnish to the City a letter of credit or performance bond, in accordance with the requirements in Section 15.2 of the Sample Agreement, as well as evidence of insurance as specified in Section 15.1.

The SFMTA reserves the right to reject any and all proposals. The Proposer's Price Proposal shall remain in effect for 240 calendar days.

Qualified Proposers shall submit their Technical Proposals, Price Proposals, Alternative Proposals (if any), and all completed forms so that they are received by the SFMTA no later than 2:00 p.m., TBD, at the following address:

San Francisco Municipal Transportation Agency
Transit Division,
1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103
Attention: Ms. Trinh Nguyen

**Procurement of New Light Rail Vehicles (LRV4)
RFP for Contract No. SFMTA-2013-19**

Qualified Proposers may obtain Volumes 1 and 2 (Technical Specifications) of the RFP, as well as additional information and addenda, at the address given above or by emailing Ms. Trinh Nguyen at LRV4@sfmta.com.

Questions regarding this RFP should be addressed to Ms Trinh Nguyen at LRV4@sfmta.com or at the address listed above. All questions regarding the RFP must be received by SFMTA no later than 4:00 PM 15 calendar days prior to the due date for the proposals. SFMTA may or may not respond to questions received after that time.

A mandatory pre-proposal conference will be held on TBD at 10:00 a.m. PDT, at the Curtis E. Green Light Rail Center, 425 Geneva Avenue, San Francisco, California 94112, 2nd floor conference room, to discuss the RFP and the Contract .

Proposers should be aware that the SFMTA currently does not have all funding required to purchase all base contract vehicles for the term of the contract. If the SFMTA awards this contract, it will only issue a notice to proceed for the amount then certified by the City Controller. As further funding is secured, SFMTA will issue subsequent notice(s) to proceed up to the amount(s) then certified. SFMTA will pursue efforts to seek gap financing to cover those periods during which budgeted funding is not accessible.

II. REQUEST FOR PROPOSALS

II.A Introduction

The SFMTA operates the San Francisco Municipal Railway (“Muni”), which is the seventh largest public transit system in the United States. SFMTA has approximately 700,000 riders on an average weekday. Its fleet of about 1,000 vehicles, over half of which are electric, consists of subway-surface light-rail vehicles, electric trolley buses, diesel buses, the world-famous cable cars, and a unique collection of historic streetcars. More information about SFMTA is available at <http://www.SFMTA.com>.

SFMTA is initiating a new light rail vehicle procurement to acquire up to 260 LRVs (also referred to as “vehicles” or “cars”) over the next 15 years. The scope of the Project will include the design, manufacture, delivery and testing of the LRVs, together with associated services, spare parts, special tools, training and documentation. The Base Quantity will be 175 vehicles. This will include an initial delivery of 24 cars, scheduled for delivery from 2016 through 2018 to supplement the fleet when the SFMTA’s Third Street Phase 2 (Central Subway) opens. SFMTA will require an additional 151 LRVs to replace the existing LRV fleet, with deliveries projected to start in 2021 and continue through 2028. The initial delivery of 24 cars will be Phase 1; the subsequent delivery of 151 cars will be Phase 2. SFMTA also expects to acquire 85 expansion cars for projected increased ridership, with deliveries to commence on a schedule to be determined. These 85 vehicles will be an option to the base quantity of vehicles.

II.B Scope of Work

As mentioned above, the scope of work of the proposed Contract is for the procurement of 175 LRVs, with an option for 85 additional LRVs. Specific requirements for the vehicles, including deliverables required by SFMTA, are outlined in Volume 2 (Technical Specifications [TS]) of this RFP.

The Proposer shall supply and coordinate all labor, inspections, engineering, tools, materials, parts, facilities, and equipment required to design, build, test, and commission the LRVs to provide a level of performance, safety, quality of materials, workmanship, and reliability sufficient to provide a 25-year minimum car service with mid-life overhaul (as recommended by the Proposer), and shall prepare all required detailed technical data as specified in the Technical Specifications. The new vehicles will operate on all lines of the system within the current system constraints.

The work shall be performed at the Proposer’s or subcontractor’s facility, except for the qualification and acceptance testing, which shall be performed in accordance with the testing requirements of TS 21.3.4.5. The Proposer shall strictly monitor the quality of work within its facilities and in those of its subcontractors.

II.C Information for Proposers

II.C.1 General Information

Prospective Proposers shall submit a formal proposal that complies with the requirements of this RFP, and all applicable federal, state, and local laws. The proposal shall be signed by an officer legally authorized to bind the proposer to a contract. Proposals shall be submitted to SFMTA in writing, in the time and in the manner described in this RFP.

II.C.2 Technical Specifications

The Technical Specifications define the functional requirements for design, manufacturing, delivery, testing, and commissioning. Where possible, the Technical Specifications have been developed from LRV performance requirements based on the constraints of SFMTA infrastructure. This approach will allow Proposers to employ innovative and advanced technology where appropriate, subject to SFMTA acceptance.

II.C.3 Shipping Location

The Contractor shall be responsible for the shipment of each car to SFMTA's Muni Metro East facility, as well as to any third party testing facility (if needed). The Proposer shall not ship any LRV without written authorization by SFMTA. The Proposer shall be responsible for any damage to the LRV and equipment or to any part of the car that occurs during the course of shipment and until Acceptance or Conditional Acceptance by SFMTA. Until that time, the selected Proposer shall repair or replace any damaged item at no cost to SFMTA. Refer to Sample Agreement Section 68.3 for details.

II.C.4 RFP Copies for Subcontractors and Contractors

To avoid any potential confusion over the requirements of this RFP, the Proposer shall ensure that each potential major Subcontractor as identified in Appendix 2B has obtained a complete copy of both volumes of the RFP and shall provide a completed Confirmation of RFP Receipt (Appendix 3D) for each.

II.D Time and Place for Submission of Proposals

SFMTA must **receive** Proposals no later than 2:00 p.m., PDT, on TBD. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person or mailed to:

San Francisco Municipal Transportation Agency
Transit Division,
1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103
Attention: Ms. Trinh Nguyen
RFP for Contract No. SFMTA-2013-19

Partial or complete omission from a proposal of any of the items set out in Section II.F Format may render a proposal non-responsive and disqualify proposals from further consideration. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

II.E Pre-Proposal Conference and Clarifications to RFP

Proposers shall attend a mandatory pre-proposal conference on TBD, at 10:00 AM PDT, to be held at the following address:

San Francisco Municipal Transportation Agency
Curtis E. Green Light Rail Center
425 Geneva Ave
2nd Floor Conference Room
San Francisco, California 94112

The pre-proposal conference will include the Project overview, contractual and technical questions and answers, and a site visit to view the current LRVs.

SFMTA encourages the submittal of written questions for the pre-proposal conference at least seven days prior to the conference. The questions should be sent to Ms. Trinh Nguyen, Project Manager, by email: LRV4@sfmta.com. All questions will be addressed at this conference and any available new information will be provided at that time.

Any requests for information concerning the RFP whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have received a copy of the RFP from the SFMTA Contracting Section. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP from the SFMTA.

Modifications and clarifications will be made by addenda. Questions regarding this RFP should be addressed in writing to:

[Ms. Trinh Nguyen P.E., Senior Program Manager](#)
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco CA 94103
[email LRV4@SFMTA.com](mailto:LRV4@SFMTA.com)

Questions sent via email are acceptable. It is the responsibility of the sender to ensure that the transmission was sent properly and received by Ms. Nguyen. SFMTA will send responses in writing, along with all the questions received, to all Qualified Proposers. **Any questions should be directed to the SFMTA no later than 4:00PM PDT 15 calendar days prior to the date for receipt of proposals.**

II.F Format

Each Qualified Proposer submitting a proposal must provide one original (with wet signatures), nine hard copies, and 10 electronic copies in pdf format of the Proposer's Technical Proposal, Price Proposal and Alternative Proposal (if any). Technical and Price Proposal forms shall also be provided in Excel format. The hard copies of proposals shall be submitted in three-ring binders, all pages shall be double-sided and on 8.5 by 11 inch recycled paper to the maximum extent feasible. The proposer may provide 11 by 17 inch foldout drawings where appropriate. All prices shall be in U.S. dollars and shall be typed or clearly written in ink. Proposers shall use English units of measure, and may provide metric equivalents in parentheses. All text shall be in the English language. Proposers shall not submit extensive drawings, catalogs, parts lists or marketing brochures.

The Proposer shall respond to each of the sections described within this RFP in the specific order presented in the RFP and address each item individually. Proposers should avoid making references to other Proposal sections unless it is not practicable to convey the information in another manner.

II.F.1 Technical Proposal

Technical Proposals must include all the parts divided by tabs and in the sequence indicated below:

- Part A – Introduction and Executive Summary
- Part B – Vehicle Description
- Part C – Management Approach and Schedule
- Part D – Other Required Documents

Details are provided in Section II.H (Technical Proposal). Each Part shall have tabbed subsections as set forth in Section II.H (e.g., for Vehicle Description, include subsections i, ii, iii, etc.).

Excluding the specific forms and drawings required by this RFP, the Technical Proposal shall not exceed 150 (double sided) pages.

II.F.2 Price Proposal

Price Proposals must include all the parts divided by tabs and in the sequence indicated below:

- Part A – Price Proposal Forms
- Part B – Bid Bond or Letter of Credit

Details are provided in Section II.I (Price Proposal). Each part shall have tabbed subsections as set forth in Section II.I.

All copies of the Price Proposal shall be enclosed in a separate sealed envelope, which shall be marked as follows:

Price Proposal: Procurement of New Light Rail Vehicles (LRV4)
RFP Contract No. SFMTA-2013-19
Submitted by: [Company Name]

II.F.3 Alternate Approach(es)

If the Proposer chooses to submit one or more Alternate Approaches (see Section II.J), they must be in a separate binder from the Technical and Price Proposals, and must clearly explain to which requirement each Alternate Approach applies. Proposer shall clearly organize the content using tabbed dividers to facilitate the evaluation.

II.G Responsibility of Proposer and Minimum Qualifications

SFMTA will only evaluate a Proposal from a Proposer that the SFMTA has determined to be responsible. The Proposer shall furnish adequate documentation with its proposal to permit SFMTA to determine the responsibility of the Proposer and its subcontractors and suppliers. SFMTA's Chief Financial Officer and her staff will review Items 2, 3 and 4 below. A responsible Proposer is one that meets all of the following minimum qualifications:

1. Will only use subcontractors/suppliers that have supplied, for use on rail transit vehicles, equipment similar to that being proposed for subsystems, elements, and components; and
2. Provides a written commitment from a surety to provide the Proposer with performance and labor and materials bonds in the amounts required and/or a commitment from a financial institution to provide a letter or letters of credit in compliance with the requirements set forth in Section 15.2 of the Sample Agreement (Appendix 4B); and
3. Provides a written commitment from its insurance broker that it will carry all the required coverages set forth in Section 15.1 of the Sample Agreement (Appendix 4B) for the term of the Contract; and
4. Submits the Financial Statement attached as Appendix 3G and demonstrate that its working capital ratio was between 1.2 and 2.0 for the last three years.

The Proposers shall also resubmit the following documents, with any updated information since they were submitted with the SOQs: audited financial statements for the last three years, as well as Dunn & Bradstreet ratings and any other rating received by rating agencies.

Proposers must provide the above information in the sequence indicated below:

- Part A – Experience of Subcontractors
- Part B – Surety/Letter of Credit Commitments
- Part C – Financial Data (including form in Appendix 3G)

Three hard copies and an electronic copy of the above information shall be provided in a separate envelope, which shall be marked as follows:

Responsibility Documents: Procurement of New Light Rail Vehicles (LRV4)
RFP Contract No. SFMTA-2013-19
Submitted by: [Company Name]

II.H Technical Proposal

In its proposal, the Proposer shall identify specific elements planned for the new LRVs, as well as the Proposer's experience with the proposed elements of the vehicle, and shall specify the names of proposed subcontractors and suppliers for each major vehicle subsystem, describing in detail the interfaces and how the Proposer will manage each subcontractor and supplier. The Proposer must demonstrate full responsibility for the execution of the Work, including management of all subcontractors, suppliers, and integration efforts that will be required.

II.H.1 Introduction and Executive Summary – Part A (maximum 3 pages)

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. The letter must acknowledge receipt of all Addenda. No price information shall be included. The proposal letter shall attest that the Proposer:

- Has reviewed all of the provisions of the RFP and any addenda;
- Has carefully reviewed the accuracy of all statements made in its Proposal;
- Has examined the experience, skill and certification (if any) requirements specified in the RFP and that all entities (Proposer, subcontractor, supplier) performing the work fulfill the specified requirements;
- Has submitted its proposal without exceptions (other than Alternate Approaches) and confirms that all SFMTA requirements in this RFP, including the Sample Agreement, are acceptable to the Proposer;
- Will complete the work as required and comply fully with the project schedule;
- Will keep its proposal, including price, in effect for the period stated in Section II.N.4; and
- Will execute the SFMTA Agreement following Notice of Intent to Award.

- Will provide the required bonds and/or letters of credit and insurance documents following Notice of Award of the contract.

II.H.2 Vehicle Description – Part B

The Technical Proposal shall demonstrate that all the equipment satisfies the functional and performance requirements in the Technical Specifications, and that all work performed will be in compliance with the Technical Specifications. The proposal shall present a concise, detailed technical description of the work to be performed. The format, style, and integrated nature of each submittal shall reflect the fact that the proposer, rather than a supplier, is submitting the Technical Proposal.

In order to facilitate SFMTA's review, each proposal must also include a summary in the front of each binder with the technical information requested in the subsections below. The response to each paragraph shall be contained within its respective tab. Each response shall include all information requested, be fully self-contained, and not reference attachments that may be in other sections of the proposal unless it is not practicable to do otherwise. These responses should be clear and concise, and shall completely explain how the proposer will meet the stated objectives without additional explanation or information. Brevity and clarity are desired. Statements merely indicating that the Proposer will meet specific requirements are not acceptable.

Vehicle Description requirements for the new LRVs are as follows (where noted by the initials "TS," these requirements refer to the Technical Specifications):

- i. General Description**
 - A. Generally describe the proposed LRVs, noting key features and how the Proposer intends to meet or exceed the requirements of the Technical Specifications.
 - B. Provide completed Form II-A, Technical Worksheet and Form II-B Supplier Worksheet.
 - C. Describe the general arrangement of the vehicle, showing overall dimensions, and the layout of interior and exterior equipment and cabs. Show a side view, plan and reflected plan views, and end view and cross sections as needed to fully convey the design.
 - D. Provide color renderings of the proposed interior and exterior design of the vehicle. Please note that these conceptual designs are intended to represent a general understanding of the requirements of the Technical Specifications and are not intended to represent the precise design to be supplied or to initiate the design review process.

- E. The Proposer may identify a maximum of two possible subcontractors per subsystem.

ii. System Requirements:

- A. Provide propulsion and braking characteristics, including graphs of:
 - 1. Vehicle speed vs. time and vehicle speed vs. distance in accordance with TS 2, Design and Performance Criteria.
 - 2. Tractive effort vs. speed for maximum acceleration.
 - 3. Tractive effort vs. speed for maximum braking. Indicate if the above plots depict actual performance of an existing car or represent Proposer's estimate of anticipated performance.
- B. Provide performance simulations over a complete round trip on Muni's L-line, including the duty cycle requirements in TS2 and TS10.
- C. Provide braking system performance calculations for both blended brakes and friction-only brakes under the following conditions, indicating if the information depicts actual performance of an existing car or represents Proposer's estimate of anticipated performance:
 - 1. *AW3 loading;*
 - 2. *Maximum service braking command;*
 - 3. *Level, tangent track.*
- D. Provide anticipated car weight and axle weight distribution.
- E. Provide estimates for interior and exterior noise and vibration of the proposed LRV and the plan that the Proposer will use to manage these levels.
- F. Provide evidence of service-proven design for systems and components. SFMTA realizes that no existing vehicles may meet all requirements of the Technical Specifications, and modifications to existing designs may be necessary. Proposers should base their overall vehicle design on proven subsystems. Concepts based on a single vehicle or hybrids of two or more existing vehicles are acceptable.

iii. Carbody:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS3 (Carbody Structure).
- B. Describe the approach that will be used to achieve the carbody structural design load requirements. Indicate previous experience in providing the levels of car body strength similar to those specified.

- iv. Coupler:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS4 (Coupler).
- v. Operators Cab:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS5 (Operator's Cab), including the ergonomic approach.
- vi. Passenger Door and Step:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS6 (Passenger Doors).
 - B. Describe the general arrangement and function of the door and step system.
- vii. Heating Ventilation and Air Conditioning:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS7 (Heating, Ventilation and Air Cooling).
- viii. Lighting System:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS8 (Lighting).
- ix. Auxiliary Electric:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS9 (Electrical).
 - B. Describe the car safety grounding and power return arrangement.
 - C. Describe the vehicle network topology, protocol and architecture.
- x. Propulsion System:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS10 (Propulsion).
 - B. Describe the spin/slide correction system and its interface with the braking system.
 - C. Describe the propulsion control system, including its interface with the friction brake system.
 - D. Describe the EMI control. Describe overload and transient protection.
- xi. Truck Assemblies:**
 - A. Explain how the Proposer intends to meet or exceed the requirements of TS11 (Truck Requirements).
 - B. Provide general arrangement drawings of the proposed trucks.

- C. Describe the primary and secondary suspension system, including the load leveling system.

xii. Friction Braking:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS12 (Braking Equipment).
- B. Describe the electronic control system.
- C. Describe the parking brake system, parking brake application and parking brake release in case of failure.
- D. Describe the load weigh system.

xiii. Vehicle Communication:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS13 (Communications).

xiv. Automatic Train Control:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS14 (Automatic Train Control).

xv. Interior:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS15 (Interior).

xvi. Monitoring & Diagnostics:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS17 (Monitoring and Diagnostics).

xvii. Software:

- A. Explain how the Proposer intends to meet or exceed the requirements of TS18 (Software Systems) for all software used on the vehicle.
- B. Describe the Proposer's software change control, approval and tracking procedures.

xviii. Materials, Workmanship and Alternative Standards:

- A. Submit a proposal for materials and workmanship as set forth in TS 19 (Materials and Workmanship).

II.H.3 Management Approach and Schedule – Part C

- i. Program Management Description** Describe how the Proposer intends to achieve the requirements of project management outlined in TS 20 (Program Management and Quality Assurance). The actual plan shall be included as an attachment to Technical Proposal Part C.

Note that TS20 and Appendix C of the Technical Specifications require that the Proposer provide its proposed Project Management Plan and Project Quality Assurance Plan for SFMTA as a part of the proposal submittal, that review and acceptance of these documents will be part of the negotiation process, and that they will become part of the final Agreement.

- ii. **Project Organization Chart:** Provide a complete project organization chart, including major subcontractors, along with how the project organization fits into the overall company organization chart. Include the following information:
 - 1. Key individuals and their departments;
 - 2. Their responsibilities within the organization;
 - 3. System integration responsibilities;
 - 4. Design, manufacturing and testing responsibilities of the Proposer and each subcontractor or supplier for all systems and major subsystems;
 - 5. Resumes of key personnel (see TS20 and TS Appendix C) listed in the organization chart.
- iii. **Manufacturing Plan:** Provide a manufacturing plan indicating plants and locations for manufacture of major components and for final assembly. List the work to be performed by the Proposer and the location at which this work will be performed. Identify the final assembly location. If carbody or truck assembly is to be performed by subcontractor(s), identify them by name and work locations. Describe the plant capacity for these locations and indicate the capacity available for work under this contract while satisfying other commitments. Demonstrate that the Proposer has the capacity, personnel and other resources to manufacture the cars specified in this document within the time proposed.
- iv. **Quality Assurance Plan:** Describe how the proposer intends to meet or exceed the requirements for Quality Assurance as described in TS 20 and TS Appendix C. The actual plan shall be included as an Attachment to Technical Proposal Part C.

Note that TS20 and Appendix C of the Technical Specifications require that the Proposer provide its proposed Project Management Plan and Project Quality Assurance Plan to SFMTA as a part of the proposal submittal, that review and acceptance of these documents will be part of the negotiation process, and that they will become part of the final Agreement.

- v. **Whole Life Cycle Costs:** Describe the Proposer's approach to providing SFMTA the best benefit in whole life cycle costs for the new LRVs. Include Proposer's experience with whole life cycle costing in the explanation. Projected costs shall be included in Form II – C.
- vi. **Technical Integration:** Describe the design responsibility of the proposer and major subcontractors (by name), and how the design work will interface among these groups. In particular, highlight where systems integration and industrial design responsibilities are focused. Describe the approach for systems integration as required by the equipment being purchased. Describe the intended design interface between the proposer's team and SFMTA's technical staff for the program management and design refinement process.
- vii. **Testing Plan:** Describe the approach for conducting the tests required in the Technical Specifications. Provide a preliminary plan for test sequencing. Describe the methods by which ongoing test results will be cycled through the design process to ensure that design modifications are implemented into all cars.
- viii. **Safety Considerations:** Describe the approach applied by the Proposer to the incorporation of safety considerations in its design.
- ix. **Reliability Estimate:** Describe how the Proposer will meet its total car system reliability estimate, including a preliminary allocation list covering vehicle subsystems indicating the contribution of each towards meeting this overall estimate as set forth in TS 2.8.
- x. **On-Site Support:** Provide a preliminary plan and approach for on-site support during delivery, testing, training and the warranty period, as set forth in TS 21.
- xi. **Samples of Training Materials and Manuals:** Provide brief representative samples extracted from training materials, manuals and parts catalogs from Proposer's previous projects that demonstrate the Proposer's experience, capability and approach.
- xii. **Schedule with Milestones:** Provide a comprehensive schedule showing key milestones. Proposals should include suggested measures and methods to address the gap in delivery between the first 24 vehicles and the subsequent replacement of the 151 vehicles.

The schedule requirements set forth in this RFP are of the utmost importance to SFMTA, and compliance with these requirements are fundamental to the success to SFMTA's light rail expansion program as well as fleet replacement. Therefore, in addition to the comprehensive schedule defined above, the Proposer shall also include with its proposal a clearly written declaration, signed by an appropriate Corporate Officer, that reaffirms the Proposer's understanding of and absolute commitment to full compliance with the schedule requirements. This declaration shall include outline the steps and efforts that the Proposer will undertake to ensure schedule compliance.

The organization and management chart, resumes, manufacturing plan and schedule in conjunction shall demonstrate that there is sufficient design and production staff and plant capacity available at the times indicated in the schedule, and that processes and structures are in place or are planned to ensure that the schedule will be maintained.

II.H.4 Other Required Documents – Part D

In addition to the requirements on the content of the proposal discussed above, Proposers **must** submit the following as part of the Appendix with the Proposal in order to be considered responsive:

1. Certification Regarding Lobbying (Appendix 3A)
2. Attestation of Compliance (Appendix 3B)
3. Buy America Certificate (Appendix 3C)

The following additional forms must be submitted to be eligible for award of the contract:

1. Confirmation of RFP Receipt (Appendix 3D)
2. Business Registration Certificate Requirement (Appendix 3E)
3. San Francisco Administrative Code Chapters 12B & 12 C
Declaration: Nondiscrimination in Benefits (Appendix 3F)
4. DBE Requirements Certification (Appendix 3H)

These forms are located in Appendix 3 of this RFP.

A PDF Version of the Business Registration Certificate form is available at:
<http://sfgsa.org/index.aspx?page=4762>.

II.I Price Proposal

The Price Proposal shall remain valid for the period stated in Section II.N.4 of this RFP. The Proposer shall list all prices on the forms provided in Appendix 1 to this RFP. All blank spaces shall be filled in and the Proposer shall make no changes in the wording of the forms. SFMTA may require Proposers to provide additional

detailed breakdowns of costs during the evaluation process. Each Proposer is urged to submit a Price Proposal with the most favorable pricing terms to the SFMTA.

II.I.1 Price Proposal Forms – Part A

- (a)** Appendix 1A Schedule of Prices
- (b)** Appendix 1B Nominal Spare Parts and Optional Spare Parts
- (c)** Appendix 1C Diagnostic Test Equipment / Special Tools

II.I.2 Proposal Security – Part B

The Price Proposal shall be accompanied by a proposal bond (bid bond), letter of credit, cashier's or certified check, or money order in the amount of \$3,000,000 payable to the City and County of San Francisco, to guarantee the filing of performance and labor and materials bonds and insurance certificates and proper execution of the Agreement. After the successful proposer has furnished same, or the City has rejected proposals, all bid securities, except those which may have been forfeited, will be returned to the proposers. The cashier's or certified check, or money order is to be drawn on a U.S. bank.

II.J Alternate Approaches

Qualified Proposers shall provide a Proposal that fully complies with the requirements of this RFP and associated documents. In addition, the City encourages Proposers to submit alternatives to the proposed technical, management, schedule and payment approaches. The City will consider for acceptance alternatives to portions of the Proposal. Additional points (up to a maximum of 10 points) may be awarded where, in the opinion of the SFMTA, such alternate approaches provide a tangible benefit and value to the City.

For each alternate approach, the Proposer shall provide a description of the proposed change in sufficient detail to understand the nature and impact of the change, including the provision of the Proposal that the Proposer would like to change. The Proposer shall provide alternate language if appropriate, and clearly specify the benefits to the City, considering technical merit, quality, schedule and cost factors.

II.K Sample Agreement

The Sample Agreement for this project is included here as Appendix 4B. The Sample Agreement contains the following Exhibits:

- Exhibit 2: Payment Schedule
- Exhibit 3: Project Delivery Schedule
- Exhibit 4: FTA Requirements for Procurement Contracts
- Exhibit 5: Warranty Requirements

The Proposer shall carefully review all requirements of the Sample Agreement in this RFP prior to preparation of its Price Proposal. In preparation of its Price Proposal, the Proposer must assume that SFMTA will not make modifications to the terms of the Agreement as attached unless it has issued an addendum changing the terms of the Agreement.

II.L Evaluation Process

II.L.1 General

SFMTA will review Technical Proposals, Price Proposals and Alternate Approaches (if any) from each Proposer that has been found to be responsible.

II.L.2 Evaluating the Proposals

- A. SFMTA will use the Negotiated Procurement Procedures attached as Appendix 4C in the evaluation of Proposals.
- B. SFMTA will appoint a Technical Evaluation Committee that will evaluate Technical Proposals and a Price Evaluation Committee to evaluate the Price Proposals. The Technical Evaluation Committee will open the Technical Proposals first and review them for responsiveness to the RFP and will again make determinations of responsibility based on any new information received from the Proposers or otherwise acquired by SFMTA investigation.
- C. Proposals will be evaluated based on the information received before the Proposal deadline as stated in Section II.D. Any part of a Proposal received after the Proposal deadline will be considered late and will be rejected without evaluation.
- D. At any time during the Proposal evaluation process, the SFMTA may require a Proposer to provide oral or written clarification of its Proposal. The SFMTA reserves the right to make an award without further clarifications of Proposals received.
- E. The Committees will employ only those evaluation criteria set forth in the RFP and in addenda that may be issued.
- F. SFMTA will recommend award of the contract to the responsible Proposer whose Proposal is most advantageous and provides the best value to SFMTA. The objective of the evaluation is to assess the best value to SFMTA in terms of acceptability of technical and all other evaluation factors at a price that is reasonable in relation to the work being performed.

II.L.3 Evaluation Criteria and Relative Weights

After determination of responsiveness and responsibility, the Technical Evaluation Committee and Price Evaluation Committee will review each respective section of the Proposal and establish two intermediate scores, a Technical Score and a Price Score, which will then be combined for each Proposal. SFMTA has established the following relative weights for the Technical Proposal and the Price Proposal:

- Technical Proposal 70%
- Price Proposal 30%

Any extra points awarded for the Alternate Approaches will be added to determine the Final Score for each Proposal.

II.L.4 Technical Evaluation and Methodology

A. Evaluation Criteria. The Technical Evaluation Committee will employ the following main criteria and relative weights in evaluating Technical Proposals, which shall total 100% of the unweighted Technical Score:

- 1. General Organization, Format and Clarity 5%;**
 - a. Follows the format for Technical Proposal as set forth in Section II.F.
 - b. Is clear and concise.
 - c. Includes all requirements in Part A – Introduction and Executive Summary.
- 2. Vehicle Description (Part B) 60%**
 - a. Proposed vehicle, in terms of compliance with Technical Specifications
 - b. Quality of proposed vehicle design and proposed subsystems
 - c. Design approach including basis of design, use of proven methodologies and integration of subsystems.
 - d. Maintainability and reliability
 - e. Compatibility and integration with existing fleet, system and facilities
- 3. Management Approach and Schedule (Part C) 35%**
 - a. Management Approach and Schedule, including Program Management, Project Organization, Testing, and System Support
 - b. Manufacturing, System Assurance and Quality Assurance Plan
 - c. Whole Life Cycle Cost approach

- B. Technical Score:** The Technical Score will be established by the following procedure:

The Technical Evaluation Committee will review each Technical Proposal in accordance with requirements set in Section II.L.4.A above. There will be a total of 100 points possible for the Technical Proposal based on the percentages assigned to specific criteria detailed in Section II.L.4.A. A higher score will be given for each sub-criterion for a Proposal that exceeds the requirements. Where the Proposer has proposed two suppliers or configurations for a particular system or subsystem, SFMTA will evaluate each and use the lower of the scores for the systems of the two suppliers or configurations.

II.L.5 Price Proposal Evaluation

- A. Evaluation Criteria.** The basis for scoring of Price Proposals will be as follows and shall total 100% of the unweighted Price Score:

1. Evaluation of Prices as provided in the following forms :
 - a. Appendix 1A Schedule of Prices
 - b. Appendix 1B Nominal Spare Parts and Optional Spare Parts
 - c. Appendix 1C Diagnostic Test Equipment/Special Tools

- B. Review of Forms.** The Price Evaluation Committee will check all Appendices 1A, 1B, and 1C for mathematical or clerical errors and will correct any errors and recalculate prices on the assumption that the lowest unit prices are correct and thus predominate. In the event of a discrepancy between the unit bid price and the extension, the unit bid price shall govern. In the event of a discrepancy between the sum of the extended amounts and the total bid shown, the sum of the extended amounts shall govern. SFMTA also reserves the right to reject any Proposal with widespread and egregious mathematical errors or with significantly unbalanced unit prices as solely determined by SFMTA.

- C. Price Score.** The Price Score will be established according to the following procedure:

The Price Proposals will be scored by the Price Evaluation Committee in accordance with the requirements set forth in Section II.L.5.A above. There will be a total of 100 points possible for the Price Proposal.

Cost Formula: The cost criterion will be scored by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals will be rated by applying the following formula:

$$Y = (L/N) \times 100$$

where

N = The total evaluated cost for this proposer

L = The lowest evaluated cost submitted by any proposer

Y = The evaluation cost points for this proposer

II.L.6 Evaluation of Alternate Approaches

Alternate Approaches will be considered after evaluation of the Technical Proposals. SFMTA will award additional points, up to a maximum of 10 points, to Proposers who demonstrate that they will provide real and tangible benefits and value added to the SFMTA from their Alternate Approach(es), considering technical, management, contractual and costing factors.

II.L.7 Final Score and Post-Evaluation

The Final Score will be established by weighting the Technical and Price Scores using the relative weights stated in Section II.L.3. Any additional points collected from scoring of the Alternate Approaches will be added to the Technical and Price Scores to determine the Final Score.

After evaluation, the SFMTA, in accordance with the Negotiated Procurement Procedures, will decide whether to:

- A. Award to the highest-ranked Proposer;
- B. Reject all Proposals; or
- C. Establish a competitive range and enter into negotiations with all Proposers within the competitive range.

SFMTA reserves the right to reject all Proposals if the prices are, in SFMTA's opinion, unreasonable or for any other reason in best interests of the SFMTA.

The City intends to award this Agreement to the firm that it considers will provide the best overall project services. In the event that an agreement cannot be reached with the highest-ranked firm, negotiations may be entered into with other qualified firms in the order of their ranking. **SFMTA reserves the right to accept other than the lowest-priced offer and to reject proposals, in whole or in part, that are not responsive to this RFP.**

II.L.8 Request for Best And Final Offer

In accordance with the Negotiated Procurement Procedures, after the first round of evaluation, as described above, SFMTA may revise the provisions of the Technical Specifications or the Sample Agreement to reflect information garnered during the first round and issue a request for Best and Final Offer (BAFO) to each Proposer within the competitive range.

SFMTA will notify the Proposer, prior to Request for BAFO, of any subcontractors who are not compliant with the contract documents and who are unacceptable to SFMTA. After the submittal of BAFO, Proposer may not

substitute any other subsystem subcontractor than those submitted in the BAFO, unless accepted by SFMTA.

II.L.9 Contract Award

The SFMTA will recommend award of the contract to the Proposer who receives the highest ranking in the evaluation process and with whom a contract has been successfully negotiated. SFMTA will issue a Notice of Intent to Award to that Proposer. The Selected Proposer agrees to permit City to perform audits and inspections as indicated in Exhibit 4 of the Sample Agreement (FTA Requirements for Procurement Contracts).

The contract is subject to approval by the Board of Directors of the SFMTA and the City's Board of Supervisors. If the contract is approved by these governing bodies, the SFMTA will issue a Notice of Award to the successful Proposer.

II.L.10 Debrief to Unsuccessful Proposers

Upon request, SFMTA will debrief unsuccessful Proposers after award of the Contract.

II.L.11 Bonds, Insurance, Letters of Credit and Execution of Contract

Within 20 calendar days following the receipt of a Notice of Award, the Proposer to whom the contract has been awarded shall deliver the required insurance certificates, and the specified letter(s) of credit and/or performance and labor and materials bonds, to the City, in accordance with Section 15 of the Sample Agreement.

If a Proposer to whom Notice of Award is made fails or refuses to furnish the required bonds and insurance certificates within 20 calendar days after receiving notice from the City to file such documents, or fails or refuses to properly execute and return the Agreement, the City may, at its option, determine that this Proposer has abandoned its proposal. Thereupon, the recommended award of the Contract to the Proposer shall be null and void, and the full principal amount of the proposal bond (bid bond) shall be payable to the City and County of San Francisco (or the cashier's or certified check or money order accompanying its proposal shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by the City as partial liquidated damages for failure of such proposer to properly execute the Agreement or file the documents required. The foregoing in no way limits the damages that may be recoverable by the City.

II.L.12 Cost and Price Analyses

SFMTA shall conduct a price analysis, and if necessary, a cost analysis of the Proposal to assess whether the prices offered by the Proposer are fair and reasonable. A price analysis is the process of examining and evaluating a

prospective price without evaluation of the separate cost elements. A cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of cost, and the projection of the data to determine the effect on price. If so requested by SFMTA, the Proposer shall promptly submit cost data and related information on a form provided by SFMTA.

SFMTA may choose to have auditors perform an audit of the Proposer's cost data, and the Proposer shall cooperate with SFMTA and make personnel and cost information available to the auditors.

Permissibility of costs will be reviewed under the standards established in U.S. OMB, "Cost Principles for State, Local, and Indian Tribal Governments (U.S. OMB Circular A-87)," 2 C.F.R. part 225. If SFMTA receives only one responsive and responsible Proposal, SFMTA may negotiate with the single Proposer and request a revised Proposal before obtaining detailed cost data for a cost analysis.

II.L.13 Pre-Award Buy America Certification

49 CFR Part 663 requires SFMTA to certify to FTA that a pre-award audit has been performed and to verify compliance with Buy America requirements. After a Proposer has been selected for award and has been sent a Notice of Intent to Award, the Proposer shall provide an SFMTA auditor with appropriate documentation to assist in the completion of the pre-award audit. The documentation supplied by the successful Proposer concerning its compliance with the Buy America regulations (49 C.F.R. Part 661) must list the components of the LRVs by manufacturer, country of origin, and percent of total cost of all components. In addition, the successful Proposer must identify the subcomponents of each component listed as a domestic component in the content calculation for Buy America compliance. Each such subcomponent must be identified by manufacturer, country of origin, and percent of total cost of all subcomponents. The Selected Proposer must identify the proposed final assembly location for the LRVs, and provide documentation detailing the manufacturing activities that will take place during final assembly at that location. The Selected Proposer shall cooperate with SFMTA and, within four calendar days after the date of the Notice of Intent to Award, provide enough detail concerning these activities to allow SFMTA's auditor to determine if these activities constitute adequate final assembly under the Buy America requirements. To assure confidentiality, the auditor's report will contain only summary data, not cost and pricing data, of individual components and subcomponents. Proposer shall clearly mark as proprietary all such cost data. To the fullest extent permitted under applicable law, SFMTA and its auditor shall keep such information confidential.

II.M Federal and Local Requirements

Refer to Sample Agreement Appendix 4B for Federal and Local Requirements.

II.N Terms and Conditions for Receipt of Proposals

II.N.1 Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the SFMTA, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the SFMTA promptly after discovery, but in no event later than the time set forth in Section II.N.2 below.

II.N.2 Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than 21 Days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

II.N.3 Addenda to RFP

The SFMTA may modify the RFP, prior to the proposal due date, by issuing written addenda. Addenda will be sent by email and, if necessary, by facsimile, to each firm listed with the SFMTA as having received a copy of the RFP for proposal purposes. The SFMTA will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the SFMTA prior to the proposal due date, regardless of when the proposal is submitted.

II.N.4 Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 240 Days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

II.N.5 Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

II.N.6 Errors, Omissions and Deviations in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the Contractor from full

compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

II.N.7 Financial Responsibility

The SFMTA accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions in response to the RFP will become the property of the SFMTA and may be used by the SFMTA in any way deemed appropriate.

II.N.8 Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Proposer approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (i) a Contractor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a Proposer to propose that the Proposer apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- c) Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

II.N.9 Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), Proposer's bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organizations net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

II.N.10 Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

II.N.11 Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

- a. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- b. Reject any or all proposals;
- c. Reissue a Request for Proposals;
- d. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
- e. Procure any materials, equipment or services specified in this RFP by any other means;
- f. Determine that no project will be pursued.
- g. Accept any proposals in whole or in part

II.N.12 No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

II.N.13 Communications Prior to Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the Proposer selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the Proposer selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP, for the purpose of influencing the Proposer selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process.

However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Director of Transportation of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation. Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors. All lobbyists or any agents representing the interests of Proposer and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (Appendix 3B) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

III. Contract Requirements

III.A Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form as shown in Appendix 4B – Sample Agreement. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The SFMTA, in its sole discretion, may select another firm and may proceed against the original selected for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§Section 34 in the Agreement); the First Source Hiring Program (§Section 44 in the Agreement); and applicable conflict of interest laws (§ Section 23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

III.B Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at www.sf-hrc.org.

III.C Minimum Compensation Ordinance (MCO)

The successful proposer is urged to agree to comply with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors are urged to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

III.D Health Care Accountability Ordinance (HCAO)

The successful proposer is urged to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

III.E First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding

the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/> and from the First Source Hiring Administrator, (415) 401-4960.

III.F Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

IV. Certifications

The list of certifications required for this Proposal is set forth in Section II.H.4. Additional information is provided below.

IV.A Debarment Certification

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-

Lower Tier Covered Transactions (Third Party Contracts over \$25,000)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, **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 San Francisco Municipal Transportation Agency ("SFMTA"). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, 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 CFR Parts 180, Subpart C and 1200, Subpart C 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.

IV.B Certification Regarding Lobbying (Appendix 3A)

All prospective proposers are required to complete and submit along with their proposals, the certification form shown as Appendix 3A regarding lobbying. The same certification shall be obtained and submitted from all lower tier participants (sub-consultants, suppliers, etc.) with work greater than \$100,000.

IV.C Attestation of Compliance (Appendix 3B)

The Proposer shall sign this certification to indicate compliance with the requirements of Section II.N.13 of this RFP.

IV.D Buy America Certificate (Appendix 3C)

The Proposer shall complete and sign this certification and submit it with its proposal.

IV.E San Francisco Business Tax Certificate (Appendix 3E)

San Francisco Ordinance No. 345-88 requires that, in order to receive an award, a firm located in San Francisco or doing business in San Francisco must have a current Business Tax Certificate. Since work contemplated under the proposed Agreement will be performed in San Francisco, a San Francisco Business Tax Certificate will be required. The Business Tax Declaration (shown as Appendix 3E) shall be completed and submitted with the proposal.

V. Protest Procedures (Appendix 4A)

The protest procedures for bidding and award of federally assisted third party contracts are contained in Appendix 4A of this RFP.

Appendix 1A: FORM I-A – Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices. All bid item prices shall be accurate reflections of the bid items proposed. Every line item must be priced on every sheet.

PROPOSER'S NAME: _____

BASE

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 1	Engineering Design, Project Management and Design Qualification Testing	Lump Sum	x 1	\$
Item 2	Vehicle Price for Base Contract	\$	x 175 Cars	\$
Item 3	Operating, Maintenance and Parts Manuals	Lump Sum	x 1	\$
Item 4	Training	Lump Sum	x 1	\$
Item 5	Spare Parts (Total of Form I-B1)	Lump Sum	x 1	\$
Item 6	Special Tools, Test and Diagnostic Equipment (Total of Form I-C)	Lump Sum	x 1	\$
Total Base: Items 1 – 6				\$

OPTIONS

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 7	Option for 1 to 85 Additional New Light Rail Vehicles	\$	x 85 Cars	\$
Item 8	Additional Spare Parts (Total of Form I-B2)	Lump Sum	x 1	\$
Total Options: Items 7 – 8				\$

ITEMS BELOW ARE FOR INFORMATION ONLY

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 9.1 *	Letter of Credit	Lump Sum	x 1	\$
Item 9.2 *	Performance Bond	Lump Sum	x 1	\$
Item 10	Insurance	Lump Sum	x 1	\$
Item 11	Warranty (In accordance with Exhibit 5 of Sample Agreement)	Lump Sum	x 1	\$

* Provide cost for surety method selected.

Appendix 1B: Form I-B – Nominal Spare Parts and Optional Spare Parts

FORM I-B1 Nominal Spare Parts

Note: Phase 1 corresponds to Cars 1-24 and Phase 2 corresponds to Cars 25-175.

Nominal Spare Parts Total Price \$ _____

Carbody and Interior

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	5 car sets	6 car sets	Windshield		
2	0 car sets	2 car sets	2 car sets	Articulation section, complete		
3	1 car sets	4 car sets	5 car sets	Passenger seat assemblies, complete (frame, inserts, hinges, mounting hardware, etc)		
4	1 car sets	3 car sets	4 car sets	Destination sign, complete (side and ends)		
5	1 car sets	1 car sets	2 car sets	Passenger side window glass		
6	1 car sets	1 car sets	2 car sets	Glass - all (except windshield and passenger side window)		

Coupler and Draft Gear

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Coupler & draft gear assembly, complete		

Cab and Train Control

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	2 units	18 units	20 units	Master Controller assembly		
2	1 cab sets	1 cab sets	2 cab sets	Cab control panel, complete (excluding master controller)		

Doors and Door Control

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Door actuator unit, including linkages and gear drives or actuators		
2	1 car sets	4 car sets	5 car sets	Door Leafs		
3	2 doorway sets of each type	6 doorway sets of each type	8 sets	Door control board or module, complete		

Air Comfort System

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Air conditioner units		
2	1 car sets	1 car sets	2 car sets	Air conditioning blower motors		
3	1 units	5 units	6 units	Air conditioning compressor motors		
4	1 units	5 units	6 units	Air conditioning compressors		

Power Supply and Auxiliary Electric

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	2 units	8 units	10 units	Pantograph assembly, complete		
2	1 car sets	1 car sets	2 car sets	Battery		
3	1 units	3 units	4 units	Auxiliary Inverter		

Propulsion

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	2 units	6 units	8 units	Traction motor, complete with coupling		
2	1 car sets	1 car sets	2 car sets	Propulsion/brake dynamic resistors assembly, complete		
3	1 car sets	1 car sets	2 car sets	Traction power contactors (motor circuit configuration contactors, reverser, et al., except line switch or main breaker)		
4	2 units	3 units	5 units	Line switch		
5	1 car sets	1 car sets	2 car sets	Control relays and sensors, all (except speed sensors or tach generators)		
6	1 car sets	3 car sets	4 car sets	speed sensors or tach generators (if required)		
7	1 car sets	4 car sets	5 car sets	Electronic control unit, complete		
8	1 car sets	3 car sets	4 car sets	Printed circuit boards, logic		
9	1 car sets	2 car sets	3 car sets	Propulsion inverters		

Truck Assembly and Suspension

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Trucks, complete (ready to install)		
2	2 truck sets	3 truck sets	5 truck sets	Motor truck axle assembly, complete (including gear box, brake disc, ground bearings, primary suspension if needed)		
3	2 truck sets	3 truck sets	5 truck sets	Trailer truck wheel/axle assembly, complete		

Friction Brakes

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	3 car sets	4 car sets	All friction brake equipment (except air compressor, connecting hoses, fittings, inter-unit wiring and electronic control unit)		
2	2 units	5 units	7 units	Compressor assembly (if required)		

Communications

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	3 car sets	4 car sets	PA, Communication systems, complete		

Miscellaneous

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	1 car sets	2 car sets	AC and DC motors, other (except traction motors)		

FORM I-B2 Optional Spare Parts

Note: Phase 1 corresponds to Cars 1-24 and Phase 2 corresponds to Cars 25-175.

Optional Spare Parts \$ _____

Carbody and Interior

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	1 car sets	2 car sets	Rubber window glazing, all		
2	1 car sets	1 car sets	2 car sets	Windscreen, complete		
3	1 car sets	1 car sets	2 car sets	Access covers of all underfloor equipment boxes		
4	0 car sets	2 car sets	2 car sets	Stanchions		
5	2 car sets	0 car sets	2 car sets	Graphics and decals		

Coupler and Draft Gear

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Electrical head, complete		
2	200 units	200 units	400 units	Electrical contacts		
3	4 units	6 units	10 units	Electrical head cover		
4	2 car sets	3 car sets	5 car sets	Coupler attenuation tubes		

Cab and Train Control

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 cab sets	3 cab sets	4 cab sets	Cab door, complete with hardware		
2	2 units	8 units	10 units	CCTV system (for outside rear view)		
3	2 cab sets	6 cab sets	8 cab sets	Wiper motor		
4	4 units	36 units	40 units	Wiper arms		
5	2 car sets	2 car sets	4 car sets	Horn assembly		
6	2 car sets	2 car sets	4 car sets	Gong assembly		
7	1 cab sets	3 cab sets	4 cab sets	Switches, pushbuttons, console displays, meters, gauges, indicating lamps, LEDs, lenses, all		
8	4 car sets	0 car sets	4 car sets	Inside sunvisors and mirrors		
9	250 units	0 units	250 units	Wiper blades		
10	2 car sets	2 car sets	4 car sets	Operator's sash		
11	1 units	1 units	2 units	Operator's seat		
12	2 cab sets	8 cab sets	10 cab sets	Cab seat cushions (seat and back)		

Doors and Door Control

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	2 doorway sets	8 doorway sets	10 sets	Door panel set, complete with glazing, suspension, and edges		
2	20 doorway sets	0 doorway sets	20 sets	Sensitive edges		
3	3 car sets	0 car sets	3 car sets	Stop request switches		
4	2 car sets	8 car sets	10 car sets	Limit switches, all		
5	1 car sets	4 car sets	5 car sets	Passenger door pushbutton switches (interior and exterior)		
6	1 car sets	2 car sets	3 car sets	Stop request light lenses		
7	1 car sets	3 car sets	4 car sets	Step assembly, complete		

Air Comfort System

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	1 car sets	2 car sets	All heating elements (passenger compartment and cab)		
2	1 car sets	1 car sets	2 car sets	Temperature control relays		
3	1 car sets	1 car sets	2 car sets	Air conditioning valves, complete		
4	1 car sets	1 car sets	2 car sets	Air flow switches, all		
5	1 car sets	2 car sets	3 car sets	Thermostats, all		
6	1 car sets	3 car sets	4 car sets	Air conditioning pressure switches		
7	1 car sets	3 car sets	4 car sets	Flexible ducting		
8	24 car sets	76 car sets	100 car sets	Disposable air filters		

Lighting

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	0 car sets	1 car sets	1 car sets	Fixtures for all interior lights, complete		
2	2 car sets	0 car sets	2 car sets	Fixtures for all exterior lights, complete		
3	1 units of each type	1 units of each type	2 units	Light fixtures complete (sockets, lens, etc.)		
4	1 car set	0 car set	1 car sets	Light sockets		
5	2 car set	0 car set	2 car sets	Lights (except heat lights)		
6	10 units	40 units	50 units	Heat Lights		
7	1 car sets	1 car sets	2 car sets	Lenses for all lights, interior and exterior (except cab console)		
8	1 car sets	0 car sets	1 car sets	Lenses for Light fixtures		

Power Supply and Auxiliary Electric

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	5 units	15 units	20 units	Pantograph head, complete		
2	2 car sets	2 car sets	4 car sets	Pantograph raise and lower actuator assembly		
3	2 car sets	3 car sets	5 car sets	Lightning or surge arrestor		
4	1 car sets	1 car sets	2 car sets	Battery rack assembly		
5	1 car sets	1 car sets	2 car sets	Relays, all		
6	2 car sets	3 car sets	5 car sets	Inverter printed circuit boards		
7	2 car sets	4 car sets	6 car sets	Battery charger/ low voltage supply		
8	2 car sets	2 car sets	4 car sets	Printed circuit boards for battery charger / low voltage DC supply		
9	5 units	0 units	5 units	Shop power plug, complete (male, car mounted)		
10	2 units	2 units	4 units	High speed circuit breaker		
11	50 car sets	150 car sets	200 car sets	Pantograph shoe carbon inserts (complete with retainer socket)		
12	1 car sets	1 car sets	2 car sets	Pantograph insulators		
13	20 car sets	0 car sets	20 car sets	Pantograph shunts		

Propulsion

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Filter Capacitor		
2	1 car sets	1 car sets	2 car sets	Line reactor		
3	1 car sets	1 car sets	2 car sets	Motor reactor		
4	2 car sets	3 car sets	5 car sets	Motor cable connecting lugs		
5	10 car sets	10 car sets	20 car sets	Contactator tips (traction power contactors)		
6	10 car sets	10 car sets	20 car sets	Contactator tips, all other		
7	2 car sets	2 car sets	4 car sets	Arc chutes, all		
8	0 sets	50 sets	50 sets	Tractor motor bearings		

Truck Assembly and Suspension

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	4 car sets	5 car sets	Primary springs		
2	1 car sets	4 car sets	5 car sets	Secondary springs		
3	4 units	4 units	8 units	Gear box with axle & motor couplings		
4	1 car sets	1 car sets	2 car sets	Load sensing device		
5	5 car sets	0 car sets	5 car sets	Shock absorber		
6	5 car sets	0 car sets	5 car sets	Motor truck pivot replacement liner / bearings		
7	5 car sets	0 car sets	5 car sets	Trailer truck pivot replacement liner / bearings		
8	3 car sets	2 car sets	5 car sets	Ball bearing slew rings for trailer truck		
9	4 car sets	0 car sets	4 car sets	Ground brush holders		
10	4 car sets	0 car sets	4 car sets	Journal bearing		
11	6 car sets	18 car sets	24 car sets	Wheel assembly, complete		
12	16 car sets	0 car sets	16 car sets	Wheel tire sets		
13	40 units	0 units	40 units	Ground brushes		
14	40 units	0 units	40 units	Ground brush springs		
15	6 units	0 units	6 units	Axles, final machined		
16	2 car sets	3 car sets	5 car sets	Bearings, gear assembly		

Friction Brakes

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	1 car sets	2 car sets	Electronic control unit, complete (if not included as part of propulsion ECU)		
2	2 car sets	3 car sets	5 car sets	Printed circuit boards - brake control (if required)		
3	3 truck sets	3 truck sets	6 truck sets	Track brake assembly, complete		
4	2 car sets	2 car sets	4 car sets	Sander valves		
5	2 units	2 units	4 units	Compressor control unit, complete with contactors		
6	2 car sets	0 car sets	2 car sets	Brake disc		
7	200 car sets	0 car sets	200 car sets	Brake pads		
8	4 car sets	0 car sets	4 car sets	Connecting air hoses and fittings, all		
9	1 car sets	2 car sets	3 car sets	Track brake wear plates, complete		

Communications

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 car sets	1 car sets	2 car sets	Interior speakers		
2	2 car sets	0 car sets	2 car sets	Exterior speakers		
3	10 units	0 units	10 units	Radio antenna		
4	10 units	0 units	10 units	Handsets		
5	2 car sets	2 car sets	4 car sets	GPS system		
6	2 car sets	2 car sets	4 car sets	Infotainment System (Digital route maps, etc)		
7	2 car sets	2 car sets	4 car sets	Mobile access router		
8	2 car sets	2 car sets	4 car sets	Event Recorder		

Miscellaneous

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	10 car sets	14 car sets	24 car sets	Circuit Breakers, all (except propulsion main breaker and auxiliary)		
2	1 car sets	1 car sets	2 car sets	Circuit Breaker holders, all		
3	25 car sets	25 car sets	50 car sets	Air and pneumatic filter elements, all		
4	10 car sets	10 car sets	20 car sets	Contactors tips (except propulsion)		

Appendix 1C: FORM I-C – Diagnostic Test Equipment/Special Tools

Diagnostic Test Equipment / Special Tools

Note: Phase 1 corresponds to Cars 1-24 and Phase 2 corresponds to Cars 25-175.

Diagnostic Test Equipment / Special Tools Total Price \$ _____

Portable Test Equipment

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	18 units	18 units	36 units	Laptop (to be able to diagnose equipment below)		
2				Propulsion system		
3				Brake and spin/slide systems		
4				Auxiliary inverter		
5				LVPS and battery		
6				Heating and cooling system		
7				Couplers/trainlines		
8				Master controller		
9				Door systems		
10				Communications system		

Shop Test Equipment

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1	1 units	1 units	2 units	Propulsion system		
2	1 unit	1 units	2 units	Friction Brake		
3	1 unit	1 units	2 units	Auxiliary inverter		
4	1 unit	1 units	2 units	LVPS and battery		
5	1 unit	1 units	2 units	Air conditioner		
6	1 unit	1 units	2 units	Master controller		
7	1 unit	1 units	2 units	Pneumatic/hydraulic controllers		

Special Tools (IF REQUIRED)

No.	Phase1 Qty.	Phase2 Qty.	Total Qty.	Description of Item	Unit Price	Total Price
1						
2						
3						
4						
5						

Appendix 2A: Form II - A – Technical Worksheets

PROPOSER'S NAME _____

INSTRUCTIONS TO PROPOSER

Sections A through P must be filled in completely. In Sections B through O where subcontracting is involved, the Proposer must list at least one subcontractor but not more than two. For any subcontractor, the requested information must be filled in completely. This worksheet is to be included as part of the Proposer's Technical Proposal. Each proposal of any multiple proposal package must have a completed worksheet.

A. DATA AND DIMENSIONS (AT AW0 WEIGHT, EXCEPT AS SPECIFIED)

- | | | | | | |
|-----|---|-------|-----|-------|-----|
| 1. | Length of car, over couplers | _____ | ft. | _____ | in. |
| 2. | Maximum outside width | _____ | ft. | _____ | in. |
| 3. | Width of car at door threshold | _____ | ft. | _____ | in. |
| 4. | Height from top of rail (TOR) to car floor | _____ | ft. | _____ | in. |
| 5. | Height from TOR to top of roof-mounted equipment | _____ | ft. | _____ | in. |
| 6. | Height from floor to ceiling, minimum | _____ | ft. | _____ | in. |
| 7. | Width of side door openings (clear) | _____ | ft. | _____ | in. |
| 8. | Height of side door openings | _____ | ft. | _____ | in. |
| 9. | Distance, center-to-center of trucks | _____ | ft. | _____ | in. |
| 10. | Truck wheelbase | _____ | ft. | _____ | in. |
| 11. | Number of seats | _____ | | | |
| 12. | Number of standees | _____ | | | |
| 13. | Weight of complete vehicle - see Section P | _____ | lbs | | |
| 14. | Wheel Gauge | _____ | in. | | |
| 15. | Wheel diameter | _____ | in. | | |
| 16. | Aisle width | _____ | in. | | |
| 17. | Minimum radius of track curve | _____ | in. | | |
| 18. | Undercar clearance to top of rail (worst case) | _____ | in. | | |
| 19. | Under-truck clearance to top of rail (worst case) | _____ | in. | | |
| 20. | Car body to truck clearance (worst case) | _____ | in. | | |
| 21. | Coupler height (centerline to top of rail) | _____ | in. | | |
| 22. | Maximum height of Pantograph | _____ | in. | | |

B. CARBODY

- | | | | | |
|----|-----------------------------|-------|--|--|
| 1. | Supplier name | _____ | | |
| 2. | Construction material | _____ | | |
| 3. | Floor construction material | _____ | | |
| 4. | Carbody skin (exterior) | _____ | | |
| 5. | Interior trim materials | _____ | | |

C. SEATS

- 1. Subcontractor name _____
- 2. Seat model no. _____
- a. Two Passenger Seat _____
- b. Back-to-Back Passenger Seat _____
- 3. Width of Two Passenger Seat _____ in. _____ in.
- 4. Width of Back-to-Back Passenger Seat _____ in. _____ in.
- 5. Both seats hip to knee _____ in. _____ in.

D. DESTINATION SIGNS

- 1. Subcontractor name _____
- 2. Front destination sign, type _____
- 3. Side destination sign, type _____
- 4. Height of characters, front sign _____ in. _____ in.
- 5. Height of characters, side sign _____ in. _____ in.
- 6. Control method _____

E. COUPLER, DRAWBAR AND DRAFT GEAR

- 1. Subcontractor name _____
- 2. Coupler face, type _____
- 3. Gathering range _____
- a. Vertical _____ in. _____ in.
- b. Horizontal _____ in. _____ in.
- 4. Buff or draft load capacity, maximum (without permanent deformation) _____ lbs. _____ lbs.
- 5. Draft gear capacity to with- stand coupling with empty cars, maximum speed (without release or deformation) _____ mph _____ mph.
- 6. Centering device, type _____
- 7. Electric coupler location _____
- 8. Type of circuit isolation _____

F. DOOR OPERATORS AND CONTROLS

- 1. Subcontractor name _____
- 2. Type of door _____
- 3. Door construction material _____
- 4. Number of door operators _____
- 5. Door operator power source _____
- 6. Minimum force required for obstruction detection _____ lbs. _____ lbs.

G. HEATING, VENTILATING, AND COOLING SYSTEM

- 1. Subcontractor name _____
- 2. Ventilating capacity _____ cfm. _____ cfm.
- 3. Overhead heater capacity _____ kW _____ kW
- 4. Air Conditioning System Capacity _____ tons _____ tons
- 5. Cab heat _____ kW _____ kW
- 6. Refrigerant Type _____

H. INTERIOR LIGHTS

- 1. Subcontractor name _____
- 2. Number of fixtures, A-Car _____
- 3. Number of fixtures, B-Car _____
- 4. Lighting Fixture Type _____

I. AUXILIARY ELECTRIC EQUIPMENT

- 1. Auxiliary Power System
 - a. Subcontractor name _____
 - b. Capacity _____ kVA _____ kVA
 - c. Nominal voltage _____ VAC _____ VAC
 - d. Power semiconductors _____
 - e. Cooling method _____
- 2. Battery
 - a. Subcontractor name _____
 - b. Capacity _____ AH _____ AH
 - c. Technology _____
 - d. No. of cells _____

J. PROPULSION SYSTEM

- 1. Subcontractor name _____
- 2. AC inverter drive - number of inverter drives per car _____
- 3. Inverter Technology _____
- 4. Inverter Cooling Method (self or forced air) _____
- 5. Traction motor rating
 - a. 1 hour _____ HP. _____ HP.
 - b. Continuous _____ HP. _____ HP.
- 6. Motor model no. _____
- 7. No. of motors per powered truck _____
- 8. Motor speed, maximum safe _____ rpm. _____ rpm.
- 9. Motor cooling type _____
- 10. Dynamic brake resistor design _____

- 11. High-speed breaker manufacturer _____
- 12. No. of control logics per car _____
- 13. Control logic cooling type _____
- 14. Minimum opening line voltage _____ VDC _____ VDC

K. GEAR DRIVE

- 1. Subcontractor name _____
- 2. Type _____
- 3. Gear ratio _____

L. TRUCKS AND SUSPENSION

- 1. Truck frame design/manufacturer _____
- 2. Primary suspension type _____
- 3. Secondary suspension type _____
- 4. No. of leveling valves _____
- 5. Journal bearing manufacturer _____
- 6. Axle, solid or hollow _____
- 7. Wheel manufacturer _____
- 8. Wheel Type _____

M. FRICTION BRAKING

- 1. Subcontractor name _____
- 2. Friction braking type (hydraulic or pneumatic) _____
- 3. Parking Brake type _____
- 4. Disc temperature, maximum rated _____ F _____ F
- 5. Control unit design, separate or part of propulsion _____
- 6. Air compressor manufacturer _____
- 7. Air compressor capacity _____ cfm. _____ cfm.

N. COMMUNICATION

- 1. PA/Intercom system manufacturer _____
- 2. Radio manufacturer _____
- 3. Destination Signs manufacturer _____
- 4. CCTV manufacturer _____

O. AUTOMATIC TRAIN CONTROL

- 1. ATC equipment manufacturer _____

Appendix 2B: Form II-B – Supplier Worksheet

CARBODY

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

COUPLER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

DOORS

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

SEATS

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

HVAC

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

LIGHTING

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

AUXILIARY POWER SUPPLY

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

LOW VOLTAGE POWER SUPPLY

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PANTOGRAPH

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PROPULSION CONTROL

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

TRACTION MOTORS

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

GEAR BOX/DRIVE SYSTEM

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

MOTOR TRUCK

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

TRAILER TRUCK

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PRIMARY SUSPENSION

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

SECONDARY SUSPENSION

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

FRICION BRAKE SYSTEM

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

CCTV SYSTEM

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

COMMUNICATIONS

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

AUTOMATIC PASSENGER COUNTING SYSTEM

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

CARBODY – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

COUPLER – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

DOORS – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

SEATS – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

HVAC – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

LIGHTING – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

AUXILIARY POWER SUPPLY – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

LOW VOLTAGE POWER SUPPLY – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PANTOGRAPH – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PROPULSION CONTROL – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

TRACTION MOTORS – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

GEAR BOX/DRIVE SYSTEM – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

MOTOR TRUCK ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

TRAILER TRUCK – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

PRIMARY SUSPENSION – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

SECONDARY SUSPENSION – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

FRICION BRAKE SYSTEM – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

CCTV SYSTEM – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

COMMUNICATIONS – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

AUTOMATIC PASSENGER COUNTING SYSTEM – ALTERNATE SUPPLIER

1. Supplier	
2. Manufacturing Facility	
3. Years of Facility Operation	
4. Locations of Units in Operation	
5. Number of Units in Operation	
6. Number of Years in Operation	
7. Owner Contact Information (phone/email)	

Appendix 2C: Form II - C – Whole Life Cycle Cost

Supplier Name _____

Submitted By _____

Submittal Date _____

Contact Name _____

Contract Number _____

Email Address _____

Supplier: _____

Submittal Date: _____

Supplier: _____

Submittal Date: _____

R-CM Whole Life (25 Years) Project Cost Estimate by Sub-System

System	Supplier	Scope of Work	MTTR	Source	Material (\$)	Interval (Years)
ATC						
ATP						
ATO						
Antenna						
Speed Sensor						
Auxiliary Power Supply						
Batteries						
Trucks						
Primary Suspension						
Secondary Suspension						
Gear boxes						
Wheel Sets						
Dampers						
Wear Plates						
Carbody						
Interiors (seats, floors, wall panels, wiring, ceiling panels, etc)						
Exterior (decals, paint, glazing, seals, wiring, piping etc)						
Gangways						
Coupler/Drawbar						

System	Supplier	Scope of Work	MTTR	Source	Material (\$)	Interval (Years)
Communications						
Controls						
Destination signs						
Public Address						
CCTV						
PIS						
Diagnostics & TMS						
Doors						
Controls						
Operators						
Leafs						
Steps						
Friction Brake						
Air Compressor (if used)						
Hydraulics (if used)						
HVAC						
Controls						
Compressor						
Evaporator						
Condenser						
Elements						
Propulsion						
Master Controller						
Traction Motors & Mounting						
Inverter						
Logic						
Line Filter						
Contactors & Relays						
Speed Sensor						
Pantograph						

Supplier: _____

Submittal Date: _____

Annual Scheduled Maintenance Cost Estimate By Sub-System

ATC

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Auxiliary Power Supply

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Batteries

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Trucks

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Carbody

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Coupler/Drawbar

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Communications

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Diagnostics & TMS

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Doors & Steps

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

HVAC

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Propulsion

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Pantograph

System / Interval	Scope of Work	Annual MTTR (hours)	Source	Annual Material Costs (\$)
Enter proposed intervals e.g. Daily				
Monthly				
Semi-annually				
Hours				
Miles				
Others				

Supplier: _____

Submittal Date: _____

Annual Unscheduled Maintenance Cost Estimate By Sub-System

System	MDBF (miles)	Source	Number of Failures Per Year	MTTR (single failure)	Source	Material Costs (single failure) (\$)
ATC						
ATP						
ATO						
Antenna						
Speed Sensor						
Auxiliary Power Supply						
Batteries						
Trucks						
Primary Suspension						
Secondary Suspension						
Mechatronics & Controls						
Wheel Sets						
Dampers						
Wear Plates						
Carbody						
Interiors (seats, floors, wall panels, wiring, ceiling panels, etc.)						
Exterior (carshell, decals, paint, glazing, seals, wiring, piping etc.)						
Gangways						
Coupler/Drawbar						
Communications						
Controls						
Destination signs						
Public Address						
CCTV						
PIS						
Diagnostics & TMS						
Doors						
Controls						
Operators						
Leafs						
Steps						
Friction Brake System						
Air Compressor (if used)						
Hydraulic system (if used)						
Heating and Ventilation						

System	MDBF (miles)	Source	Number of Failures Per Year	MTTR (single failure)	Source	Material Costs (single failure) (\$)
Air Conditioning						
Controls						
Blowers						
Compressor						
Evaporator						
Condenser						
Propulsion						
Master Controller						
Traction Motors						
Inverter						
Logic						
Line Filter						
Contactors & Relays						
Speed Sensor						
Pantograph						

Appendix 3A: 49 CFR, PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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 sub recipients 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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this _____ day of _____, 20_____.

By: _____
(Signature of Authorized Official)

Appendix 3B: ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: _____

The Form is Submitted on Behalf of Firm: _____

Name of RFP: _____

1. I attest that I and all members of the firm listed above will and have complied to date with Section II.N.13 of the RFP.

Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section II.N.13 of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.

Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date _____

Appendix 3C: Buy America Certificate

Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of 49 CFR Part 661. Bidder shall only sign one certification.

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 CFR 661.11.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

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 section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and the applicable regulations in 49 CFR 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Appendix 3D: Confirmation of RFP Receipt

**RFP Contract No. SFMTA-2013-19
Procurement of New Light Rail Vehicles (LRV4)**

Subcontractor confirms that it has received from a Qualified Proposer the referenced Request for Proposals (RFP) and associated addenda.

PROPOSER'S NAME: _____

Confirmation of RFP Receipt

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____



Appendix 3E: Business Registration Certificate Requirement

General

To receive an award, a Contractor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) may be pro-rated for new registrations, depending on when during the year you started conducting business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine your registration fee go online to: www.sfgov.org/Tax/BusinessForms and select "Understanding the S.F. Business Registration Certificate." In addition, every entity "conducting business in San Francisco" must file a combined Payroll Expense Tax Statement and Business Registration renewal annually. Effective January 1, 2009, businesses with a computed tax of \$3,750 or less are exempt from paying payroll expense tax provided the statement is filed on time.

Who must obtain a Business Registration Certificate?

Any business that is located or conducting business in San Francisco.

What is "conducting business in San Francisco"?

If an entity answers "yes" to any of Items 1-8 on the reverse, it is considered to be "conducting business in San Francisco."

Are there exceptions?

Yes. An entity receiving rental income solely from one cooperative housing corporation, one residential structure of fewer than 4 units, or one residential condominium shall not be deemed to be engaging in business.

My business is not located in San Francisco. Is a registration certificate still required?

- If the entity "conducts business in San Francisco," a registration certificate is required. See Items 1-8 on the reverse.
- Entities that do not "conduct business in San Francisco" (excluding government agencies) must sign and return the Declaration.

What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/ Business Tax), licenses/permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the

certificate be issued.

How do I apply for and obtain the certificate?

Complete an application form and submit it along with the appropriate registration fee in person or by mail to:

Office of the Treasurer & Tax Collector
ATTN: Taxpayer Assistance
City Hall, Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4696

There are two different application forms, one for Sole Proprietorships and one for all other ownership types. Both applications are available in person at the address above or online at:

www.sfgov.org/Tax/BusinessForms

Do Company Divisions, Parents and Subsidiaries have to register separately?

That depends on a company's individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

Can I do business with the City without a certificate?

As a rule, if you do not "conduct business in San Francisco" as outlined on the reverse, you are not required to obtain a Business Registration Certificate. The City can make purchases from businesses only in the following situations:

- The entity conducts business in San Francisco and has registered and possesses a current Business Registration Certificate.
- The entity does not conduct business in San Francisco and has signed and submitted the Declaration.
- The entity is a government agency.
- There is an emergency. Although OCA can award the contract, the Contractor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts, and product purchases.

What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a **copy** of the receipt with your bid.

What if I currently “do not conduct business in San Francisco,” but would register if I win this bid?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Office of the Treasurer & Tax Collector.

What must I file?

Unless you previously submitted this form, fax it to the Treasurer & Tax Collector at (415) 554-6207 or mail it to Treasurer & Tax Collector, City Hall, Room 140, #1 Carlton B Goodlett Place, San Francisco, CA 94102-4696.

If you are bidding on a City contract, you must resolve any Business Tax issues before the contract can be awarded to you. That means either registering with the Tax Collector if you are required to do so, or submitting this form showing that you are not required to register.

What if I have submitted this form previously?

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

What if I don't have a City Contractor number yet?

You need to get one before submitting this form. To do that, go to <http://www.sfgov.org/site/oca>. Click on “Required Contractor Forms,” download the IRS Form W-9 and New Contractor Number Request Form and fax them to the Controller at (415) 554-6261.

For more information:

For information on how to apply for the certificate, call the Tax Collector's Office at (415) 554-6718 or 554-4400. For information on your eligibility to receive a particular award, call the Office of Contract Administration at (415) 554-6743

Business Tax Declaration

Please indicate "Yes" or "No" by marking the boxes on Items 1-8, based on your company's situation *as of now*, whether a contract is signed or not. If any answers would change for your company if awarded a bid that is pending, see the last paragraph in this column*.

Do you conduct business in San Francisco?

- | Yes | No | <u>Does the business entity currently...</u> |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. ...maintain a fixed place of business within San Francisco? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. ...exercise corporate or franchise powers within San Francisco? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. ...own or lease real property within San Francisco for business purposes? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. ...regularly maintain a stock of tangible personal property for sale in San Francisco? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. ...employ or loan capital on property within San Francisco? |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. ...solicit business within San Francisco for all or part of any seven days during one fiscal year? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. ...perform work or render services within San Francisco for all or part of any seven days during one fiscal year? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. ...utilize the street within San Francisco in connection with the operation of motor vehicles for business purposes for all or part of any seven days during one fiscal year? |

- If you indicated "Yes" to any of Items 1-8, you must complete Items 9-15 in this Declaration and **must register immediately**.
- If you answered "No" to **all** Items 1-8, ordinarily you are not conducting business in San Francisco. In this case, you need not register with the Tax Collector and may omit items 9-15, but you **must sign and return** this Declaration, which is subject to review by the Tax Collector.

* If the awarding of a bid would cause any of the responses to items 1-8 to change to "Yes," indicate those item numbers here:

- 1 2 3 4 5 6 7 8

If awarded a bid, an application for a Business Registration Certificate must be submitted within 15 days of the effective date.

Tax-exempt Entities, Banks, Insurance Companies, Others

If you answer "Yes" to any of Items 9-12, you still need to register but need not pay the registration fee. To register, you must submit proof of tax-exempt status to the Tax Collector, with other forms. For non-profit entities, proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code.

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 9. This is a non-profit, tax-exempt entity. |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. This entity is a bank or an insurance company. If "Yes," indicate your type of business:

_____ |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. This entity is a skilled nursing facility licensed under Title 22, CA Admin. Code, Div. 5. |

12. Other Exemptions. See Francisco Business and Tax Regulations Code Article 12A, Section 906(d) to (f), available online at: www.sfgov.org/BTRcode

Applying for a Business Registration Certificate

If you answered "Yes" to any of Items 1-8, check item 13, 14, or 15 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for OCA to reject the bid.

13. This entity has registered with the Tax Collector and is assigned Certificate Number:
_____ (6 digits, e.g., "123456").
14. This entity applied for a Certificate by mailing the application and fee to the Tax Collector, or by submitting the application in person, on
_____(mm-dd-yyyy).
The application is pending.
(NOTE: Completing this Declaration is not the same as applying for a Business Registration Certificate.)
15. This entity needs to register and will do so immediately.

.....
I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector. I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20_____, at

_____ ,

(State)

(City)

Name of company (please print)

Signature

City Contractor number (see reverse for how to obtain one)

Name of person signing

Mailing address

Telephone

City, State, ZIP

Federal Employer Identification Number (FEIN)

- Routing:**
- Please **fax this P-25 form to** (415) 554-6207, or you may mail it to: Treasurer & Tax Collector, City Hall, Room 140, #1 Carlton B. Goodlett Place, San Francisco, CA 94102-4696.
 - If you are registering, obtain an application from the Tax Collector's website (<http://sfgov.org/tax/business> forms). Include this form.
 - If you submitted this form previously and if your business tax status has not changed, discard this form.

Questions:

...regarding how to apply for a certificate, call the Tax Collector at (415) 554-6718 or (415) 554-4400.

... regarding a bid, call the Office of Contract Administration at (415) 554-6743.

Appendix 3F: S.F. Administrative Code Chapters 12B & 12C

CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION



S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS

(HRC-12B-101)

► **Section 1. Vendor Information**

Name of Company: _____

Name of Company Contact Person: _____

Phone: _____ Ext.: _____ Fax: _____

E-mail Address: _____

Vendor Number (if known): _____

Federal ID or Social Security Number: _____

Approximate Number of Employees in the U.S.: _____

Are any of your employees covered by a collective bargaining agreement or union trust fund? Yes No

Union name(s): _____

DATE & TIME RECEIVED BY HRC (FOR HRC USE ONLY)

► **Section 2. Compliance Questions**

Question 1. Nondiscrimination – Protected Classes

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? **Please note:** a "YES" answer is required for compliance. Please answer yes or no to each category.

- | | | | |
|-------------------|--|--|--|
| • Race | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Sex | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Color | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Sexual orientation | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Gender identity (transgender status) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Domestic partner status | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • National origin | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Marital status | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Ancestry | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Disability | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes <input type="checkbox"/> No | • AIDS/HIV status | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Height | <input type="checkbox"/> Yes <input type="checkbox"/> No | • Weight | <input type="checkbox"/> Yes <input type="checkbox"/> No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

Yes No

Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

Yes No

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

*The term "Domestic Partner" includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

If you answered "NO" to both Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested.

If you answered "YES" to either or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

Question 2. (continued)

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dependent Life Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

► **Section 3. Required Documentation**

YOU MUST SUBMIT SUPPORTING DOCUMENTATION

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a statement from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Guide at <http://www.sfgov.org/site/uploadedfiles/sfhumanrights/forms/quickref.pdf> or contact the HRC.

Have you submitted supporting documentation for each benefit offered? Yes No

► **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year _____, at _____ (City) _____ (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

➔ **Submit this form and supporting documentation to:** HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94102-6033, or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: www.sfhrc.org.

☎ **For assistance** please contact the Human Rights Commission at 415-252-2500 (TTY: 415-252-2550).

HRC-12B-101 (11/05)

APPENDIX 3G

Financial Statement

To be completed by all proposers (please provide figures in U.S. Dollars) for three most recent audited fiscal years. Please use a separate sheet for each fiscal year.

Fiscal Year ending _____

ASSETS

Cash on Hand and in Banks (Provide Proofs)*	\$
Account and Notes Receivable	\$
Current Assets	\$
Fixed Assets (net of depreciation)	\$
Other Assets (include sub categories)	\$
Total Assets	\$

* Please include any letters or lines of credit and provide supporting documentation

LIABILITIES

Accounts Payable	\$
Notes Payable to Banks in next twelve months	\$
Notes Payable to Others	\$
Taxes Payable	\$
Current Liabilities	\$
Long Term Liabilities (More than twelve months)	\$
Other Liabilities	\$
Total Liabilities	\$
Net Worth	\$

INCOME FROM OPERATIONS

Revenue	\$
Interest Income	\$
Cost of Goods Sold (if appropriate)	\$
Gross Profit	\$
Non-Operating Revenue (include sub categories)	\$
General & Administrative Expenses	\$
Depreciation	\$
Interest Paid	\$
Non-Operating Expense (include sub categories)	\$
Net Gain or Loss	\$

- Please provide quarterly cash flow for the last 36 months.
- List any material outstanding litigation and potential amount of exposure.

I certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of pre-qualification, and possible debarment for a period of five years.

Signature of Owner or Officer

Date Signed

Company Name

Federal ID #

Appendix 3H: DBE Requirements

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

SECTION 1

FTA SPECIAL PROVISIONS FOR TRANSIT VEHICLE MANUFACTURERS (TVMs)

**-- TITLE 49 CODE OF FEDERAL REGULATIONS PART 26:
PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES
IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE
PROGRAMS**

Section I

FTA SPECIAL PROVISIONS FOR TRANSIT VEHICLE MANUFACTURERS (TVMS)

General - This procurement is subject to the provisions of Section 26.49 of 49 CFR Part 26 (“the Regulations”). Accordingly, as a condition of permission to bid, a Transit Vehicle Manufacturer’s certification must be completed and submitted with the bid. A bid which does not include the certification **WILL NOT** be considered.

INTRODUCTION – PROCEDURES FOR TRANSIT VEHICLE MANUFACTURERS

The SFMTA shall require that each transit vehicle manufacturer, as a condition of being authorized to bid on transit vehicle procurements in which FTA funds participate, certify that it has complied with the requirements of 49 CFR Section 26.49.

Each manufacturer shall establish and submit, for the FTA Administrator’s approval, an annual percentage overall goal. **In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying 49 CFR Part 26, §26.45.** The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

The manufacturer may make the certification called for in paragraph (1) above if it has submitted the goal required by paragraph (2), and the FTA Administrator has either approved it or not disapproved it.

For questions regarding certification information or technical assistance, TVMs should contact:

Britney Berry
Federal Transit Administration
Office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590
202-366-1065

EXHIBIT A

SAMPLE FORMAT

TRANSIT VEHICLE MANUFACTURERS CERTIFICATION OF COMPLIANCE WITH SUBPART C, 49 CFR PART 26

This procurement is subject to the provisions of Section 26.49 of 49 CFR Part 26. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid. A bid which does not include the certification will not be considered.

TRANSIT VEHICLE MANUFACTURERS CERTIFICATION

(Name of Firm), a TVM, hereby certifies that it has complied with the requirements of Section 26.49 and Section 26.45 of 49 CFR Part 26 by submitting a current annual DBE goal to FTA .

The goal applies to Federal Fiscal Year _____ (October 1, 20____ to September 30, 20____) and has been approved or not disapproved by FTA.

(Name of Firm), hereby certifies that the manufacturer of the transit vehicle to be supplied

(Name of Manufacturer) has complied with the above-referenced requirement of **Section 26.49 and Section 26.45** of 49 CFR Part 26.

Signature: _____

Date: _____

Title: _____

Firm: _____

EXHIBIT B

TRANSIT VEHICLE MANUFACTURER

1. **ANNUAL OVERALL GOAL 49 CFR Part 26 Sections 26.45, 26.47, 26.51, 26.53 and 26.55.**
2. **TVMs are required to submit to the FTA Administrator, or his/her designee for approval an annual percentage overall goal for the utilization of DBEs.**
 - a. A TVM goal is submitted and approved using the same procedure followed by recipients under Subpart C – Goals, Good Faith efforts, and Counting: Sections 26.45, 26.47, 26.51, 26.53, and 26.55 of the Regulations.
(See http://www.fta.dot.gov/civilrights/dbe/civil_rights_5263.html).
 - b. Work performed outside the United States or by the TVM's own work force is excluded from the base used to calculate the goal.
3. **SOLICITATION OF BIDS/PROPOSALS (26.49)**
 - a. The Regulations provide that the TVM will certify to the recipient that:
 - (1) It has submitted the required annual percentage overall goal to FTA; and
 - (2) FTA has either approved its annual percentage overall goal or has not disapproved the goal.
 - b. A distributor or dealer must provide a certification of the manufacturer's compliance for those vehicles the distributor or dealer seeks to offer.
 - c. The recipient is required to include a provision in its bid specifications requiring the above certification from TVMs, distributors, or dealers, as a condition of permission to bid.
4. **BIANNUAL REPORTS.** Biannual reports of contracting with DBEs are required from TVMs to assess their progress toward meeting the projected DBE goal. **These reports are to be submitted to Ms. Britney Berry, Federal Transit Administration, Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590, 202-366-1065, britney.berry@dot.gov, in accordance with Section 23.49 of the Regulations.**

Appendix 4A: Protest Procedure

MUNICIPAL TRANSPORTATION AGENCY

PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

(Construction, public improvements, personal services,
negotiated procurement and other major procurement contracts)
REVISED: April 2007

1. Policy

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Director of Transportation, who shall review the protest and recommend its resolution to the Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.

2. Definitions

Contract Manager (CM) refers to the Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.

Award shall mean authorization by resolution of the Municipal Transportation Agency Board of Directors or authorization by the Director of Transportation, for contracts under the Director of Transportation's authority, for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a sealed bid.

Bid includes the terms "offer" or "proposal" as used in the context of negotiated procurements, requests for proposals and sealed bids.

City means the City and County of San Francisco, acting through the Municipal Transportation Agency.

Contract Compliance Office (CCO) is the SFMTA office that administers

compliance with federal regulations governing Disadvantaged Business Enterprises, as well as SFMTA's program governing Small Business Enterprises.

Days refers to working days of the City and County of San Francisco (unless otherwise indicated).

Director of Transportation refers to the Director of Transportation of the SFMTA.

Division of Sustainable Streets refers to the Division of Sustainable Streets and the former Department of Parking and Traffic of the Municipal Transportation Agency.

Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

Municipal Transportation Agency (SFMTA or Agency) is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Division of Sustainable Streets, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Division of Sustainable Streets, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

Protest is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.

Post-Award Protest is a complaint by a bidder or proposer when Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.

San Francisco Municipal Railway refers to the San Francisco Municipal Railway of the Municipal Transportation Agency.

Small Business Enterprise (SBE) refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.

3. Responsibilities:

3.1 The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.

3.2 The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.

3.3 In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.

4. Implementation

4.1 Submit Protest

A protest describing the nature of the disagreement must be submitted in writing to MTA no later than five (5) days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in writing to MTA no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to MTA no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Director of Transportation
Municipal Transportation Agency
One South Van Ness Ave, 7th Floor
San Francisco, CA 94103

with copies to:

Director of Transit
Municipal Transportation Agency
One South Van Ness Avenue 7th Floor
San Francisco, CA 94103

and

Ms. Trinh Nguyen P.E., Senior Program Manager
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco CA 94103
Phone: (415) 701-4602 or Fax: (415) 701 5328

4.2 Coordination Efforts

With direction from the Director of Transportation, and following the requirements of FTA Circular 4220.1F, the CM shall determine the nature of the disagreement and coordinate resolution efforts.

4.3 DBE or SBE Requirements

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information. The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director of Transportation and the CM of its decision. The CM shall provide copies of the decision to the Director of Transit. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract specific DBE or SBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in Section V.D.3.v of the Agency's DBE or SBE Program apply to requests for reconsideration from the apparent low bidder. Neither the Director of Transportation nor the MTA Board of Directors will have jurisdiction to hear administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts.

4.4 Issues Not Related to DBE or SBE Requirements

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Director of Transportation and the CM for review and evaluation. The CM shall provide copies of the opinion to the Director of Transit, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

4.5 Disagreement by Protester

Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Director of Transportation for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Director of Transportation shall review the decision and make a recommendation to Agency for final action. The CM shall inform the protester of the Director of Transportation's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.

4.6 Incorporate Legal Opinion/Recommendation

The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the Agency prior to the meeting when final award is determined.

4.7 Final Action

The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.

4.8 Protest to FTA

FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.

Appendix 4B: SAMPLE AGREEMENT

Agreement Between

**The City and County Of San Francisco
San Francisco Municipal Transportation Agency**

And

[Contractor]

For

Procurement of New Light Rail Vehicles (LRV4)

Contract No. SFMTA-2013-19

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Exhibits

Exhibit 1	Schedule of Prices (Form I-A)
Exhibit 2	Payment Schedule
Exhibit 3	Project Delivery Schedule
Exhibit 4	FTA Requirements
Exhibit 5	Warranty

City and County of San Francisco
San Francisco Municipal Transportation Agency
One South Van Ness 7th Floor
San Francisco, California 94103

Agreement between the City and County of San Francisco and

[insert name of contractor]

This Agreement is made this _____ day of _____, 2014, in the City and County of San Francisco, State of California, by and between: [insert name and address of contractor] (“Contractor”) and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

- A. SFMTA wishes to obtain the services of a qualified firm to procure up to 260 Light Rail Vehicles.
- B. A Request for Qualifications (“RFQ”) was issued on March 29, 2013, and City qualified three proposers to submit proposals.
- C. A Request for Proposals (“RFP”) was issued on (DATE) to the qualified proposers, and City selected Contractor as the highest-qualified scorer pursuant to the RFP.

Now, THEREFORE, the parties agree as follows:

Definitions

Acceptance: The formal written acceptance by the City that all Work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor’s proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

Certification: Certification by the Controller that funds necessary to make payments as required under the Contract are available in accordance with the City’s Charter.

City: The City and County of San Francisco.

Conditional Acceptance: The circumstance in which a Vehicle has been delivered to SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

Conformed Contract Documents: The Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

Contract, Agreement: The written contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security, and all supplemental agreements.

Contract Modification: A written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The proposer to whom the Award is made.

Controller: Controller of the City.

Correction: The elimination of a defect.

Days: Unless otherwise designated, "Days" as used in the Contract shall mean calendar days.

Defect: Any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.

Director: The Director of Transportation of the SFMTA or his or her designee.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

Final Acceptance: The formal written acceptance by the Director of Transportation or his or her designee that all contract deliverables for the Contract have been satisfactorily completed and accepted.

Light Rail Vehicles: The vehicles procured under this Contract, also referred to as "Cars," "LRV4s," or "Vehicles."

Material and/or Equipment: The Light Rail Vehicles (including all parts and equipment installed in them) and other deliverables furnished by the Contractor under the provisions of the Contract.

Notice To Proceed (NTP): A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

Project Manager: The Project Manager assigned to the Contract for the SFMTA, or his or her designated agent.

Proposal: The technical and management information and prices submitted by Contractor in response to the RFP.

Related Defect(s): The damages inflicted on any component or subsystem as a direct result of a Defect.

Request for Qualifications; RFQ: The Request for Qualifications issued by the SFMTA on March 29, 2013 to qualify proposers for the RFP.

Request for Proposals; RFP: The Request for Proposals issued by the SFMTA on (Date), to procure up to 260 Light Rail Vehicles.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway and the Division of Sustainable Streets (Parking and Traffic).

Subcontractor, Supplier: Any individual, partnership, firm, or corporation that undertakes integrally on the Project the partial or total design, manufacture, performance of, or furnishes one or more items of work under the terms of the contract. As used in this Agreement, the terms Subcontractor and Supplier are synonymous.

Technical Specifications: The portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the Work and the materials, products (including the assembly and testing), and other requirements relative to the manufacturing and construction of the Work.

Work: The furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Vehicles.

Working Days: Those calendar days during which regular business is conducted excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Acronyms

FDR	Final Design Review
FTA	Federal Transit Administration
PDR	Preliminary Design Review
RFP	Request for Proposals
RFQ	Request for Qualifications
SOQ	Statement of Qualifications

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.

1.1. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the

Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

1.2. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

1.3. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall not exceed 15 years from the Effective Date.

3. Effective Date of Agreement.

This Agreement shall become effective on the date the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Work Contractor Agrees to Perform.

The Contractor agrees to perform the Work provided for in the Technical Specifications, and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit 3.

5. Compensation.

5.1. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words – no pennies]. The breakdown of costs associated with this Agreement appears in the Schedule of Prices (Exhibit 1) and Payment Schedule (Exhibit 2), incorporated by reference as though fully set forth herein.

5.2. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until equipment, reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

5.3. In no event shall City be liable for interest or late charges for any late payments. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

6. Guaranteed Maximum Costs.

6.1. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

6.2. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

6.3. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

6.4. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6.5. This contract will be initially certified for \$ _____. Contractor shall not incur costs in excess of such amount without written authorization from the SFMTA, signed by the SFMTA Chief Financial Officer.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City. Progress payments shall be made by the City to Contractor at the address specified below:

7.1. Amount. Subject to any subsequent deductions for Liquidated Damages for late delivery of Contract deliverables as specified in Section 19 of this Agreement, the City agrees to pay an amount not to exceed the compensation amount stated in Section 5.1 of this Agreement and in accordance with the terms and conditions of this Agreement.

7.2. Invoices. Contractor's invoices shall be submitted to the following address:

San Francisco Municipal Transportation Agency
Transit Division
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attention: Ms. Trinh Nguyen P.E., Senior Program Manager

Each invoice shall include:

- Relevant milestones;
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;
- Total invoice amount.
- Supporting documentation and/or documentation referencing submittal or delivery.

7.3. Progress Payments. SFMTA shall make payments as the work proceeds in accordance with the progress payment provisions as set forth in the Payment Schedule (Exhibit 2). Progress payments shall be conditioned on either (1) transfer of title, free of encumbrances, to the City for the portion of the components, equipment or material paid for by the progress payment, plus a certificate of insurance required by Section 15.1 of this Agreement; or (2) issuance of a letter of credit in conformance with the provision of Section 15.2.5 in the amount of the progress payment. Progress payments for which a letter of credit shall be required are as follows: Milestones A, B and C of Item 1 of Exhibit 2 to this Agreement, and Milestones A, B (except if title is delivered prior to payment by SFMTA) and C of Item 2 of Exhibit 2 to this Agreement. Letter(s) of credit for such progress payments will be released upon Acceptance of 80 percent of the total Vehicles.

In lieu of a letter of credit to secure progress payments, Contractor may elect to increase its performance bond required under Section 15.2.2 of this Agreement by the cumulative amount of progress payments for each of the above Milestones and any

other items for which Contractor elects to submit security instead of transferring title. Such increase in the amount of the performance bond shall be included in the amount of the performance bond submitted at the time of Contract Award. This increase in the amount of the performance bond shall constitute security for all progress payments for which the bond is issued should Contractor default with respect to any provision of this Agreement. In lieu of an increase in the Performance Bond, an Advance Payment Bond, in a form acceptable to the City's Risk Manager, or other security acceptable to the City's Risk Manager, will also be accepted.

For any Vehicle subject to Conditional Acceptance, the payment shall be reduced by an amount equal to twice the estimated cost for parts and labor for the corrective action, which amount shall be withheld and paid after corrective action by the Contractor and final Acceptance by SFMTA.

All Work covered and paid for during the construction of the Light Rail Vehicles (LRV4) shall become the sole property of SFMTA. This provision shall not be construed as relieving the Contractor from the sole responsibility for all Work upon which payments have been made or for the restoration of all damaged Work or as waiving the right of SFMTA to require the fulfillment of all of the terms of the Contract specifications. The Contractor shall remain liable for insuring and delivering the material in the final form as specified in the Contract, and shall replace material at no cost to SFMTA in the event it is not delivered and accepted by SFMTA.

Contractor shall prepare invoices supported by evidence satisfactory to SFMTA that the Work invoiced has been accomplished and that the materials, listed, if any, are stored and ready for use.

7.4. Exchange Rate Risk. The City will not make price adjustments on this Contract to protect the Contractor from fluctuations in the value of the applicable foreign currency in relation to the United States dollar.

7.5. Inflation Risk. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

7.6. Release. The Contractor shall, if required by the City, execute and deliver at the time of final payment and as a condition precedent to final payment, a release in form satisfactory to the City, discharging the City, its officers, agents and employees of and from liabilities, obligations, and claims arising under this contract.

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by

the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

10. Taxes

10.1. Payment of Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the Work performed pursuant hereto, shall be the obligation of Contractor.

10.2. Possessory Interest. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

10.2.1. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

10.2.2. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

10.2.3. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

10.2.4. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

14.1. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and Work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and Work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

14.2. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall

be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services or Work performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance; Bonds

15.1. Insurance

15.1.1. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of his Agreement, Contractor shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, illness or injury. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors; and

(b) (i) Commercial General Liability Insurance with limits not less than \$50,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and any exclusion for railroads shall be removed; or

(ii) A combination of Umbrella or Excess Insurance and Commercial General Liability Insurance with combined limits not less than \$50,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; such coverage shall be written on a follow form basis, and any exclusion for railroads shall be removed; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Garage Liability insurance, including coverage for garage operations arising from premises/operations, product/completed operations, contracts, owned vehicles, non-owned vehicles and damage to vehicles owned by others (bailment), with a minimum limit of liability of \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage; and

(e) Garagekeepers' Legal Liability insurance, with an endorsement for coverage of Light Rail Vehicles, comprehensive form, with limits not less than \$2,000,000 each occurrence; and

(f) All Risk Property Insurance with replacement cost coverage and limits of no less than (amount TBD based on value of maximum cars stored). Insurance shall cover all risk of physical loss or damage to the Contractor's site, including buildings, contents, any storage facility and its contents; and

(g) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(h) Unless otherwise covered by Commercial General Liability and/or Umbrella or Excess Insurance specified in paragraph 15.1.1(b), Transit Liability coverage with limits not less than \$50,000,000, to be in place prior to testing of Vehicles on any public or third-party rails; and

(i) Crane Operator's/Riggers Liability Insurance covering crane operations while at Contractor's site with limits of no less than \$10,000,000 per occurrence and in the aggregate. This insurance applies only if Contractor uses a crane in the performance of the Work.

(j) Any shipping contractor or subcontractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than the value of the item(s) shipped, as stated in Exhibit 1A, Price Item 2, and commercial liability insurance in the amount of not less than \$1,000,000.

15.1.2. Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability, Transit Liability and Shippers Coverage policies must provide the following:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

15.1.3. Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

15.1.4. All policies shall provide 30 Days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
Transit Division
1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103
Attention: Ms. Trinh Nguyen P.E., Senior Program Manager
Contract No. SFMTA-2013-19

15.1.5. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of five years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise

to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies

15.1.6. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

15.1.7. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

15.1.8. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A- VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

15.1.9. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

15.1.10. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

15.2. Bonds/Letter of Credit

15.2.1. General. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 15.2 by obtaining either the required bonds or an irrevocable letter of credit ("Letter of Credit") in an equivalent amount, or a combination of the two types of instruments. In addition, for each subsequent Vehicle delivery phase described below, Contractor may elect to change how the obligations are met by furnishing a bond to cover an obligation previously covered by a Letter of Credit or vice-versa, subject to approval of the SFMTA and the City's Risk Manager.

15.2.2. Security. Contractor shall furnish to the City either a performance bond or a Letter of Credit for each phase of delivery as set forth below:

(a) Phase 1 (Vehicles 1-24)

(i) A performance bond or Letter of Credit in the amount of 25% of the total price for Phase 1 within 20 Days following the receipt of the notice of award of the Contract.

(ii) If requested by Contractor and agreed to by City, the amount of the performance bond may be reduced, or the City may authorize a reduction in the amount of the Letter of Credit from 25% to 12.5% of the total price for Phase 1 upon Acceptance of the 24th Car. Upon expiration of the warranty period of the 24th Car, the City will release the performance bond (or authorize the release of the Letter of Credit) covering the 24 Cars. Alternatively, the City may release the performance bond (or authorize the release of the Letter of Credit) upon Acceptance of the 24th Car provided that

Contractor has furnished to City a warranty bond or Letter of Credit in accordance with the requirements of Section 15.2.4.

(b) Phase 2 (Vehicles 25-175)

(i) Contractor shall furnish to the City a performance bond or Letter of Credit in the amount of 25% of the total price for Phase 2 as a condition precedent to issuance of a Notice to Proceed to Contractor for Phase 2.

(ii) If requested by Contractor and agreed to by City, the amount of the performance bond may be reduced (or the City may authorize a reduction in the amount of the Letter of Credit) as Phase 2 Vehicles are Accepted as follows:

(A) from 25% to 20% of the total price for Phase 2 upon expiration of the warranty period of the 75th Car;

(B) from 20% to 15% of the total price for Phase 2 upon expiration of the warranty period of the 125th Car.

(iii) Upon expiration of the warranty period of the 175th Car, the City will release the performance bond or authorize the release of the Letter of Credit. Alternatively, the City may release the performance bond or authorize the release of the Letter of Credit upon Acceptance of the 175th Car provided Contractor has furnished to City a warranty bond or Letter of Credit in accordance with the requirements of Section 15.2.4 at the time of Acceptance of the 175th Car.

(c) Optional Delivery Phase (Vehicles 176-260). If SFMTA exercises the option for delivery of additional Vehicles (Option Vehicles), Contractor shall furnish to the City a performance bond or Letter of Credit in the amount of 25% of the total option price within 20 Days of Contractor's receipt of notice from SFMTA of the Agency's intention to exercise the option. The amount of the performance bond for the Option Vehicles may be reduced (or the City may authorize a reduction in the amount of the Letter of Credit for such Vehicles) from 25% to 5% upon Acceptance of the last Option Vehicle. The City will release the performance bond or authorize the release of the Letter of Credit, upon the expiration of the warranty period of the last Option Vehicle. Alternatively, the City may release the performance bond or authorize the release of the Letter of Credit upon Acceptance of the last Option Vehicle provided that Contractor has furnished the City with a warranty bond or Letter of Credit in accordance with the requirements of Section 15.2.4.

15.2.3. Labor and Materials Bond.

(a) Phase 1 (Vehicles 1-24) Within 20 days following the receipt of notice of award of contract, the Contractor shall furnish to City either a labor and materials bond (in the form to be approved by the City) or a Letter of Credit in the amount of 25% of the of the total price for Phase 1, to guarantee Contractor's payment of materials, provisions, or other supplies used for or in the performance of Phase 1 of the Contract. Upon delivery and acceptance by the City of 75% of the contracted number of vehicles for Phase 1, the amount of the labor and materials bond may be reduced (or the City may authorize a reduction in the amount of the Letter of Credit)

to 30% of the original amount. Upon final payment by the City for all Contract deliverables under Phase 1, the obligations of the Contractor and surety under the labor and materials bond shall be released by the City in writing (or in the case of a Letter of Credit, the City shall authorize the release of the Letter of Credit for this purpose). The original bond document(s) shall be retained by the City.

- (b) **Phase 2 (Vehicles 25-175).** Contractor shall furnish to the City either a labor and materials bond or Letter of Credit in the amount of 25% of the total price for Phase 2, to guarantee Contractor's payment of materials, provisions, or other supplies used for or in the performance of Phase 2 of the Contract as a condition precedent to issuance of a Notice to Proceed to Contractor for Phase 2. Upon delivery and acceptance by the City of 75% of the contracted number of vehicles for Phase 2, the amount of the labor and materials bond may be reduced (or the City may authorize a reduction in the amount of the Letter of Credit) to 30% of the original amount. Upon final payment by the City for all Contract deliverables under Phase 2, the obligations of the Contractor and surety under the labor and materials bond shall be released by the City in writing (or in the case of a Letter of Credit, the City shall authorize the release of the Letter of Credit for this purpose). The original bond document(s) shall be retained by the City.
- (c) **Optional Delivery Phase (Vehicles 176-260)** Within 20 days of receipt of a notice from City of intention to exercise the option for delivery of additional Vehicles, the Contractor shall furnish to City either a separate labor and materials bond or a Letter of Credit in the amount of 25% of the cost of the additional Vehicles to be purchased, to guarantee performance of all Contract obligations with respect to such optional Vehicles. Provisions for releasing or reducing the amount of the bond or Letter of Credit shall apply in the same manner as described above. Any such bond shall also be retained by the City.

15.2.4. Warranty Bond. Once all Vehicles have been Accepted for Phase 1, Phase 2, or for Option Delivery, Contractor may replace the performance bond for that phase, or request that the City authorize the release of a Letter of Credit provided in lieu of a performance bond by obtaining a warranty or guaranty bond or an additional Letter of Credit in the amount of 10 percent of the Contract amount for that phase or for the Option Vehicles, as appropriate. Where Contractor's performance is secured by a Letter of Credit and Contractor obtains a warranty bond to cover Contractor's warranty obligations for a given phase or the Option Delivery period, Contractor may request that the Letter of Credit be released to reflect that the Contractor's obligations under that delivery phase have otherwise been fulfilled. A bond or Letter of Credit under this paragraph 15.2.4 shall be for the purpose of covering all of Contractor's warranty obligations under the Contract for that phase or for Option delivery, and shall become effective upon release of the performance bond or City's authorization to release the Letter of Credit specified in Subsection 15.2.2 above. At the end of each year of warranty coverage, the Contractor may request a reduction of coverage, which may be approved at the discretion of SFMTA and the City's Risk Manager.

15.2.5. Requirements for Letter of Credit.

- (a) **General Requirements.** Any Letter of Credit submitted as required security under this Agreement shall be a confirmed, clean, irrevocable Letter of Credit in favor of the City and County of San

Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount (subject to modification as otherwise provided in this Section 15.2 to reflect the adjustments set forth above) throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the Letter of Credit as required, City will be entitled to cancel this Agreement. The Letter of Credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City.

- (b) **Financial Institution.** The Letter of Credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating. Should the financial institution fail to maintain such rating, Contractor shall replace the Letter of Credit within 30 days with a Letter of Credit from a financial institution with such a rating.
- (c) **Demand on Letter of Credit.** The Letter of Credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the Letter of Credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said Letter of Credit only after City first has made its demand for payment directly to Contractor, and five full Working Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Letter of Credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the Work described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Letter of Credit is so used or applied by City, Contractor, within 10 Working Days after written demand by City, shall reinstate the Letter of Credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.
- (d) **Expiration or Termination.** The Letter of Credit must provide for 60 Days notice to City in the event of non-extension of the Letter of Credit; in that event, Contractor shall replace the Letter of Credit at

least 10 Working Days prior to its expiration. In the event the City receives notice from the issuer of the Letter of Credit that the Letter of Credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement Letter of Credit (in a form and issued by a financial institution acceptable to the City) within 10 Working Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the Letter of Credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the Letter of Credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

- (e) **Return of Letter of Credit.** The Letter of Credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the Letter of Credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit, as determined by City.
- (f) **Excessive Demand.** If City receives any payments from the aforementioned bank under the Letter of Credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the Letter of Credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

15.2.6. Requirements for Bonds.

- (a) Bonding entities on the above bonds must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to SFMTA and to the Controller and Risk Manager of the City.
- (b) During the period covered by the Agreement, if any of the sureties upon the bonds shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the amount of such bond to the

extent to which the surety might be liable, Contractor, within 30 Days after notice given by SFMTA to Contractor, shall provide a replacement bond (or Letter of Credit) with sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to provide an acceptable replacement bond (or letter of Credit), Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or Work to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages.

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall

constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES OR WORK PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages/ Weight Incentives

19.1. Liquidated Damages

By entering into this Agreement, the Contractor agrees that in the event the Work, as provided under Section 4, is delayed beyond the scheduled milestones and timelines as provided in the Project Delivery Schedule in Appendices 1E and 2C of this Agreement, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Except where the delay is the result of an Unavoidable Delay, City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by SFMTA .

<u>Milestone</u>	<u>Amount per Day</u>
Delivery of first 2 Vehicles	\$2000 Per Vehicle
Delivery of Vehicles 3 - 260	\$1000 Per Vehicle
Completion of training program	\$500
Completion of delivery of Phase 1 spare parts	\$500
Completion of delivery of Phase 2 spare parts	\$500
Conditional Acceptance of	\$500

manuals (operation, maintenance and parts manuals)

Delivery of diagnostic test equipment and special tools \$500

Liquidated Damages imposed under this Agreement shall be in addition to any other damages which are recoverable by the City specified elsewhere in the contract documents.

19.2. Weight Limits and Incentives

The nominal Vehicle weight shall be [insert weight from Contractor's proposal in pounds] at AW0. Vehicles shall be weighed prior to delivery, and, for each pound in excess of the nominal weight, the City will deduct \$10 per pound per Vehicle from the Contractor's invoice. For each pound below the nominal weight, the City will pay an incentive payment of \$10 per pound per Vehicle. To allow for manufacturing variations, neither penalties nor incentives will be assessed on the first one percent excess or under weight. SFMTA shall reject Vehicles weighing in excess of 80,000 lbs at AW0 and shall not be required to pay for rejected Vehicles.

20. Default; Remedies

20.1. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

20.1.1 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 36, 52, 54 or 56.

20.1.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of 15 Days after written notice thereof from City to Contractor.

20.1.3 San Francisco Municipal Transportation Agency Contractor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (v) takes action for the purpose of any of the foregoing.

20.1.4 A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

20.2. Remedies. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

21.1. Exercise of Option. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

21.2. Contractor Actions. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

21.2.1 Halting the performance of all services and Work under this Agreement on the date(s) and in the manner specified by City.

21.2.2 Not placing any further orders or subcontracts for materials, services, equipment or other items.

21.2.3 Terminating all existing orders and subcontracts.

21.2.4 At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

21.2.5 Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

21.2.6 Completing performance of any services or Work that City designates to be completed prior to the date of termination specified by City.

21.2.7 Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

21.3. Contractor Invoice. Within 30 Days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

21.3.1 The reasonable cost to Contractor, without profit, for all services and Work City directed Contractor to perform prior to the specified termination date, for which services or Work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10 percent of Contractor's direct costs for services or other Work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

21.3.2 A reasonable allowance for profit on the cost of the services and Work described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and Work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed five percent of such cost.

21.3.3 The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

21.3.4 A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

21.4. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 21.3.

21.5. Deductions. In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for Work or services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or Work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or Work in compliance with the requirements of this Agreement.

21.6. Survival. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration

22.1. Survival of Sections. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 20, 24, 26 through 28, 49 through 52, 55, 56, 61, 62 and 67.

22.2. Contractor Duties. Subject to the immediately preceding subsection 22.1, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify the City.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the Work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information, which may be owned or controlled by City, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:

San Francisco Municipal Transportation Agency
Transit Division,
1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103
Attention: Ms. Trinh Nguyen P.E. Senior Program Manager
lrv4@sfmta.com

To Contractor: [insert name of contractor, mailing address, e-mail address and fax number]

Any notice of default must be sent by registered mail.

26. Intellectual Property

26.1. Works for Hire; Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services or Work to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. If, in connection with services or Work performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. These shall include [INSERT ANY SPECIFIC SYSTEMS ITEMS COVERED] If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26.2. Licenses Granted

26.2.1. Computerized Software and Systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, exclusive, non-transferable, license at all locations owned or controlled by City to use all such deliverables, or portions thereof. City shall also be authorized to modify or prepare derivative works of the deliverables and make copies of such deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the deliverable(s) or any related materials or documentation. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City. Upon request, Contractor shall provide to City a copy of the source code, which corresponds to the most current version of the deliverable, as well as any and all applicable proprietary materials that are otherwise not furnished under this Agreement, but may become necessary for the long-term maintenance and operation of the Vehicles. Alternatively, prior to Notice to Proceed, City and Contractor shall negotiate and enter into an escrow agreement whereby the applicable source codes for software that is proprietary to Contractor or its

suppliers or subcontractors, including periodic updates of said source codes, and other proprietary materials, are placed in escrow. The source codes placed in escrow shall be on magnetic media and shall be accompanied by detailed software documentation, including a list of applicable software development tools. The Director of Transportation shall execute said escrow agreement on behalf of City.

26.2.2. Other Deliverables. Contractor grants City a perpetual, non-exclusive, non-transferable license to use, retain, and reproduce at all locations controlled by SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (i) prepared by Contractor or its subcontractors or suppliers (but not exclusively for City); and (ii) required to be provided to City in connection with this Agreement. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City.

26.3. Proprietary Materials. To the extent that the Contractor considers any document or deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. Alternatively, at SFMTA's request, documents shall be placed in escrow, along with source codes, as described in subsection 26.2.1 above. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or deliverables under the City's Sunshine Ordinance or the California Public Records Act. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

27. Reserved

28. Audits and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the performance of the Work. City's execution of this Agreement constitutes its approval of the subcontractors listed below. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement made in violation of this provision shall be null and void.

[LIST APPROVED SUBCONTRACTORS]

30. Assignment

The Work to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Reserved.

33. Reserved

34. Nondiscrimination; Penalties

34.1. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

34.2. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

34.3. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed

for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.. As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

34.4. Incorporation of Administrative Code Provisions by Reference, The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. Tropical Hardwoods and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

36. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

37. Resource Conservation.

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

38. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the Work specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation.

Contractor agrees not to discriminate against disabled persons in the provision of services or Work, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

39. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

40. Public Access to Meetings and Records.

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

41. Notification of Limitations on Contributions.

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief

executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

42. Requiring Minimum Compensation for Covered Employees

Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

43. Health Benefits for Covered Employees

Contractor agrees to choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and to comply with the HCAO as set forth in San Francisco Administrative Code Chapter 12Q.

44. First Source Hiring Program

Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 83 are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

45. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years.

46. Preservative-Treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic,

elemental arsenic, or an arsenic copper combination, including, but not limited to, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

47. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

47.1. City-Ordered Changes

The City may order changes in the Work and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall respond within 30 days to such orders, except that:

If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost or the time required to execute the change in scope of Work, the City shall make a reasonable and proper adjustment in the Contract price, delivery schedule, or both, as agreed upon by the Contractor and the Agency as the reasonable and proper allowance for the increase or decrease required.

No order for any alteration, modification, or extra that will 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 City in the manner required under City law. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract, which include the requirements of the Technical Specifications.

47.2. Regulatory Changes

If a price adjustment is necessary to incorporate changes mandated by legislation or regulations that are promulgated or become effective after the Effective Date of the Contract and before manufacture of the Vehicles, the Agency and the Contractor shall negotiate the price adjustment. Such price adjustments may be audited, where required.

47.3. Schedule Changes

If City-ordered changes have potential impact on the delivery schedule, the Contractor shall submit a schedule change request for City approval.

48. Authority of Project Manager; Claims; Disputes.

48.1. Authority of Project Manager Authority of Project Manager. The Project Manager shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In

discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 48.4 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 5 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

48.2. Claims for Additional Compensation.

48.2.1. Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

48.2.2. The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

48.2.3. It is the intention of this Section 48.2 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

48.3. Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

48.4. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the parties shall be decided in writing by the SFMTA Project Manager. The Project Manager's decision shall be administratively final and conclusive unless within 10 Working Days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Transit, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transit shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

48.5. No Cessation of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Project Manager.

48.6. Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

48.7. Disputes Among Contractor's Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

49. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

50. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

51. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 47.

52. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

53. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as Subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

54. Reserved

55. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

56. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor

57. Time of Essence

Time is of the essence in this Agreement.

58. Technical Specifications

58.1. Fabrication. The Vehicles shall be designed, fabricated, and tested in accordance with Volume 2 "Technical Specifications."

58.2. Omission. Notwithstanding the Technical Specifications or other data provided by the Project Manager, the Contractor shall have the responsibility of supplying all parts and details required to make these Vehicles complete and ready for service even though such details may not be specifically mentioned in the Specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this Contract or should have been installed by the Contractor.

58.3. Design Review. Refer to Technical Specification Appendix C Section 0.2.4.

58.4. Preliminary Drawings. Refer to Technical Specification Appendix C Section 0.2.4.

58.5. Materials/Accessories Responsibility. Refer to Technical Specification Section 19.

59. Project Planning, Scheduling and Control

59.1. Introduction. This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract Work. Contractor shall employ Critical Path Method scheduling (CPM) for planning, scheduling and reporting all work required by the Contract Documents.

59.2. Descriptions of Submittals. Submittals will be provided in accordance with Technical Specification Appendix C Section 0.2.3.4.

60. Reserved

61. FTA Requirements

The provisions contained in "FTA Requirements for Procurement Contracts," attached as Exhibit 4, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

62. Cooperative Drafting

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no

presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

63. Warranty

Contractor shall provide warranties of Vehicles, training, parts and special tools as described in Exhibit 5 (Warranty).

64. Title

Adequate documents for securing the title of the Vehicle shall be provided to the Project Manager at the time the Vehicle is delivered. Upon Acceptance or, in the case of a Vehicle being Conditionally Accepted, upon Conditional Acceptance of each Vehicle, the Contractor warrants that the title shall pass to the SFMTA free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims and demands of any character. Title to the spare parts to be delivered under this Contract shall vest in the SFMTA immediately upon Acceptance by the SFMTA.

65. Option Vehicles

All items purchased under the options shall be identical in every way to those purchased under the base Contract. All conditions, Technical Specifications, and requirements set forth in the base Contract documents shall apply to the items purchased under option unless otherwise specified in this section.

65.1. Option for New Light Rail Vehicles. At the option of the City, the Contractor shall provide additional light rail Vehicles in quantities indicated in the Schedule of Prices. The option for 1 to 85 Vehicles (Item 7 on the Payment Schedule Exhibit 2) may be executed any time within seven years after NTP.

65.2. Option for Additional Spare Parts. At the option of the City, Contractor shall provide additional spare parts (Item 8 on the Payment Schedule, Exhibit 2). Prices shall remain firm for 24 months after NTP.

66. Precedence of Contract Documents

Any inconsistency in requirements of the contract documents shall be resolved by giving precedence in the following order:

- (a) Executed Agreement
- (b) Technical Specifications
- (c) Warranty Provisions

67. Deliveries

67.1. Predelivery Tests and Inspections. Pre-delivery tests and inspections shall be performed prior to shipment to SFMTA. Such tests and inspections shall be performed in accordance with the procedures defined in Verification Section 21.3 of the Technical Specifications, and they may be witnessed by the SFMTA Resident Inspector. When a Vehicle passes these tests and inspections, the Resident Inspector shall authorize release of the Vehicle for shipment. Such authorization does not imply Acceptance of the Vehicle by SFMTA.

67.2. Delivery Procedure. Delivery shall be determined by signed receipt of the SFMTA Engineer at the point of delivery and may be preceded by a cursory inspection of the Vehicle. The point of delivery shall be:

San Francisco Municipal Railway

Muni Metro East Facility

Contractor shall deliver Vehicles during weekday working hours, Monday through Friday, 9am – 3pm., except SFMTA holidays or as otherwise specified in writing by SFMTA. Contractor shall provide at least five Working Days notice to SFMTA prior to delivery. Delivery of the Vehicles shall be F.O.B. point of delivery, freight pre-paid and allowed. Contractor shall ensure that all Vehicles are fully operable when they are delivered.

67.3. Spare Parts Delivery Procedure. Contractor shall deliver Contract spare parts in two shipments or smaller lots provided that all spare parts shipments are delivered in accordance with Exhibit 3. Composition of spare parts in each lot is subject to SFMTA approval. Contractor shall provide SFMTA with one-weeks advance notice before shipment of each lot of spare parts. Such notice shall include a packing list clearly identifying all parts and their quantity in the shipment.

Delivery shall be determined by signed receipt of the SFMTA representative at the point of delivery and may be preceded by a cursory inspection of the parts. Within 20 Days of delivery, SFMTA will issue a notification of acceptance, non-acceptance or Conditional Acceptance of the spare parts. The point of delivery shall be:

San Francisco Municipal Railway
Muni Metro East Facility

68. Acceptance Of Vehicles

68.1. Procedure.

After arrival at the designated point of delivery, each Vehicle will undergo pre-Acceptance and Acceptance tests by SFMTA as defined in the Verification Section 21.3 of the Technical Specifications. When a Vehicle passes all tests, SFMTA will provide written Acceptance of the Vehicle to the Contractor. Contractor shall transfer title to the Vehicle to the City on the day of Acceptance, or Conditional Acceptance, if the Vehicle is not fully Accepted. Acceptance of one Vehicle does not imply Acceptance of any other delivered Vehicles.

If a Vehicle fails the Acceptance tests, the Vehicle shall not be Accepted until the repair procedures defined in Section 69, of this Agreement have been carried out and the Vehicle has been retested and passes all applicable tests. All deliveries of Vehicles shall be halted whenever five or more Vehicles have failed or have not been Accepted or Conditionally Accepted and are awaiting repairs or corrections.

After completion of post-delivery testing, SFMTA will issue a notification of Acceptance, non-Acceptance or Conditional Acceptance.

68.2. Conditional Acceptance. If a Vehicle does not meet all requirements for Acceptance, SFMTA may, at its exclusive option, “conditionally accept” the Vehicle and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for Acceptance. For any Conditionally Accepted Vehicle, payments shall be made as provided in Section 7 above.

68.3. Assumption of Risk of Loss. Prior to Acceptance by SFMTA, and regardless whether title has passed to the City, the Contractor shall bear risk of loss of

the Vehicle, including any damage sustained during transportation to the delivery site. Notwithstanding the foregoing, Contractor shall not be responsible for any loss to the Vehicle that is caused by the active negligence of the SFMTA or where the Vehicle has been Conditionally Accepted by the SFMTA.

69. Repairs Prior To Acceptance

The SFMTA Project Manager may require the Contractor, or its designated representative, to perform repairs after non-Acceptance or conditional Acceptance, or the Contractor may request that the work be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform SFMTA in advance of any modifications made to the Vehicle during the Acceptance period.

69.1. Repairs by Contractor. If the SFMTA Project Manager requires the Contractor to perform repairs after non-Acceptance of the Vehicle, the Contractor's representative must begin the repair within five Days after receiving notification from the SFMTA Project Manager of failure of Acceptance tests.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA Project Manager option, the Contractor may be required to remove the Vehicle from SFMTA property while repairs are being effected. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Vehicle is under its control.

69.2. Repairs by SFMTA. If the SFMTA Project Manager agrees to a request by the Contractor for SFMTA to perform repairs on a Contractor-owned Vehicle prior to SFMTA Acceptance, SFMTA shall correct or repair the defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the SFMTA Project Manager to the Contractor for actual cost reimbursement of parts. The Contractor shall provide forms for these reports.

If the Contractor supplies parts for repairs being performed by SFMTA before Acceptance of the Vehicle, Contractor shall ship these parts prepaid to SFMTA within ten working days after receipt of the request for the parts. The Contractor may request that defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

Contractor shall reimburse SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by SFMTA. If SFMTA performs the repairs itself, the amount shall be determined by multiplying the number of man-hours actually required to correct the defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of towing the Vehicle if such action was necessary. If SFMTA requires the service of an outside repair facility, Contractor shall reimburse SFMTA for all such repair invoices. Contractor shall also reimburse SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

SFMTA may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the Contractor or its surety shall pay to the SFMTA any deficiency.

70. Unavoidable Delays

70.1. Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

70.2. Notification of Delay. The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

70.3. Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing.

The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

71. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

San Francisco Municipal
Transportation Agency

Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

[name of authorized representative]
[title]
[address]

City vendor number:

By _____
David A. Greenburg
Deputy City Attorney

San Francisco Municipal
Transportation Agency
Board of Directors

Resolution No. _____

Dated: _____

Attest:

Secretary

Board of Supervisors

Resolution No. _____

Dated: _____

Attest:

Clerk

Exhibit 1
Form I-A – Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices. All bid item prices shall be accurate reflections of the bid items proposed. Every line item must be priced on every sheet.

PROPOSER'S NAME: _____

BASE

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 1	Engineering Design, Project Management and Design Qualification Testing	Lump Sum	x 1	\$
Item 2	Vehicle Price for Base Contract	\$	x 175 Cars	\$
Item 3	Operating, Maintenance and Parts Manuals	Lump Sum	x 1	\$
Item 4	Training	Lump Sum	x 1	\$
Item 5	Spare Parts (Total of Form I-B1)	Lump Sum	x 1	\$
Item 6	Special Tools, Test and Diagnostic Equipment (Total of Form I-C)	Lump Sum	x 1	\$
Total Base: Items 1 – 6				\$

OPTION

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 7	Option for 1 to 85 Additional New Light Rail Vehicles	\$	x 85 Cars	\$
Item 8	Additional Spare Parts (Total of Form I-B2)	Lump Sum	x 1	\$
Total Options: Items 7 – 8				\$

ITEMS BELOW ARE FOR INFORMATION ONLY

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 9.1 *	Letter of Credit	Lump Sum	x 1	\$
Item 9.2 *	Performance Bond	Lump Sum	x 1	\$
Item 10	Insurance	Lump Sum	x 1	\$

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 11	Warranty (In accordance with Exhibit 5 of Sample Agreement)	Lump Sum	x 1	\$

* Provide cost for surety method selected.

Exhibit 2 PAYMENT SCHEDULE

Item 1 - Engineering Design, Project Management and Design Qualification Testing
(FORM I-A Item 1)

	Milestone	Percent of Bid Item
A	Submittal and Approval of Test Program, System Safety, Reliability, Maintainability and other plans as negotiated with SFMTA	2%
B	Completion and Approval of Preliminary Design Review	2%
C	Completion and Approval of Final Design Review	35%
D	Completion and Approval of Vehicle Performance Qualification Testing	30%
E	Completion and Approval of Test Program as specified	26%
F	Completion and Approval of all Contract Requirements (Retention)	5%
Total	For Item 1	100%

Item 2 – Vehicle Price for Base Contract
(FORM I-A Item 2)

Item 2A – Vehicle Price for Base Contract (Cars 1 - 24)

	Milestone	Percent of Bid Item
A	Placement of contracts with the following major subcontractors (Cars 1 - 24).* <ul style="list-style-type: none"> • Propulsion • Friction Brake • Air Comfort • Door Operators & Controls • Carbody • Train Control • Coupler • Communication 	2%
B	Delivery of complete set of subsystems to site of installation.	20%/Vehicle
C	Vehicle structure complete and ready for shipment to final assembly site	20%/Vehicle
D	SFMTA acceptance for shipment of vehicle from final assembly site to SFMTA property (Conditional Acceptance)	25%/Vehicle

	Milestone	Percent of Bid Item
E	Acceptance of vehicle by SFMTA	30%/Vehicle
F	Completion and Approval of all Contract Requirements for Phase 1 (Retention)	3%
Total	For Item 2A	100%

*Payment will be made only to the extent that deposits have been paid to suppliers and up to the amount of the deposits or 2%, whichever is the lesser value; in addition Contractor must provide security for payment under Section 7.3 of the Agreement.

Item 2B – Vehicle Price for Base Contract (Cars 25 - 175)

	Milestone	Percent of Bid Item
A	Placement of contracts with the following major subcontractors (Cars 25 - 175).* <ul style="list-style-type: none"> • Propulsion • Friction Brake • Air Comfort • Door Operators & Controls • Carbody • Train Control • Coupler • Communication 	2%
B	Delivery of complete set of subsystems to site of installation.	20%/Vehicle
C	Vehicle structure complete and ready for shipment to final assembly site	20%/Vehicle
D	SFMTA acceptance for shipment of vehicle from final assembly site to SFMTA property (Conditional Acceptance)	25%/Vehicle
E	Acceptance of vehicle by SFMTA	30%/Vehicle
F	Completion and Approval of all Contract Requirements for Phase 2 (Retention)	3%
Total	For Item 2B	100%

*Payment will be made only to the extent that deposits have been paid to suppliers and up to the amount of the deposits or 2%, whichever is the lesser value; in addition, Contractor must provide security for the payment, as required under Section 7.3 of the Agreement.

Item 3 - Operating, Maintenance and Parts Manuals

(FORM I-A Item 3)

	Milestone	Percent of Bid Item
A	Acceptance of Draft Manuals	5%
B	Delivery and Acceptance of Operating, Maintenance and Parts Manuals	95%
Total	For Item 3	100%

Item 4 – Training
(FORM I-A Item 4)

	Milestone	Percent of Bid Item
A	Completion of Training Program and delivery and acceptance of all deliverables	95%
B	Completion and approval of all Contract Requirements (Retention)	5%
Total	For Item 4	100%

Item 5 - Spare Parts
(FORM I-A Item 5)

	Milestone	Percent of Bid Item
A	Delivery and acceptance of spare parts. Delivery and payment will be on a line-item basis.	95%
B	Completion and approval of all Contract Requirements (Retention)	5%
Total	For Item 5	100%

Item 6 – Special Tools, Test and Diagnostic Equipment
(FORM I-A Item 6)

	Milestone	Percent of Bid Item
A	Delivery and acceptance of Diagnostic Test Equipment, Special Tools, Bench Test Equipment	95%
B	Completion and approval of all Contract Requirements (Retention)	5%
Total	For Item 6	100%

Item 7 - Option for 1 to 85 Additional New Light Rail Vehicles
(FORM I-A Item 7)

Progress payments will be made in accordance with Item 2B.

Item 8 – Additional Spare Parts
(FORM I-A Item 8)

Progress payments will be made in accordance with Item 5.

Exhibit 3: PROJECT DELIVERY SCHEDULE

The Contractor shall submit as part of their proposal for review and evaluation a Project Schedule that indicates key design process duration, manufacturing duration, testing, training (for new systems), and delivery milestones. Significant project events should be noted including design reviews and inspection hold points. In any event, the total project schedule must not be greater than 180 months from NTP.

Item	Calendar Days after Notice to Proceed
Test Program, System Safety, Reliability, Maintainability and other plans as negotiated with SFMTA	60
Delivery of 1st vehicle to SFMTA	750
Delivery of 2nd vehicle to SFMTA	810
Training Start	870
Training Complete	990
Special Tools / Diagnostic Test Equipment	870
Delivery of Publications (Manuals, Parts Book, Drawings) - Prelim	870
Delivery of Publications (Manuals, Parts Book, Drawings) - Final	1080
Delivery of Spare Parts (Phase 1)	990
Testing Complete / Acceptance of Vehicle	990
Delivery Rate of remaining LRV4 (3-24)	2/month
Delivery of 24th vehicle to SFMTA	1320
Delivery of Spare Parts (Phase 2)	2490
Delivery of 25th vehicle to SFMTA	2490
Delivery Rate of remaining LRV4 (25-175)	2/month
Delivery of 175th vehicle to SFMTA	4650
Delivery of 176th vehicle to SFMTA	4665
Delivery Rate of remaining LRV4 (176-260)	2/month
Delivery of 260th vehicle to SFMTA	5265

EXHIBIT 4

FTA REQUIREMENTS FOR PROCUREMENT CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION (Contracts over \$25,000)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, 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 San Francisco Municipal Transportation Agency ("SFMTA"). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, 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 CFR Parts 180, Subpart C and 1200, Subpart C 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.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

B. 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 clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

B.1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B.2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B.3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission,

“Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor 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 SFMTA deems appropriate.

VIII. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 the clause set forth in paragraph A of this section, 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 the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco 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 the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of 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 paragraphs A through D of this section.

IX. ENERGY CONSERVATION REQUIREMENTS

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.

X. CLEAN WATER REQUIREMENTS (*applicable to all contracts in excess of \$100,000*)

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XI. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

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

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of

the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIV. TERMINATION FOR CONVENIENCE OF CITY (required for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

XV. TERMINATION FOR DEFAULT (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XVI. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVII. 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 Agreement 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 leading 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 above 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 Agreement

when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVIII. RECYCLED PRODUCTS

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

XIX. BUS TESTING (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

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

XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, 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.

B. 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. 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.

XXII. FLY AMERICA

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

XXIII. NATIONAL ITS ARCHITECTURE POLICY *(Applicable to contracts for ITS projects)*

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXVI. SEAT BELT USE

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages 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.

EXHIBIT 5: WARRANTY

1.1 BASIC PROVISIONS

1.1.1 Warranty Requirements

Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor shall warrant and guarantee to SFMTA each complete vehicle and specific subsystems and components according to the following provisions:

The Contractor shall ensure in its procurement arrangements that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, and subcontractors. Any inconsistency or difference between the warranties extended to SFMTA by the Contractor and those extended to the Contractor by its suppliers, vendors, and subcontractors, shall be at the risk and expense of the Contractor. Such inconsistency or difference will not excuse the Contractor's full compliance with its obligations under the Contract Documents.

Upon request of SFMTA, the Contractor promptly shall provide to the Project Manager complete copies of written warranties or guarantees and of documentation of any other arrangement relating to such warranties or guarantees extended by the Contractor's suppliers, sub suppliers, vendors, and subcontractors covering parts, components, and systems utilized in the vehicle. If any vendor/supplier to the Contractor offers a warranty on a component that is longer or more comprehensive than the required warranties stated in this Exhibit, the Contractor shall inform SFMTA of this additional warranty and pass it through to SFMTA at no additional cost to SFMTA.

The Contractor shall ensure that such suppliers, sub suppliers, vendors, and subcontractors satisfactorily perform warranty-related work.

1.1.1.1 Complete Vehicle

The vehicle shall be warranted and guaranteed to be free from defects and related defects for five (5) years, beginning on the date of official Acceptance or Conditional Acceptance of each vehicle. During this warranty period, the vehicle shall maintain its structural and functional integrity. The warranty shall be based on regular operation of the vehicle within the Muni Metro System.

1.1.1.2 Intentionally left blank

1.1.1.3 Subsystem And Components

Primary load carrying members of the vehicle structure shall be warranted against corrosion failure and/or fatigue failure for a period of 12 years.

1.1.1.4 Additional Warranties

If the customary standard warranties for the Material and/or Equipment, and installation thereof, exceed the period specified in Section 1.1.2, such warranties shall run to the SFMTA.

If separate or additional warranties covering the Material and/or Equipment are furnished by the manufacturer, supplier, or seller of component part or parts of any item of said Material and/or Equipment, the SFMTA shall have the right, but not the duty, to benefit from these separate or additional warranties, along with the primary warranties set forth herein above. The SFMTA shall look only to Contractor for fulfillment of all warranty requirements expressed and implied by the making of the Contract.

The existence of any separate or additional warranties that run to the Contractor from the manufacturer, supplier, or installer of a component part of an item of Material and/or Equipment shall not relieve the Contractor of its obligation to repair or replace any of the Material and/or Equipment on account of faulty design, manufacture or workmanship during the warranty period. The SFMTA shall not be required to look to any other party for fulfillment of warranty provisions.

1.1.2 Voiding Of Warranty

The warranty shall not apply to any part or component of the vehicle that has failed as a direct result of misuse, negligence, or 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 recognized standards of the industry.

The warranty on any part or component of the vehicle shall also be void if SFMTA fails to conduct normal inspections and scheduled preventive maintenance procedures on the same part or component substantially as recommended in the Contractor's maintenance manuals, and such failure by SFMTA is the sole cause of the part or component failure.

1.1.3 Exceptions To Warranty

The warranty shall not apply to scheduled maintenance items and items furnished by SFMTA, except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

1.1.4 Detection Of Defects

If SFMTA finds Defects within the warranty period defined in Section 1.1.2 it shall notify the Contractor's representative in writing. Within 5 Working Days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the sub-system or component is inspected by the Contractor's representative or is removed and examined at SFMTA

property or at the Contractor's plant. At that time the status of warranty coverage on the sub-system or component shall be mutually resolved between SFMTA and the Contractor. Work necessary to commence the inspection or repairs, under the provisions of Section 1.2, Repair Procedures shall proceed immediately after receipt of notification by the Contractor. If within 10 Working Days of notification to Contractor, SFMTA and Contractor are unable to agree whether a Defect is covered by warranty provisions, SFMTA reserves the right to commence repairs and seek reimbursement through Section 1.2 Repair Procedures.

If Contractor independently becomes aware of a Defect in accepted Material and/or Equipment or services, the Contractor shall submit to SFMTA, in writing, within 15 working days a recommendation for corrective actions, together with supporting information in sufficient detail to enable SFMTA to determine what corrective action, if any, shall be taken.

The Contractor shall promptly comply with any timely written direction from the SFMTA to correct or partially correct a Defect, at no cost to the SFMTA.

The Contractor shall also prepare and furnish to the SFMTA data and reports applicable to any correction required under this Section (including revision and updating of all other affected data called for under the Contract) at no cost to the SFMTA.

In the event of timely notice of a decision not to correct, or only to partially correct, the Contractor shall submit a technical and cost proposal within fifteen (15) working days to amend the Contract to permit acceptance of the affected Material and/or Equipment or services in accordance with the revised requirement, and an equitable reduction in the Contract Price shall promptly be negotiated by the parties and be reflected in a Change Order to the Contract.

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1.1.6 Fleet Defects

A fleet defect is defined as cumulative failures of any kind in the same components in the same or similar application where such items are covered by the warranty and such failures occur within the warranty period in at least ten (10) percent of the vehicles delivered under the same Phase of this contract. SFMTA shall have final approval of corrections or changes under these conditions.

1.1.6.1 Correction of Fleet Defects

The Contractor shall correct a fleet defect under the procedures specified in Section 1.2, Repair Procedures. Within ten (10) working days of receipt of notification of a fleet defect, unless SFMTA grants an extension, the Contractor shall provide SFMTA with a plan, acceptable to SFMTA, specifying how and when all vehicles with defects shall be

corrected. Said plan is subject to approval by SFMTA. In addition, after correcting such defects, the Contractor shall promptly undertake and complete a work program, acceptable to SFMTA, reasonably designed to prevent the occurrence of the same defect in all other vehicles and spare parts purchased under this contract. Any proposed changes to a fleet defect work plan or program must be submitted to SFMTA for its approval. If (a) Contractor does not provide a plan for correction within the time specified above (or as extended by SFMTA); or (b) a specific declared fleet defect is not fully corrected within the time specified in the plan; or (c) the remainder of the vehicles are not corrected in accordance with the Contractor's work program; SFMTA will assess liquidated damages in accordance with Section 19 of the Agreement.

The warranty on parts, components or sub-systems replaced as a result of a fleet defect shall be assigned a new warranty period equal to the original manufacturers or contract part warranty, whichever is longer, effective the replacement date. Any extended warranties shall commence at the conclusion of the new warranty period.

1.1.6.2 Fleet Defect Repairs

When SFMTA requires the Contractor to perform warranty-covered repairs under the Fleet Defect provisions, the Contractor's representative must begin work necessary to effect repairs in a proper and timely manner, within five Working Days after the approval of the retrofit plan/schedule. Whenever the Contractor makes warranty repairs, new parts, subcomponents and subsystems shall be used, unless the repair of original parts is authorized in writing by SFMTA. SFMTA shall make the Car available to complete repairs timely with the Contractor's repair schedule.

The Contractor shall provide, at its own expense, all spare parts, labor, tools and space required to complete repairs. The Contractor shall reimburse SFMTA for all expenses incurred, including labor for moving Cars, or towing charges for Cars transported, between SFMTA's facilities and Contractor's service center or the facilities of its subcontractors or suppliers.

1.1.6.3 Contractor Supplied Parts

The Contractor shall furnish parts for all warranty work performed by the Contractor.

1.1.6.4 Voiding Of Warranty Provisions

The fleet defect provisions shall not apply to vehicle defects solely caused by noncompliance with the Contractor's recommended normal maintenance practices and procedures or caused solely by abuse of the equipment.

1.1.6.5 Exceptions To Warranty Provisions

Fleet defect warranty provisions shall not apply to damage that is a result of normal wear and tear in service. The provisions shall not apply to SFMTA-supplied items.

1.1.7 Contractor's Representative

The Contractor shall, at its own expense, provide qualified service personnel at the SFMTA facilities in accordance with Section 22.2.7 of Technical Specifications.

1.2 REPAIR PROCEDURES

The Contractor shall be responsible for all warranty-covered repair work. The Contractor or its designated representative shall secure parts and perform all affected warranty repair work. At its discretion, SFMTA may perform such work if it determines it needs to do so based on transit service or other requirements. The Contractor shall be responsible, and shall reimburse SFMTA, for all costs for warranty work performed by SFMTA personnel or by any contractor(s) hired by SFMTA to perform warranty work, as described in Section 1.2.2, Repairs by SFMTA.

1.2.1 Repairs By Contractor

When SFMTA requires the Contractor to perform warranty-covered repairs, the Contractor's representative must begin work necessary to effect repairs in a proper and timely manner, within ten (10) working days after receiving notification of a defect from SFMTA. Whenever the Contractor makes warranty repairs, new parts, subcomponents and subsystems shall be used, unless the repair of original parts is authorized in writing by SFMTA. SFMTA shall make the vehicle available to complete repairs timely with the Contractor's repair schedule

The Contractor shall provide, at its own expense, all spare parts, labor, tools and space required to complete repairs. The Contractor shall reimburse SFMTA for all expenses incurred, including labor for driving vehicles, or towing charges for vehicles transported, between SFMTA's facilities and Contractor's service center or the facilities of its subcontractors or suppliers. At SFMTA's option, the Contractor shall repair vehicles at an offsite location, and not on SFMTA's property. If the vehicle is removed from SFMTA's property, the Contractor's representative shall diligently pursue the acquisition of parts and repair procedures. The schedule and scope of the repairs shall be approved by SFMTA.

1.2.2 Repairs By SFMTA

If SFMTA elects to perform or procure a contractor to perform, the warranty-covered repairs, the following shall apply.

1.2.2.1 Parts Used

SFMTA shall use new parts, subcomponents and subsystems that Contractor shall provide specifically for these repairs. All parts shall be stamped or permanently marked with the OEM part number, and serial number if applicable. Warranties on parts used shall begin once the Car has been repaired. The warranty on parts, components or

sub-systems replaced as a result of a standard warranty repair shall be assigned a new warranty period equal to the original manufacturers or contract part warranty, whichever is longer, effective the replacement date. Any extended warranties shall commence at the conclusion of the new warranty period.

SFMTA shall use parts or components available from its own stock only on an emergency basis. Monthly reports, or reports at intervals mutually agreed upon, of all repairs covered by warranty will be submitted by SFMTA to the Contractor for reimbursement or replacement of parts or components. The Contractor shall provide forms for these reports.

1.2.2.2 Contractor-Supplied Parts

The Contractor shall warehouse, at the Contractor's service center in San Francisco, all necessary parts to support its warranty obligations. The Contractor shall furnish parts for all warranty work, whether the warranty labor is performed by the Contractor or by SFMTA. Contractor shall deliver, prepaid, warranty parts for repairs within five (5) calendar days of notification from SFMTA.

1.2.2.3 Defective Parts Return

The Contractor may request that defective parts or components covered by warranty be returned to the manufacturing plant. The Contractor shall pay the total cost for this action. Materials will be returned in accordance with the Contractor's instructions. Contractor shall provide such instructions to the SFMTA Project Manager at the beginning of the project.

The Contractor's representative shall meet with a SFMTA representative on a biweekly basis to determine which parts need to be returned to the manufacturer for evaluation, or which parts may be discarded.

1.2.2.4 Reimbursement For Labor

Contractor shall reimburse SFMTA for all warranty labor incurred by SFMTA. The amount shall be determined by multiplying the number of man-hours required to correct the defect by the current top mechanic's or technician's hourly overtime wage rate, which includes fringe benefits, multiplied by the project overhead rate (150% of the wage rate). Additionally, Contractor will be responsible for the cost of towing the vehicle if such action was necessary and if the vehicle was in the normal service area.

The wage rate, and therefore, the warranty labor rate, is subject to adjustment each year. Through January 31, 2013, the warranty labor rate shall be based on the

technician's wage rate of \$140.00/hour, which includes labor, fringe benefits, and overhead.

In the event SFMTA deems it necessary to contract out for warranty repairs, the Contractor shall reimburse SFMTA for the actual cost of the repair, including charges for any warrantable parts, consequential parts or damages, labor, and towing or transportation.

Contractor shall reimburse SFMTA for warranty claims within 30 days after each claim has been submitted by SFMTA. If SFMTA does not receive payment within 30 Days, SFMTA will deduct the amount of the claim, which includes labor, parts, administrative overhead and towing costs from payments due to Contractor.

1.2.2.5 Reimbursement For Parts; Towing

In the event SFMTA uses its own parts for warranty repairs, the Contractor shall reimburse SFMTA for those parts, including all Defective parts, components, and consequential parts supporting the warranty repair. The reimbursement shall be at the invoice cost of the parts or components at the time of repair and shall include applicable taxes plus a 15% handling fee.

The warranty will include the cost of towing because of the failure of a warranted part. Towing costs consist of the cost any SFMTA labor expended, any parts utilized in the transfer of the Car, and the actual cost of any other transportation costs incurred by SFMTA because of the failure of a warranted part, plus a 15% handling fee.

1.2.3 Warranty After Replacement Or Repairs

The warranty on parts, components or sub-systems replaced as a result of a standard warranty repair shall be as follows: (a) each part or component replaced with a brand new component or part will be assigned a new warranty period equal to the original manufacturer's or contract part warranty, whichever is longer, effective the replacement date, with any extended warranties commencing at the conclusion of the new warranty period; (b) any SFMTA replaced component or part that is a certified rebuilt, certified reconditioned or a certified remanufactured component or part shall be warranted for the remainder of the original warranty period of the component or part, commencing on the replacement date.

1.2.4 Failure Analysis

At SFMTA's request, the Contractor, at its cost, shall conduct a failure analysis of a failed part involved in a fleet defect or that is safety-related or a major component that could affect fleet operation that has been removed from vehicles under the terms of the

warranty. The analysis shall be documented and compiled into a report. The Failure Analysis Reports shall be delivered to SFMTA Project Manager within sixty (60) calendar days of the receipt of failed parts.

Appendix 4C: NEGOTIATED PROCUREMENT PROCEDURE

1. General

The San Francisco Administrative Code, Section 21.4(e) "Mass-transit Vehicles" provides as follows:

Notwithstanding any other provision of the charter or ordinances of the City and County of San Francisco, the Public Transportation Department, through its department head and through the Purchaser, is authorized to include among its purchasing specifications the use of negotiated procurement procedures for the purchase of mass-transit vehicles.

This document describes the process and prescribes guidelines for the San Francisco Municipal Transportation Agency (SFMTA) to purchase mass-transit vehicles by the use of negotiated procurement. This document covers those phases in the procurement process that may differ from the lowest reliable and responsible bidder procurement and those that are unique to a negotiated procurement. All other non-conflicting City purchasing/contracting requirements still apply to this negotiated procurement process. The procedures for the major phases of a Negotiated Procurement follow.

2. Request for Proposals

The Request for Proposal (RFP) will describe the negotiated procurement process and will disclose the evaluation criteria which will be used to determine the proposal ranking. Disclosure of the evaluation criteria will also include their relative importance although numerical weighting schemes may be disclosed. Selection of evaluation criteria will be determined by the Director of Transportation or his or her designee, and, if SFMTA requests, the Director of the Office of Contract Administration, and will include items such as but not limited to:

- Conformance with technical specifications
- Price
- Verified service history of subsystems and equipment
- Contractor's performance on past programs either for SFMTA and/or other major transit properties
- Adequacy of manufacturing facilities
- Qualifications of management/technical personnel
- Program management experience and financial stability and capability
- Quality assurance program
- After sales and warranty support capability and history
- History of meeting delivery schedules

3. Pre-proposal Conference

A pre-proposal conference will be held to explain more fully how the SFMTA intends to procure mass-transit vehicles under the RFP. The RFP will be used to announce the time, place and scope of the pre-proposal conference. Potential proposers may be requested to submit written questions in advance of the conference.

A complete record of the conference proceedings will be made and distributed to all prospective proposers and attendees after the conference. Also, all attendees will be advised that remarks and explanations made at the conference will not qualify the terms of the RFP and the terms remain unchanged unless the RFP is amended in writing.

4. Receive Proposals

Receipt and handling of proposals will be accomplished with the same degree of security and confidentiality as other sealed bids. There will be no public opening of proposals.

Proposers will be responsible for delivering the proposals in accordance with the instructions contained in the RFP. Proposals delivered to SFMTA as stated in the RFP will be entered in a log with the date and time noted. Each proposal will be inventoried. Discrepancies, shortages, or other problems discovered during the inventory will be noted and documented. After the inventory has been finished by SFMTA, the log and the proposal will be placed in secure storage to await further processing. SFMTA will safeguard from unauthorized disclosure the number of proposals received, the names of the proposers, the bid prices, and other information contained in the proposals. However, in the event of a known breach in security the City's only obligation will be to disclose the same or equivalent information to all proposers.

5. Evaluate Proposals

Prior to receipt of proposals, SFMTA will assemble a proposal evaluation team and will establish an evaluation method. The evaluation method will provide a reasonable basis for source selection and will be in accordance with the evaluation criteria identified in the RFP.

Proposals will be evaluated to:

- Determine that proposals either meet or exceed the evaluation criteria
- Establish a competitive range for negotiations
- Determine which proposals (technical and price) are within the competitive range
- Identify nonconforming areas and potentially beneficial substitute designs for further discussions with proposers
- Identify and document any requirements in the RFP that may have to be changed.

The proposals will be evaluated and a ranking established based on the results. The evaluation will be accomplished through an objective application of the evaluation procedure. A numerical weighting system will be used in the evaluation; however, it need not be disclosed to the proposers. The results of the evaluation will be documented.

6. Establish the Competitive Range

The evaluation of proposals will determine which proposals are in the competitive range for the purpose of conducting negotiations. The competitive range will be established based on the proposer's scores and rankings. The competitive range will include those proposers who the proposal evaluation team judges to be within reach of becoming the number one ranked proposer after negotiation and submittal of the best and final offer. Proposers judged not to be within reach of becoming the number one ranked proposer will be determined to be out of the competitive range and eliminated from this procedure. If a proposal is judged to be on the borderline, it will be placed in the competitive range. If only one proposal is found to be in the competitive range, one of the following courses will be followed:

- Recommend award to the single proposer without negotiations or a Best and Final offer.
- Negotiate with the single proposer and request a Best and Final offer.
- Reject all proposals.

Proposers not within the competitive range will be notified in writing at the earliest practical time. This notification will advise proposers that any protests must be filed in accordance with the protest procedure referenced in Section 11 herein.

7. Negotiations with Proposers in Competitive Range

Negotiations will be conducted with all proposers whose proposals are in the competitive range. The content and extent of the negotiations may vary from one proposer to another.

Proposers will be notified in writing to prepare for negotiation of their proposals. The notice will provide the following information:

- The location where the negotiations will take place
- The date and time of negotiations
- The expected participants and duration of the negotiations
- Notification of any specific alternatives that will be the subject of negotiation
- Specific elements of proposal requiring clarifications or negotiation

Notification to each of the proposers will provide the schedule for negotiations and indicated areas of interest or concern with their proposal that the proposal evaluation team wishes to examine in more detail during the negotiation. During the negotiations with each proposer, the proposal evaluation team will attempt to address each of the following areas.

- Deficiencies or nonconformities in the proposal
- Ambiguities and clarifications regarding the technical proposal and other terms and conditions of the proposal
- Suspected mistakes in the proposal
- Alternates to areas where the proposer is considered to have a weak proposal

A written record of all negotiation proceedings will be maintained and kept confidential.

8. Request for Best and Final Offers

Following the conclusion of negotiations with the proposers, the proposers who remain under consideration for award will be invited to submit a Best and Final Offer (BAFO). The BAFO will provide the opportunity for the proposers to modify their offers as a result of negotiations and any changes made to the RFP.

Each proposer will be advised that the BAFO will be based on the:

- Original RFP and all issued addenda
- Initial technical proposal plus changes submitted in writing during the negotiating process
- New price proposal that is consistent with the two items above

9. Best and Final Offer Evaluation

The BAFO evaluation will be conducted in accordance with the procedure established for the initial evaluation and all criteria will remain the same. The proposals will be ranked in the order of points received. The BAFO evaluation findings will be documented.

After receipt of the BAFO's, the City will not reopen discussions with any proposers unless it is clearly in the City's best interest to do so. If discussions are reopened, another round of BAFO's will subsequently be requested from proposers who submitted a proposal in the last requested BAFO.

10. Recommended Award

The evaluation team shall advise SFMTA in writing of the numerical ranking of the proposers. This ranking shall be achieved by applying the evaluation criteria and numerical weighting system established prior to receipt of the proposals. This submittal shall constitute the Evaluation Committee's recommendation that the contract be let to the highest ranked proposer. Following SFMTA's review of and concurrence with the Committee's award recommendation (the highest ranked proposer), the Director of Capital Programs and Construction of SFMTA will recommend the highest ranked proposer to the Director of Transportation, who shall recommend the highest-ranked proposer to the SFMTA Board of Directors for award of contract. In the event that the proposed contract totals \$10,000,000 or more, the SFMTA shall submit the contract to the Board of Supervisors for its approval.

11. Protest Procedures

Protest under these Negotiated Procurement Procedures shall be conducted pursuant to the SFMTA's "Protest Procedure for the Bidding and Award Process of Federally Assisted Third-Party Contracts".

12. Additional Vehicles

If, due to the breakdown of mass transit equipment or other situation adversely affecting the public welfare, an expeditious procurement of additional transit vehicles is desired from a contractor that has been awarded a contract under these negotiated procurement procedures, the SFMTA may procure such

vehicles from said contractor through non-competitive negotiation without the necessity of a new solicitation.

In approving a procurement under this section, SFMTA shall base its determination on the best interests of the City, as recommended by the Director of Transportation, with supporting documentation, including cost analyses, the effect on patrons of SFMTA, the effect on SFMTA operations and capital planning, and the position of granting agencies, including the Federal Transit Administration