Merrimack Valley Regional Transit Authority

REQUEST FOR PROPOSALS

MVRTA RFP #2020-25

JOINT PROCUREMENT FOR THE PURCHASE AND DELIVERY OF HEAVY-DUTY TRANSIT BUSES

Date of Issuance:	**Friday, November 22, 2019**
Pre-Proposal Meeting:	**Friday, December 6, 2019**
Request for Questions and Clarifications Due:	**Friday, January 3, 2020**
Proposals Due:	**Friday, January 31, 2020**

Joseph J Costanzo
Administrator
Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835
Phone (978) 469-2151
Email: staff@mvrta.com

VOLUME 1 OF 2

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1. REQUEST FOR PROPOSALS NOTICE

Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 018435
Administrator: Joseph J. Costanzo

Project Name: JOINT PROCUREMENT FOR THE PURCHASE AND DELIVERY OF HEAVY-DUTY TRANSIT BUSES FOR THE MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY AND OTHER PROCURING AGENCIES

Contact: Phillip Clayton
Telephone: 978-469-1251 ext. 135
Email: staff@mvrta.com

1.1. INTRODUCTION

NOTICE IS HEREBY GIVEN THAT sealed proposals will be received by the Merrimack Valley Regional Transit Authority ("MVRTA"), on behalf of thirteen (13) additional Massachusetts Regional Transit Authorities and The Steamship Authority of Woods Hole, MA, for the Purchase and Delivery of Heavy-Duty Transit Buses for itself and the following Procuring Agencies in accordance with requirements of this RFP.

Procuring Agencies

Berkshire Regional Transit Authority (BRTA)	Brockton Area Transit Authority (BAT)
Cape Ann Transit Authority (CATA)	Cape Cod Regional Transit Authority (CCRTA)
Franklin Regional Transit Authority (FRTA)	Greater Attleboro Taunton Regional Transit Authority (GATRA)
Lowell Regional Transit Authority (LRTA)	Martha's Vineyard Transit Authority (VTA)
MetroWest Regional Transit Authority (MWRTA)	Montachusett Regional Transit Authority (MRTA)
Pioneer Valley Transit Authority (PVTA)	Southern Regional Transit Authority (SRTA)
Worcester Regional Transit Authority (WRTA)	The Steamship Authority

The RFP Documents and detailed specifications may be obtained free of charge at the MVRTA Offices, located 85 Railroad Avenue, Haverhill, MA 01835. The RFP Documents may also be requested by mail; by telephone via contacting Mr. Phil Clayton, MVRTA (978) 469-1251 – extension #135; or by email staff@mvrta.com

This Joint Procurement is funded with assistance from the Massachusetts Department of Transportation ("MassDOT") and the Federal Transit Administration ("FTA"), and, as such, are subject to specific state laws, regulations, policies, and procedures, as well as Federal laws and regulations that apply to FTA funded procurements.

Proposers are advised that by signing and submitting an offer to MVRTA they are certifying that they and their affiliates are not suspended or debarred in accordance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200.

MVRTA and the other Procuring Agencies are Equal Opportunity Employers, and comply with all applicable Federal civil rights laws and implementing regulations. All firms, including Disadvantaged Business Enterprise ("DBE") firms, will be afforded full opportunity to submit proposals and will not be subject to discrimination on the basis of race, color, sex or national origin in the consideration for an award.

1.2. DUE DATE

Sealed proposals are due on **January 31, 2020** at MVRTA, 85 Railroad Avenue, Haverhill, MA 01835, no later than 2:00 PM Eastern Standard Time (EST.) Proposers are required to submit a proposal including all the RFP forms contained in this package. Each proposal shall be plainly marked with the Proposer's Name and the Procurement Number: G1941. Proposals received after the stated deadline above will not be considered and will be returned to the Proposer unopened.

1.3. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held promptly at **10:00 AM on December 6, 2019** in the Worcester RTA Office located at 42 Quinsigamond Ave., Worcester, MA 01610. The Pre-Proposal Conference will take approximately one (1) hour. Members of the MVRTA's staff will be available to answer general questions pertaining to the RFP and the specifications herein. Any questions that may require research or modification to the RFP shall be submitted to the MVRTA in writing as described in Section 2.6 (Clarifications of Specifications) and Section 2.10 (Requests for Approved Equals) hereunder. This Pre-Proposal Conference is not mandatory, however, attendance is highly recommended.

1.4. ACCEPTANCE PERIOD

MVRTA requires a minimum Acceptance Period of **one hundred and eighty (180) calendar days**. "Acceptance Period" for purposes of this solicitation means the number of calendar days available to MVRTA for awarding a contract(s) based on the Due Date specified in this solicitation for receipt of proposals.

2. INSTRUCTIONS TO BIDDERS

2.1. GENERAL INFORMATION

MVRTA invites qualified firms to submit Proposals in response to this RFP for the production and delivery of 30', 35' and 40' foot Heavy-Duty Low Floor transit buses. This RFP is issued by MVRTA on behalf of a thirteen (13) additional Massachusetts Regional Transit Authorities and The Steamship Authority of Woods Hole, MA. The term of any contract(s) entered into with the winning Proposer(s) is five (5) years. The MVRTA intends to award one or more contracts for specific quantities of heavy duty buses by type and size. MVRTA, as the Lead Agency, will award the basic contract containing the pricing, specifications, terms and conditions for entire term. Each Procuring Agency will issue individual purchase orders during the term of the basic contract. All terms and conditions under the basic agreement will apply to all purchase orders issued under this Agreement.

This Joint Procurement enables the MVRTA and other Procuring Agencies to standardize the future selection of transit buses, obtain better pricing through volume discounts, and reduce the number of annual or as-needed procurements when Federal grant funding is made available.

It should be noted that any reference to MVRTA regarding the terms and conditions in the contract documents is intended to include all of the Procuring Agencies. The MVRTA shall incur no financial responsibility or other liability in connection with purchase orders between the Contractor and a specific Procuring Agency. Each Procuring Agency shall accept sole responsibility for placing orders and making payments directly to the Contractor.

2.2. PROCURING AGENCIES

Each Procuring Agency will purchase a range of vehicles by type and size throughout the term of the Contract based on their individual needs and funding availability. These ranges are deemed reasonable in relation to the Procuring Agency's peak service vehicles. (We need to insert these numbers).

Merrimack Valley Regional Transit Authority (MVRTA) - Lead Agency
85 Railroad Avenue
Haverhill, MA 018435

Berkshire Regional Transit Authority (BRTA)
1 Columbus Avenue
Pittsfield, MA 01201

Brockton Area Transit Authority (BAT)
155 Court Street
Brockton, MA 02302-4608

Cape Ann Transit Authority (CATA)
3 Pond Road
Gloucester, MA 01201

Cape Cod Regional Transit Authority (CCRTA)
215 Lyannough Road
Hyannis, MA 02601

Franklin Regional Transit Authority (FRTA)
The John W. Oliver Transit Center
12 Olive Street, Suite 1
Greenfield, MA 01301

Greater Attleboro Taunton Regional Transit Authority (GATRA)
10 Oak Street
Taunton, MA 02780-3950

Lowell Regional Transit Authority (LRTA)
115 Thorndike Street,
Lowell, MA 01852

Martha's Vineyard Transit Authority (VTA)
11 A Street,
Edgartown, MA 02439

MetroWest Transit Authority (MWRTA)
85 Railroad Avenue
Haverhill, MA 01835

Montachusett Regional Transit Authority (MRTA)
1427 Water Street
Fitchburg, MA 0183

Pioneer Valley Transit Authority (PVTA)
2802 Main Street
Springfield, MA 01107

Southeastern Regional Transit Authority (SRTA)
700 Pleasant Street, Suite 320
New Bedford, MA 02740

Worcester Regional Transit Authority (WRTA)
60 Foster Street
Worcester, MA 01608

The Steamship Authority
P.O. Box 284
Woods Hole, MA 02108

Table A. Vehicles in Revenue Service Per Agency

Procuring Agencies	Rec'd ✓	Vehicles In Rev. Service
Merrimack Valley Regional Transit Authority	✓	71
Berkshire Regional Transit Authority	✓	25
Brockton Area Transit Authority	✓	87
Cape Ann Transit Authority	✓	19
Cape Cod Regional Transit Authority	✓	323
Franklin Regional Transit Authority	✓	26
Greater Attleboro Regional Transit Authority	✓	115
Lowell Regional Transit Authority	✓	79
Martha's Vineyard Transit Authority	✓	33
MetroWest Regional Transit Authority	✓	95
Montachusett Regional Transit Authority	✓	176
Pioneer Valley Transit Authority	✓	265
Southeastern Regional Transit Authority	✓	74
Worcester Regional Transit Authority	✓	103
The Steamship Authority-Woodshole	✓	35
Totals By Size		
All RTA's Rev Vehicles		1526

2.3. SCOPE OF WORK

The MVRTA, along with the other Procuring Agencies, at their sole discretion, may procure up to the maximum number of buses by bus type and size indicated in the Tables below during the 5-year contract term. Initially, the Contractor will furnish the MVRTA an order of a minimum of 15 and a maximum of 21 Heavy-Duty Low Floor Transit Buses in accordance with the delivery schedule set forth Section 2.4 (Delivery of Buses) with the final quantity of each size bus to be determined at the time of Contract award ("Initial Order"). Under this Joint Procurement, the Contractor will likely furnish and deliver an additional X to Y Heavy-Duty Low Floor Transit Buses to the other Procuring Agencies under the terms of the Contract and in accordance with each Purchase Order that is issued.

2.3.1. Minimum and Maximum Quantities By Bus Type and Size

Table B. Clean Diesel Heavy Duty Transit Bus Quantities For Each Procuring Agency

Procuring Agencies	Rec'd	30 ft Diesel		35 ft Diesel		40 ft Diesel	
	✓	min	max	min	max	min	max
Merrimack Valley Regional Transit Authority	✓	0	0	15	21	0	0
Berkshire Regional Transit Authority	✓	0	0	0	6	0	0
Brockton Area Transit Authority	✓	1	4	5	21	10	21
Cape Ann Transit Authority	✓	5	13	0	0	0	0
Cape Cod Regional Transit Authority	✓	6	9	9	12	0	0
Franklin Regional Transit Authority	✓	1	3	3	4	0	0
Greater Attleboro Regional Transit Authority	✓	5	7	5	8	0	0
Lowell Regional Transit Authority	✓	1	6	1	5	0	0
Martha's Vineyard Transit Authority	✓	0	0	0	0	0	0
MetroWest Regional Transit Authority	✓	0	3	0	0	0	0
Montachusett Regional Transit Authority	✓	4	8	2	4	0	0
Pioneer Valley Transit Authority	✓	0	0	20	40	35	60
Southeastern Regional Transit Authority	✓	0	0	10	50	0	2
Worcester Regional Transit Authority	✓	0	0	2	25	0	0
The Steamship Authority-Woodshole	✓	0	0	0	0	1	4
Totals By Size		23	53	72	196	46	87

Table C. Hybrid Heavy Duty Transit Bus Quantities For Each Procuring Agency

Procuring Agencies	Rec'd ✓	30 ft Hybrid min	30 ft Hybrid max	35 ft Hybrid min	35 ft Hybrid max	40 ft Hybrid min	40 ft Hybrid max
Merrimack Valley Regional Transit Authority	✓	0	0	1	5	0	0
Berkshire Regional Transit Authority	✓	0	0	0	2	0	0
Brockton Area Transit Authority	✓	0	0	0	0	0	0
Cape Ann Transit Authority	✓	0	0	0	0	0	0
Cape Cod Regional Transit Authority	✓	0	0	0	0	0	0
Franklin Regional Transit Authority	✓	0	0	0	0	0	0
Greater Attleboro Regional Transit Authority	✓	0	0	2	5	0	0
Lowell Regional Transit Authority	✓	1	6	1	5	0	0
Martha's Vineyard Transit Authority	✓	0	0	0	0	0	0
MetroWest Regional Transit Authority	✓	0	0	0	0	0	0
Montachusett Regional Transit Authority	✓	0	0	0	0	0	0
Pioneer Valley Transit Authority	✓	0	0	0	0	0	0
Southeastern Regional Transit Authority	✓	0	0	1	4	0	0
Worcester Regional Transit Authority	✓	0	0	0	0	0	0
The Steamship Authority-Woodshole	✓	0	0	0	0	0	0
Totals By Size		1	6	5	21	0	0

Table D. Electric Heavy-Duty Transit Bus Quantities For Each Procuring Agency

Procuring Agencies	Rec'd	30 ft Electric		35 ft Electric		40 ft Electric	
	✓	min	max	min	max	min	max
Merrimack Valley Regional Transit Authority	✓	0	0	0	0	0	0
Berkshire Regional Transit Authority	✓	0	0	0	0	0	0
Brockton Area Transit Authority	✓	0	0	0	0	0	0
Cape Ann Transit Authority	✓	1	2	0	0	0	0
Cape Cod Regional Transit Authority	✓	0	0	0	0	0	0
Franklin Regional Transit Authority	✓	0	0	0	0	0	0
Greater Attleboro Regional Transit Authority	✓	5	8	2	2	0	0
Lowell Regional Transit Authority	✓	1	6	1	5	0	0
Martha's Vineyard Transit Authority	✓	1	6	1	8	1	5
MetroWest Regional Transit Authority	✓	1	3	0	0	0	0
Montachusett Regional Transit Authority	✓	0	0	0	0	0	0
Pioneer Valley Transit Authority	✓	0	0	0	0	0	0
Southeastern Regional Transit Authority	✓	0	0	0	5	0	0
Worcester Regional Transit Authority	✓	0	0	0	0	0	0
The Steamship Authority-Woodshole	✓	0	0	0	0	1	2
Totals By Size		9	25	4	20	2	7

2.4. DELIVERY OF BUSES

Delivery of buses shall be no later than 365 calendar days after the close of the calendar quarter (i.e., March 31, June 30, September 30, December 31) in which the Procuring Agency's order is delivered to the Contractor. Delivery shall be made during regular business days (Monday through Friday); Federal and State holidays excluded, between the hours of 8:00AM and 4:00PM EST.

The Contractor shall prepay all delivery costs, including the costs for all required materials and supplies to deliver the buses to the designated locations. The Contractor shall bear all risk of damage to or loss of the bus while in transit. For the Initial Order by MVRTA, MVRTA shall reimburse Contractor for delivery costs of the buses in accordance with the successful Proposer's Cost Proposal (see Appendix A: Cost Proposal form.) Delivery charges and delivery locations for for buses purchased by the other Procuring Agencies shall be determined when the Purchase Order is issued.

The Contractor shall prepare all buses for shipment in such a manner as to protect them from damage in transit, and shall be responsible for and repair all damaged parts or replace all losses incurred in the course of delivery of the equipment to the agreed upon Maintenance Facility. When necessary, heavy parts shall be mounted on skids or crated, and all parts or materials that might otherwise be lost shall be boxed or wired in bundles. All parts shall be plainly marked for identification and destination.

The final delivery schedule for all buses ordered by the other Procuring Agencies during the term of this Contract will be mutually negotiated directly between the Procuring Agency and the Contractor prior to the issuance of a Purchase Order.

2.4.1. Service

Prior to delivery, each bus shall be completely serviced by the Contractor or by an authorized dealer of the Contractor in a service shop within the state of Massachusetts. Service shall include not less than the following: lubrication, wash, body condition and other checks and adjustments required for proper complete servicing of a new vehicle. Each vehicle shall be ready for placement in service upon delivery and acceptance.

2.4.2. Damage by Contractor

All risk of damage or loss to the buses up to the time of delivery to the specified locations shall be the responsibility of the Contractor. Any materials or equipment found to be damaged or defective at the time of delivery shall be repaired, replaced, or corrected at no additional cost to the Procuring Agency. The Procuring Agency may deduct any costs it incurs for such repairs, replacement, or correction from any payments due if the Contractor fails to comply with the requirements of this section.

2.4.3. Warranties

The Contractor shall warrant to the MVRTA, its successors and assigns, that the title to the material, supplies or equipment covered by the Contract, when delivered to MVRTA or to its successor or assigns, is free from all liens and encumbrances. The Contractor guarantees and warrants that all work performed and items supplied under this Contract shall: (1) conform to the Technical Specifications and all other requirements of this RFP; (2) fulfill its design functions and be fit for both its ordinary and intended purposes; (3) be free of all patent and latent defects in design, materials and workmanship; and (4) perform satisfactorily.

It is understood and agreed that by acceptance of this warranty and the acceptance of materials or supplies to be manufactured or assembled pursuant to the Technical Specifications, MVRTA does not waive any warranty, either expressed or implied.

2.4.4. Summary of Items to be Provided Upon Delivery

The following items must be furnished by the Contractor upon delivery of each vehicle:

(a) all warranty verification vouchers, certificates, or coupons,

(b) operation and maintenance manuals with electronic copy for vehicle and all add-on equipment,

(c) drawings showing wiring of auxiliary circuits and/or modifications of standard vehicle wiring, which would not be included in the standard vehicle maintenance manual,

(d) 100% filled fuel tank(s),

(e) vehicles(s) free of dealer signs and manufacturer emblems,

(f) assurance of compliance with manufacturer's pre-delivery service, and

(g) all required documents for securing vehicle title completely executed by the manufacturer/dealer and ready for submission to the Department of Motor Vehicles (i.e., MA Certified Weight Certificate, Vehicle Certificate of Origin). The manufacturer warrants that the title will pass to MVRTA free of any liens, mortgages and encumbrances, financing statements, claims, and demands of any character, and

(h) Transit Bus Database Information in hardcopy and electronic Microsoft Windows Excel file that includes:

- Manufacturer name
- Vehicle model name
- MVRTA Coach number
- Manufacturer vehicle identification number (VIN#) Engine make, model and serial number
- Engine ECM model and serial number
- Transmission make, model and serial number
- Transmission ECU model and serial number
- Differential model and serial number
- Alternator model and serial number
- Regulator model and serial number
- Starter model and serial number
- Air compressor model and serial number
- Air conditioning compressor model and serial number
- Steering box model and serial number
- Front axle model and serial number

- Rear axle model and serial number
- Catalyst/muffler and/or exhaust after-treatment model and serial number
- Wheelchair ramp model and serial number
- DVR model and serial number

2.5. PRICING

The price to be quoted under this RFP will include all items of labor, materials, tools, equipment, training, and other costs necessary to fully complete production and delivery of all transit buses ordered. Any items omitted in the Technical Specifications that are clearly necessary for the production of equipment and assembly will be considered a portion of such specifications. The price quoted will remain fixed for a period of **one hundred eighty (180) days** from the Proposal Due Date. Price adjustment allowances and procedures are set forth in Section 2.5.1 (PPI Index Escalator/De-escalator) below.

2.5.1. PPI Index Escalator/De-escalator

MVRTA and other the Procuring Agencies reserve the right to order up to the maximum number of buses specified in Section 2.31. (Minimum and Maximum Quantities of By Bus Type and Size) and equipment over the 5-year contract term. The prices of such buses and equipment shall be at the prices quoted on Proposer's Cost Proposal (see Appendix A: Cost Proposal form.) The price(s) of any buses or equipment ordered by MVRTA or other Procuring Agencies after the initial 180 day firm/fixed price period shall be that quoted plus/minus any change that will be calculated based on the following formula, which utilizes the U.S. Department of Labor/Bureau Of Labor Statistics Producer Price Index (PPI) Category 1413, "Trucks and Bus Bodies."

The change in this index will be used to adjust the base order prices. In no event, however, will MVRTA or the other Procuring Agencies allow a PPI-based adjustment that result in a price increase of greater than five (5) percent per year above the base order price.

Formula:

Index Point Change	Example
PPI Index in Future Award Month	141.1
Less PPI Index Base Award Month	137.6
Equals Index Point Change	3.5

Index Percent Change	
Index Point Change	3.5
Divided by PPI Index @ Base Award Month	/137.6
Equals	.0254
Results Multiplied by 100	.0254 X 100
Equals Percentage Change	2.54%

Base Order Price	$1000.00
Multiplied by Percentage Change	$ 25.40
Revised Price for Future Order	$1025.40

2.6. CLARIFICATION OF SPECIFICATIONS

Any questions or requests for clarifications to, or relief from, the Technical Specifications, must be submitted in writing using the form contained in Appendix B (Request for Clarifications, Changes, Substitutions and Approved Equals) and send to the attention of **Phil Clayton** at the address listed on the cover page of this RFP, or emailed to staff@mvrta.com no later than

January 3, 2020 at 2:00 PM.

Should MVRTA make changes to any specification, stipulation, requirement, or procedure, an electronic notification will be sent to all Proposers in the form of written Addenda and posted on the MVRTA website (www.MVRTA.com) by **November 15, 2019.** Each prospective Proposer receiving these RFP Documents will be sent an electronic notification of all posted clarifications. Proposers are, however, responsible for monitoring the MVRTA's Website on a regular basis.

Any modification or amendment to the RFP requirements will be by written Addenda issued by the MVRTA Administrator. No officer, agent, or employee of MVRTA is authorized to amend any provision contained in this RFP, including the Technical Specifications, unless such amendment is issued as an Addendum and sent to all Proposers in accordance with this section.

2.7. ACKNOWLEDGEMENT OF ADDENDA

Proposers must acknowledge receipt of all written Addenda by signing and returning the Addenda Acknowledgment form contained in Appendix C (with the Proposer's submission. If this RFP is modified by an amendment, then all terms and conditions that are not modified remain unchanged. *Oral interpretations will not be binding on MVRTA or the other Procuring Agencies.*

2.8. EXTENSION OF DUE DATE

Requests for an extension of the RFP Due Date must be submitted in writing to the attention of **Phil Clayton** at MVRTA no later than five (5) business days prior to the Due Date. MVRTA reserves the right to determine whether an extension is justified. All Proposers will be notified in writing if an extension granted.

2.9. CONFORMITY TO DESIGN SPECIFICATIONS/SUBSTITUTIONS

It is understood that specifying a brand name or specific types of components and/or equipment in the Technical Specifications shall not relieve the Proposer from its responsibility to furnish the end product in accordance with the warranty and contractual requirements stated herein. In all cases, materials furnished by the Contractor must be as specified. Where brand names or specific items are used in the Technical Specifications, consider the term "or approved equal" to apply. All Proposers are provided an opportunity to substitute the brand name product with an "approved equal" product in accordance with the process stipulated in Section 2.10 (Request for Approved Equals.)

The Proposer is responsible for notifying MVRTA of any brand named items contained in this RFP that are not adequately described with the salient characteristics such that alternate brands can be fairly and adequately evaluated. Unless otherwise specifically provided in the Technical Specifications, reference to any equipment, material, article or patented process by trade name, make or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.

2.10. REQUEST FOR APPROVED EQUALS

A Proposer may, at its option, use any equipment, material, article, or process which, in the judgment of the MVRTA, is equal to that designated in the Technical Specifications. To do so, Proposer shall furnish, at its own expense, all test results, technical data and background information required by the MVRTA in making the determination as to whether the proposed equipment, material or article or process is, in the judgment of the MVRTA Administrator, equal to that designated herein.

All requests for an “approved equal” substitution must be submitted in writing using the form contained in Appendix B (Request for Clarifications, Changes, Substitutions and Approved Equals) no later than **January 10, 2020 at 2:00 PM** to:

Joseph J Costanzo, Administrator
Merrimack Valley Regional Transit Authority,
85 Railroad Avenue
Haverhill, Massachusetts 01835
email: staff@mvrta.com

Correspondence regarding "approved equals” will not be accepted by MVRTA from any party other than the Proposer. No official correspondence will be accepted via fax.

The Proposer must submit three (3) copies of its documentation to MVRTA that clearly demonstrates the equality of the item they are offering to the one contained in the Technical Specifications. A Proposer’s request for an approved equal must be fully supported with catalog information, specifications, illustrations or other pertinent information as evidence that the substitute offered is equal to or better than what is requested in the Technical Specifications. Any samples that are required must be furnished free of expense, and, if not destroyed may, upon request, be returned to the Proposer at the Proposer 's expense. Each individual sample must be labeled with the Proposer's name, Manufacturer's brand name and number, Proposal number and item reference. Samples of Proposer’s items may remain on file at MVRTA for the term of the Contract. Any requests by a Proposer to return samples shall be accompanied by instructions from the Proposer that includes shipping authorization and name of carrier, and must be received within ninety (90) days after Proposal Due Date. If instructions are not received within this time frame then the samples shall be disposed of by the MVRTA.

MVRTA reserves the right to determine whether or not a proposed substitute is, in fact, equal in performance and features to the named brand product specified in the Technical Specifications. In all cases, materials must be furnished as specified. Any unapproved deviations, exceptions, substitutions, alternates or conditional qualifications contained in a proposal may be cause for its rejection.

All requests for an "approved equal" substitute will be accepted or rejected by the MVRTA at least fifteen (15) calendar days prior to Proposal Due Date.

2.11. FAILURE TO SUBMIT OFFER

If no offer is to be submitted, the RFP Documents do not need to be returned to MVRTA unless otherwise specified. MVRTA, however, does request that the potential Proposer send an email or letter to the MVRTA Administrator advising whether future solicitations for the type of supplies or services covered by this RFP are desired.

2.12. NO PUBLIC OPENING

There is no public opening of this RFP. MVRTA will distribute the Proposals to the selection committee for Evaluation in accordance with Section 4 (Selection Process). Proposals will be examined by a selection committee and the results will be reported to each Procuring Agency within ninety (90) days after the Due Date. No Proposer may withdraw its proposal for a period of ninety (90) days after the Proposal Due Date.

2.13. REJECTION OF BID

MVRTA reserves the right to reject any and all proposals, in whole or in part, if such action is determined to be in the best interests of MVRTA. Unless all proposals are rejected, award shall be made to the Proposer(s) whose proposal, conforming to the solicitation, in the judgment of MVRTA, will be most advantageous to the MVRTA and the other Procuring Agencies, price/cost and other factors considered.

2.14. WAIVER OF INFORMALITIES, DEVIATIONS, MISTAKES AND MATTERS OF FORM

MVRTA reserves the right to waive any informalities, deviations, mistakes, and matters of form rather than substance of the RFP documents, which can be waived or corrected without prejudice to the Contractor. No officer or agent of MVRTA is authorized to waive this reservation.

2.15. APPEAL/PROTEST PROCEDURES

MVRTA is solely responsible for resolving all contractual and administrative issues arising out of this RFP, including evaluation and selection of proposals, protests of awards, disputes, and claims. MVRTA has established procedures that will ensure that protests are received and processed efficiently. Proposers are directed to Appendix D (MVRTA Protest Process) for details on the process**.** Appeals/protests relative to this procurement will be reviewed and adjudicated in accordance with the MVRTA's established procedures.

2.16. PRE-CONTRACTUAL EXPENSES

MVRTA shall not be liable for any pre-contractual expenses incurred by the Proposer in the preparation of its proposal. The Proposer shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Proposer in:

(a) Preparing its proposal in response to this RFP;

(b) Submitting its proposal to MVRTA;

(c) Negotiating with MVRTA any matter related to this proposal; or

(d) Any other expenses incurred by Proposer prior to date of award, if any, of the Contract.

2.17. TAX EXEMPTION

MVRTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. MVRTA is also exempt from Massachusetts State Sales Tax. Such taxes should not be included in Proposer's cost proposal.

As an independent Contractor, the Contractor alone shall be responsible for payment of all federal, state and local taxes of all types and kinds applicable to such fees incurred under this Contract.

2.18. CONFLICT OF INTEREST

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. Therefore, it is the responsibility of Contractor to ensure compliance with the Commonwealth's Conflict of Interest Laws, and avoid any conduct that might result in or give the appearance of creating for Board members, officers or employees of MVRTA in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct that might result in a Board member, officer or employee failing to comply with G.L., c. 268A. Non-compliance with these Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of MVRTA by the Proposer, Proposer's employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of MVRTA; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of any city, county, or town serviced by MVRTA; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify MVRTA's Administrator in writing and fully disclose all circumstances thereof. MVRTA reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If MVRTA does not grant an exception, the Contractor shall, within ten (10) days of written notice from MVRTA, take all action necessary to comply with the terms stated herein.

The Proposer shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws by submitting the form contained in Appendix E (Conflict of Interest Certification.)

2.19. PROHIBITED INTEREST

No member, officer, or employee of the MVRTA during his or her tenure or for one (1) year after that tenure shall have any interest, direct or indirect, in this Agreement or the proceeds under this Agreement, nor shall any such person act as an agent or attorney for, or otherwise represent a Proposer or Contractor/Consultant by making a formal or informal appearance, or any oral or written communication before the MVRTA, or any officer or employee of the MVRTA, for a period of

one (1) year after leaving office or employment with the MVRTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a Contract.

3. PROPOSAL CONTENT AND SUBMISSION

3.1. PROPOSAL CONTENT

The intent of this RFP is to encourage responses from qualified transit bus manufacturers with an ability to successfully complete the tasks required under this RFP. To this end, Proposers shall submit their sealed proposals in response to this RFP using the format outlined below. Failure to adequately respond to each item may render the Proposal non-responsive, causing it to be rejected.

3.1.1. Cover Letter

The cover letter shall introduce the Proposer's team and summarize the main qualifications of the firm; agrees to the proposed Scope of Work ,Technical Specifications, and all terms and conditions stated herein; and submits a cost proposal that is firm for **one hundred eighty (180) days.**

3.1.2. Table of Contents

The Table of Contents shall list all items provided in the proposal submission.

3.1.3. Proposers Contact Information

Firm name, business address, telephone number, email address, designated contact and email address.

3.1.4. Business Description

Date business was established and type of organization (individual, partnership, corporation, etc.). A narrative of the Proposer's manufacturing facilities, parts distribution locations, and service support offices must be included.

3.1.5. Understanding of the Scope of Work

A clear and concise description of the services and equipment offered by the Proposer in response to this RFP. Describe the overall design used in carrying out the project and accomplishing its objectives. Describe each major tasks or activities undertaken as a means of reaching such objectives. Explain or display the essential points of activity in a time sequence explaining or showing the amount of time allotted to each activity. Provide sample production timelines and delivery schedule for each of the bus types and sizes Proposer is responding to.

3.1.6. Proposer's Qualifications

Provide a concise statement covering the history of your company under current and any prior names (include number of years in business under each name), your major projects or activities (general and specific projects similar to the subject of this RFP), the transit populations you have served, the relationship of this project to your corporate purpose, and why you feel that your company is best suited to fulfill the requirements of the Proposal. Include the following:

(a) A brief description of the experience your company has had in providing similar buses and equipment that is the subject of this RFP to other transit agencies. Provide a list of at least five (5) customer references that are public transit agencies currently operating your vehicles. The customer references shall include the transit agency's name, the contact name and title, telephone number, and email address of the person most familiar with your contract with the agency; the dollar

amount of the contract; the dates that these programs/projects were completed, and a detailed description of the vehicles you provided under that contract.

(b) A brief description of the experience and qualifications of the proposed key staff members, including the Project Manager who are assigned to this project, and the percentage of time each key staff will be devoted to the project. Describe the function of each key staff on the project, and specify where those staff will be located.

(c) Demonstrate past fiscal responsibility on similar projects (e.g., independent audits or a list of projects completed within the budget.) Submit a copy of your latest audited financial statement that was completed by a certified public accountant within the past 18 months. Submit a list of ongoing or planned commitments, which may affect assets, lines of credit, guarantor letters, or Proposer's ability to perform the work required under this RFP.

(d) Provide a statement as to any judgments, litigations, licensing violations, or other violations, outstanding or resolved, associated with your company over the last five (5) years.

3.1.7. Technical Understanding

Provide all data relevant that pertain to the transit buses offered in your Proposal, including:

(a) Listing of all requests for approved equals from MVRTA's contract documents and specifications.

(b) Engineering drawings and layouts as needed to respond to specific items identified within the MVRTA's Technical Specifications. Proposers will also submit any other supporting documentation that it deems appropriate to aid the MVRTA in evaluating the technical merit of the Proposer's proposal in each factor.

(c) Copies of the Altoona Bus Test report for the vehicle offered, including all issues reported by the testing agency and any corrective actions taken by the manufacturer as a result of the test, as well as and any subsequent testing completed to confirm the adequacy of any modifications.

(d) Representative samples of all maintenance, parts, and related service manuals that cover the buses offered in the proposal. Examples of service and part update bulletins, electrical diagrams, and bus operator's manuals shall also be submitted.

(e) Information regarding the structure, locations, and policies of the Parts Service organization that will support the bus offered, including listing the nearest Parts Service facility to MVRTA.

(f) Details of Proposer's clean diesel, hybrid diesel/electric drive system, and electric options as offered.

(g) Evidence of Proposer's ability to meet the delivery requirements of the RFP. Proposer shall include a list of all deliveries the Proposer has made within the past three (3) years. That list should contain the number of units involved; whether the buses were delivered per the contract terms; and, whether there were of any late deliveries, and, if so, the Proposer shall submit a list of those late deliveries.

3.1.8. Cost Proposal

Cost Proposals will be evaluated based on the Total Base Offer per type and size of bus that is submitted by each Proposer for consideration by the Selection Committee. The Proposer must submit separate pricing for each bus type (i.e., Clean Diesel, Hybrid, and Electric) and bus size (i.e., 30 Foot, 35 Foot, and 40 Foot) being offered, as well as for the options required. See Appendix A (Cost Proposal.)

Prices quoted on each cost sheet for bus type and size configurations shall remain firm for **one hundred eighty (180) days**. Price adjustment allowances and procedures, if applicable, are set forth in Section 2.5.1 (PPI Index Escalator/De-escalator.)

The cost for spare components will not be used in the evaluation of each bus type and size configuration cost proposal that is submitted. MVRTA and Procuring Agencies, however, reserve the right to negotiate a final spare parts package, including final quantities and costs at the time of contract award.

3.2. PROPOSAL SUBMISSION

Proposer shall submit **ONE (1) unbound original, FIVE (5) hard copies, and ONE (1) electronic PDF copy on a USB drive** of its Proposal in a sealed package marked with the RFP number: **MVRTA G1941** that is addressed to:

Joseph J. Costanzo, Administrator
Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835

Proposals must be received in MVRTA's Administrative Office on or before **December 6, 2019 at 2:00 PM.** Proposals received after this time or at any other location will not be accepted.

3.3. PROJECT TIMELINE

The following project timeline is provided for your scheduling information and is subject to change at the discretion of MVRTA:

	Event Date
RFP Issued…….	November 22, 2019
Pre-Proposal Meeting…….10:00 a.m.	December 6, 2019
Requests for Questions and Clarifications Due	January 3, 2019
MVRTA's Response to Questions and Clarification……..	January 17, 2020
Proposals Due …… 2:00 p.m.	**January 31, 2019**
Interviews (tentative)…….	February 5, 2020
Notice to Proceed (tentatively scheduled)	February 14, 2020

4. SELECTION PROCESS

4.1. BASIS OF AWARD

Pursuant to this RFP, Proposers are required to comply with the terms and conditions stated herein in order to be deemed responsible and responsive. Only Proposers who submit responsive offers will be evaluated against the criteria set forth below. Award will be made to the Proposer(s) who is deemed responsible, possesses the management, financial, and technical capabilities necessary to fulfill the requirements of the Contract, whose proposal conforms in all material aspects to the requirements of this RFP at the scheduled time of submission, and who is judged by an integrated assessment of the evaluation criteria defined below.

4.2. EVALUATION/SELECTION COMMITTEE

The Administrator of MVRTA is the Procurement Officer responsible for leading the selection process for the purchase and delivery of heavy-duty transit buses. The Procurement Officer has selected a representative group from the participating transit agencies with the knowledge, experience, and managerial responsibilities of purchasing, maintaining, and running a fleet of heavy-duty clean diesel, hybrid, and electric transit buses operating in Massachusetts. Evaluation of competing proposals requires discretion throughout the entire selection process, including the actions of all persons associated with evaluating the proposals submitted in response to this RFP. Inadvertent disclosures may be damaging to MVRTA and the other procuring agencies. Therefore, members of the selection committee will not reveal information concerning the committee's evaluation of all competing proposals to individuals outside of the procuring agencies participating in this RFP. Members of the selection committee will at all times avoid any unauthorized contact with the competing proposers that is not essential to the selection process, as well as any other situation that would raise questions of impropriety.

After Contract(s) award, the Procurement Officer is solely responsible for disseminating information in accordance with local, state, and federal laws and regulations. If an unauthorized disclosure or release of information occurs without the proper authority, the matter will be brought to the attention of the Procurement Officer for investigator and resolution.

4.3. TECHNICAL EVALUATION CRITERIA

Proposers whose Proposals are deemed responsive will be evaluated against the following selection criteria.

Maximum Possible Technical Points = 60 points

4.3.1. PRODUCT DESIGN AND PERFORMANCE CRITERIA

The information provided by the Proposer in its technical submittal will be utilized to evaluate the product design and performance of the specific types and sizes of buses offered by the Proposer in response to this RFP. Failure to complete the required submissions on the proper forms with adequate supporting data will impact the final point determination of this section. The number and significance of the requested deviations from the Technical Specifications, which are intended to describe a bus design that provides for fleet commonality and standardization of parts, training

and related support costs will impact the final point determination of this section. Vehicle construction and system design, as well as documented reliability may be used in this evaluation, as well as other design and performance elements of the components which comprise those systems. At a minimum, test results, safety and maintenance factors, and cost of normal operation for the bus design and system components proposed may be considered in determining a final value for this factor. **(30 points)**

4.3.2. EXPERIENCE AND QUALIFICATIONS CRITERIA

The Selection Committee will consider the capabilities and experience of the Proposer as presented in their Proposal and determined by review of information available from references and other external resources. To determine the experience and qualifications of the Proposer, the Selection Committee may look at the Proposer's overall organizational and financial capabilities and consider key components such as organizational reporting structure, quality control, quality assurance, research and development, technical training and parts support, response time, product capabilities, ability to furnish multiple bus configurations, bonding capacity, and financial history, as well as other considerations in reaching a final point determination. The Selection Committee may also look at judgments, liens, fleet defect history, warranty claims, and the steps that the Proposer has taken to resolve these concerns in assessing the overall reputation of the Proposer. The Selection Committee will also review the Proposer's delivery schedule offer to assess their ability to fulfill the delivery requirements, including reviewing past delivery performance. **(30 points)**

4.4. COST PROPOSAL EVALUATION CRITERIA

The Proposer is required to submit its cost proposal using the Cost Proposal Forms contained in Appendix A***,*** without alteration. The Proposer is allowed to submit a cost proposal that includes pricing for all bus types (i.e., Clean Diesel, Hybrid, and Electric) and sizes (i.e., 30 Foot, 35 Foot, and 40 Foot) or for one or more type/size combinations.

Cost Proposals will be evaluated based on the "Total Base Offer Per Bus," for each bus type and bus size category. The Lowest Proposed Price for each bus type and bus size category will receive a maximum of forty (40) points. Every other Proposal that is evaluated will be given points proportional to the Lowest Proposed Price in each bus type and size category. This point total will be calculated by dividing the Lowest Proposed Price price by each Proposer's Total Base Offer Per Bus for each bus type and size category and multiplying that result by 40.

For example, the following calculation will be done for each bus type and bus size category:

Cost Proposal Score = (Lowest Proposed Price) ÷ (Total Base Offer Per Bus) X 40

Maximum Possible Cost Points Per Bus Type and Size Category = 40 points

4.5. EVALUATION METHODOLOGY

The maximum number of points achievable for each bus type and size category is 100.

	Weight
1. Technical Proposal	**60**

a. Product Design and Performance - 30 points

b. Experience and Qualifications - 30 Points

2. Cost Proposal **40**

TOTAL POSSIBLE POINTS 100

4.6. INTERVIEWS

Following the Selection Committee's review and screening of each Proposal, one or more Proposers may be invited to participate in a final selection process, if deemed necessary. A final selection process may include the submission of additional information and/or participation in an oral interview.

Interviews, if held, are tentatively scheduled for the week of **January 10, 2020** at:

Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835

4.7. REVISED PROPOSALS, DISCUSSIONS, NEGOTIATIONS, BEST AND FINAL OFFERS

MVRTA reserves the right to accept or reject any or all Proposals received as a result of this RFP, to negotiate with any individual or qualified firm, to modify or cancel in part or in its entirety the RFP, to request revised Proposals, to request further information, or to request Best and Final Offers (BAFO) if it is in the best interest of the MVRTA to do so. MVRTA, however, may award a contract without negotiations, so Proposers are encouraged to submit their best Proposal.

4.8. CONTRACT AWARD AND AGREEMENT

The Selection Committee will make a recommendation of award of a contract(s) to the Procurement Officer. All Proposers will be notified of the recommended award by mail. No contract will be in force until issuance of a written Notice to Proceed issued by the Administrator of the MVRTA. MVRTA may award one or more contracts for bus type and size categories.

The Proposer(s) selected to perform the work outlined in this RFP, will be required to execute the Contract Cover Agreement attached as Appendix F.

4.9. PRE-MANUFACTURING MEETING

After award of a Contract(s), the Contractor(s) and representatives from MVRTA and the other Procuring Agencies shall either schedule a meeting at the bus manufacturing plant or schedule a conference call prior to commencing with bus manufacturing. This meeting or conference call is for the purpose of discussing the Contract provisions and the Technical Specifications. The Contractor(s)will be required to submit a project time-line for MVRTA and each of the other Procuring Agencies that reflects the actual schedule regarding design, manufacturing, testing, and delivery of the buses for review.

5. GENERAL TERMS AND CONDITIONS

5.1. APPROPRIATION CONTINGENCY

If MVRTA or the other Procuring Agencies fail to appropriate operating funds, or if funds are not otherwise made available for the continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this shall not affect MVRTA's or the other Procuring Agencies rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder shall be to discharge both the Contractor and MVRTA and the other Procuring Agencies from future performance of the Contract, but not from their rights and obligations existing at the time of such termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the base price of the Contract. MVRTA shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first. MVRTA's fiscal year begins June 1.

5.2. CONFIDENTIAL INFORMATION

The Massachusetts Public Records Law (M.G.L. c. 66 § 10) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to these specifications, protest, or any other written communication between the MVRTA and Proposer shall be available to the public.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that MVRTA withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. **Proposer may not designate its entire Proposal as confidential. Additionally, Proposer may not designate its Cost Proposal as confidential.**

If Proposer requests that MVRTA withhold from disclosure information identified as confidential, and the MVRTA complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the MVRTA from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information) and pay any and all cost and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue or maintain any legal action against MVRTA or its directors, officers, employees or agents in connection with the withholding from disclosure of Proposer information.

If Proposer does not request that MVRTA withhold from disclosure information identified as confidential, MVRTA shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to MVRTA.

5.3. SEVERABILITY

In the event any article, section, subarticle, paragraph, sentence, clause, or phrase contained in the Contract shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, such determination, declaration, or adjudication shall in no manner affect the other articles, sections, subarticles, paragraphs, sentences, clauses, or phrases of the Contract,

which shall remain in full force and effect as if the article, section, subarticle, paragraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable, was not originally contained in the Contract.

5.4. ENTIRE AGREEMENT

This Agreement and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the Contractor and MVRTA (Parties) and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

5.5. HEADINGS NOT BINDING

The headings appearing at the beginning of the articles, sections, parts, paragraphs or subparagraphs in this Contract have been inserted for identification and reference purposes only.

5.6. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Contractor and MVRTA.

5.7. PERFORMANCE GUARANTEE REQUIREMENT

A Performance Guarantee in the amount of **20%** of the total contract value is required by MVRTA to ensure faithful performance of the contract. The Performance Guarantee may be either a Performance Bond or an Irrevocable Stand-By-Letter of Credit and shall remain in full force for the term of this Agreement. The Proposer shall certify that it will provide the requisite Performance Guarantee to MVRTA within ten (10) business days from Contract execution in accordance with the following minimum requirements (see Appendix F: Performance Guarantee Certification).

5.7.1. Performance Bond. The successful Proposer shall furnish at its own expense a Performance Bond in the sum equal to **20%** of the total amount for the Initial Order of buses (See Appendix G.1: Performance Bond.) Within thirty (30) days of each subsequent purchase from the Procuring Agencies, the Contractor shall provide a Performance Bond in the sum equal to **20%** of the total amount of the purchase order placed by each Procuring Agencies. MVRTA requires all Performance Bonds to be secured through an insurance company (or companies) which is/are licensed in the Commonwealth of Massachusetts or which is/are approved by MVRTA. The insurance company must have a rating of B+ or better. The name of the agency or agent writing the bond shall be identified with or on the bond.

5.7.2. Irrevocable Stand-By-Letter of Credit. If the Proposer chooses to provide a Letter of Credit as its Performance Guarantee, the Proposer shall furnish with its proposal, certification that an Irrevocable Stand-By-Letter of Credit will be provided if the Proposer becomes the successful Contractor (see Appendix G.2: Irrevocable Standby Letter of Credit). The Proposer shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By-Letter of Credit for the action will be provided if the Contract is awarded to the Proposer.

The Irrevocable Stand-By-Letter of Credit will only be accepted by MVRTA if:

5.7.2.1. A bank in good standing issues it. MVRTA will not accept a Letter of Credit from an entity other than a bank.

5.7.2.2. It is in writing and signed by the issuing bank.

5.7.2.3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.

5.7.2.4. The Merrimack Valley Transit Agency (or other Procuring Agency) is identified as the Beneficiary.

5.7.2.5. It is in an amount equal to 20% of the contract value. This amount must be in U.S. dollars.

5.7.2.6. The effective date of the Letter of Credit is the same as the effective date of the contract.

5.7.2.7. The expiration date of the Letter of Credit coincides with the term of this Agreement.

5.7.2.8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the MVRTA (or other Procuring Agency) and the Contractor for the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and supporting documentation (See Appendix G.2: Irrevocable Standby Letter of Credit and Appendix G3 Bank Draft). to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

5.8. INDEPENDENT CONTRACTOR STATUS

It is understood and agreed that the Contractor, including its employees, subcontractors, suppliers, consultants and agents will be providing services under the Contract as an independent Contractor for MVRTA and that none of the subcontractors, agents or employees of the Contractor will be an employee or agent of MVRTA. All liability to persons actually providing services for payment of charges related to wages or other compensation shall be the sole responsibility of Contractor.

5.9. SUBCONTRACTING OF WORK

The Contractor shall give its personal attention to the fulfillment of the Contract and shall keep the work under its control as well as directing, monitoring, and coordinating all necessary liaisons between its subcontractors, suppliers, consultants and agents to ensure the successful completion of the Contract.

The Contractor shall not subcontract for any of the services it is obligated to perform under the Contract without the written consent of MVRTA. Any subcontracting of the work approved in writing by MVRTA shall not release the Contractor of its liability under the Contract.

The Contractor's subcontractors, suppliers, consultants and agents shall look only to the Contractor for the payment of claims of any nature whatsoever arising out of any subcontract. The Contractor shall include in all agreements with its subcontractors, suppliers, consultants, and agents as pertaining to this Contract, that its subcontractors, suppliers, consultants, and agents

shall make no claim whatsoever against MVRTA, its members or agents, for any work performed or thing done by reason of the subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and its subcontractors, suppliers, consultants and agents by the subcontract.

5.10. PAYMENT TERMS

The following terms constitute the method of payment for this Agreement.

(a) MVRTA shall make all payments to the Contractor in United States Dollars.

(b) Payments will be made by check or wire transfer within forty-five (45) days after receipt of properly prepared Contractor's invoice and upon completion of the milestone corresponding to the payment due.

(c) MVRTA shall pay the full price of each bus upon issuance of final acceptance of the bus and receipt of an approved invoice. The MVRTA will pay approved invoices within forty-five (45) days of their receipt. Invoices shall be mailed, emailed or hand delivered to MVRTA's office.

(d) **Prompt Payment Mechanism.** The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of work completed no later than thirty (30) business days from the receipt of each payment the Contractor receives from MVRTA. The Contractor agrees further to return any retainage withheld within thirty (30) days after the subcontractor's work is fully and satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of MVRTA. Failure by the Contractor to comply with these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as MVRTA deems appropriate.

5.11. ASSIGNABILITY

In the event that MVRTA or any other Procuring Agency does not purchase its maximum bus allotment due to unforeseen circumstances or lack of funding, that Procuring Agency may assign the remainder of its bus allotment by type and size (up to the maximum number set forth herein) to another Procuring Agency or transit provider in accordance with FTA's "piggybacking" requirements. This right of assignment shall remain in force over the 5-year contract term. This right of assignment will not change the quantity or types of buses that may be ordered pursuant to this RFP.

5.12. MODIFICATIONS

This Agreement can only be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of the Contractor and MVRTA. Any variance from the terms and conditions of this Agreement or any order or other written notification given by either Party to the other that is not duly authorized shall have no force or effect.

5.13. PRECEDENCE OF DOCUMENTS

In the event of an inconsistency or conflict in any of the terms and conditions, requirements or provisions contained in the documents that comprise this Agreement, the inconsistency shall be resolved by giving precedence, in descending order, to the following:

1. Change Orders and Contract Modifications
2. Clarifications of Specifications Addenda
3. Request for Proposal Volume 1 (Notice, General Terms and Conditions, Federal Requirements)
4. Request for Proposal Volume 2 (Technical Specifications)
5. Contract Drawings
6. Bonds/Certificates, Affidavits, and Other Pertinent Forms
7. Contractor's Proposal

Either party to the Agreement shall not take advantage of any apparent error or omission in the Contract documents. In the event that either party shall discover such an error or omission, the party shall notify the other party immediately. MVRTA shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

5.14. NO WAIVER

None of the provisions of this Agreement, unless otherwise specified, shall be considered waived by either party hereto unless such waiver is in writing and signed by both parties. No such waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in such waiver.

5.15. CHANGE ORDER

MVRTA may, at any time throughout the Term of the Agreement or any extensions thereof, issue a written Change Order requiring the Contractor to make changes within the general scope of the Agreement that may include additions, modifications, and improvements to the services. A Change Order shall not modify the overall purpose of this Agreement.

The Contractor may, at any time, propose in writing to MVRTA for acceptance or denial, modifications to the Contract documents, which will benefit MVRTA. MVRTA shall review the Contractor's proposal and may request such modifications. Denial of a proposed modification shall neither provide the Contractor with any basis for a claim for damages nor release the Contractor from contractual responsibilities.

If the Change Order issued by MVRTA under this Section 5.15 (Change Order) causes an increase or decrease in the Contractor's cost to provide the services and/or requires a change to the schedule that, in MVRTA's reasonable discretion, is determined to be necessary, an equitable adjustment will be made and incorporated into this Agreement.

5.15.1. Change Order Notice. Upon receipt of a Change Order issued by MVRTA, the Contractor shall within ten (10) business days of receipt of the Order give written notice (including preliminary cost and time estimates) to MVRTA stating the Change Order to be either an alteration to, deviation from, addition to, or deletion from the Contract. Within thirty (30) days of receipt of the Order or other time period mutually agreed to by MVRTA and the Contractor, the Contractor shall submit a detailed Change Order proposal, which includes the following information:

5.15.1.1. Description of change and details of work to be done.

5.15.1.2. Detailed cost and pricing data based on generally accepted cost principles such as the Federal Acquisition Regulation (FAR) Part 31 to include material, labor, overhead and profit. The cost detail should be comprehensive and readily traceable into the Contractor's accounting records and underlying supporting documentation. The Contractor's profit should also be disclosed separately so that a judgment can be made relative to the reasonableness given the technical level of work and the associated risk.

5.15.1.3. Statement of additional time, if any, required for the completion of the Contract by reason of the Change Order.

5.15.2. Change Order Authorization

5.15.2.1. The Contractor shall not proceed with any Change Order work until MVRTA gives written authorization.

5.15.2.2. MVRTA shall not accept any responsibility whatsoever for Change Order work performed by the Contractor without proper authorization by MVRTA.

5.15.2.3. All Change Orders shall be executed in accordance with the terms and conditions of the Contract.

5.15.2.4. All executed Change Orders shall constitute the entire agreement between MVRTA and the Contractor with regard to any and all costs and time extensions related to Change Order work.

5.16. CLAIMS

The Contractor shall give written notice to MVRTA of potential claim no later than thirty (30) calendar days from any act or event for which it intends to seek adjustment in payment, terms, or schedule and for which said matter is not disposed of by agreement through a Change Order. The written notice shall set forth the basis of the claim in sufficient detail to allow MVRTA to thoroughly evaluate the situation and shall provide an estimate of any costs involved. The Contractor shall also furnish any additional information relating to the claim as MVRTA may reasonably request. MVRTA shall respond to the claim within thirty (30) calendar days of receipt of said claim.

It is an essential part of this Contract that the Contractor perform fully, entirely, and in an acceptable manner the work required under the Contract within the times stipulated. Therefore, the Contractor hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.

5.16.1. In case the commencement of the work is delayed or any part thereof is delayed or suspended by MVRTA (except for reasons caused the fault or neglect of the Contractor), the Contractor shall be granted an extension of time in which to complete the work, less a reasonable period of time within which the Contractor could have done necessary preliminary work.

5.16.2. If performance of all or any major portion of the work is suspended, delayed or interrupted for any unreasonable period of time by an act or failure to act by MVRTA in the administration of the Contract as required by the Contract, and without the fault or negligence of the Contractor, an adjustment to the Contract

shall be made by MVRTA, in accordance with the Change Order provisions. The Contractual adjustment may be for: (1) an extension of time; and/or (2) an increase or decrease in the actual cost of performance of the Contract.

5.16.3. No adjustments to the Contract shall be made if performance by the Contractor would have been prevented by other causes even if the work had not been suspended, delayed or interrupted by MVRTA.

5.16.4. Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this section shall be determined by MVRTA. Such determination shall be a condition precedent to the right of the Contractor to receive any cost adjustment hereunder.

5.16.5. The decision of MVRTA shall be final and conclusive unless within thirty (30) days of receipt of MVRTA's decision the Contractor mails or delivers to the MVRTA a written notice of rejection, in which event the decision of the MVRTA shall have no further effect and either party may have the dispute and the subject matter thereof settled in accordance with the provision of Section 5.17 (Disputes) below.

5.17. DISPUTES

MVRTA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the Parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the Parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within MVRTA and the Contractor's organization.

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

Pending final settlement of any dispute, the Parties shall proceed diligently with the performance of the Contract, and in accordance with MVRTA's direction or decisions made thereof.

5.18. INDEMNIFICATION AND INSURANCE

5.18.1. **Indemnification of the Authority.** The Contractor agrees to indemnify, save harmless, and defend MVRTA and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings ("Claims"), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims ("Liabilities") for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

5.18.1.1. MVRTA agrees that the Contractor shall not be responsible for any Claims or Liabilities that may be imposed upon or incurred by or as-

serted against the Contractor to the extent that those Claims or Liabilities are caused by any negligent act or negligent failure to act by MVRTA or its agents, employees, or subcontractors.

5.18.1.2. The Contractor being bound by all applicable state and federal regulations hereby expressly agrees to hold MVRTA harmless against all audit exceptions or denials of the reimbursement arising from the Contractor's violation of the terms and conditions of state and federal laws. The Contractor shall make restitution to MVRTA of such amounts of money as are withheld from MVRTA by state, federal, county or local agencies or organizations due to the Contractor's noncompliance with applicable state and federal law, provided that in the event of any claim for such restitution, MVRTA provides the Contractor with prompt notice of such claim and allows the Contractor to contest such claim. Restitution shall be made no later than sixty (60) days after receipt of notification from MVRTA that monies are due to MVRTA**.**

5.18.2. Defense of Indemnification. The Contractor shall be notified in writing by MVRTA within a reasonable period of time of the assertion of any Claim against it that the Contractor has agreed to indemnify above (the "Indemnified Claim"). If MVRTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, the Contractor shall reimburse MVRTA for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by MVRTA in connection with MVRTA's defense of the Indemnified Claim against it and/or the conduct of all response actions. If MVRTA decides to have the Contractor defend the Indemnified Claim or handle the response action, MVRTA shall notify the Contractor of that decision in writing. In such instances, the Contractor shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that MVRTA is fully indemnified by the Contractor and that the settlement or compromise shall not include the admission of guilt or comparable plea, wrongdoing or negligence, the permitting or imposition of civil or criminal penalties or indictments, the entering of consent decrees or orders of any kind by the Contractor on behalf of MVRTA, or any other action that would materially prejudice the rights of MVRTA without MVRTA's express written approval. MVRTA shall cooperate fully with the Contractor in the defense of any Indemnified Claim.

5.18.3. Insurance to be Carried by the Contractor. The Contractor will carry and maintain, throughout the term of the Contract, including any extension thereof, all insurance required under this section. These insurance requirements apply to the Contractor and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that the Contractor authorizes to work under this agreement.

5.18.3.1. Commercial General Liability Insurance. The Contractor shall carry and maintain Commercial General Liability insuring the Contractor and MVRTA, and the Contractor's subcontractors and agents for all activi-

ties allowed hereunder including the Contractor's indemnification obligations with minimum liability coverage for personal injury, bodily injury, and property damage with limits not less than **One Million Dollars ($1,000,000)** per occurrence and **One Million Dollars ($1,000,000)** in aggregate. Such insurance shall cover all of Contractor's operations both at and away from the project site.

(a) This insurance shall include coverage for, but not limited to:

- Premises and operations
- Products and completed operations
- Contractual liability
- Personal injury
- Advertising injury
- Explosion, collapse, and underground coverage (xcu)
- Broad form property damage

(b) Such insurance shall include the following endorsements as further detailed in Section 5.18.4 (Insurer; Additional Insurance Requirements) below.

- Additional Insured
- Cross Liability or Severability of Interests Clause
- Primary and Non-Contributory wording
- Waiver of Subrogation

Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

5.18.3.2. Automobile Liability Insurance. The Contractor shall carry and maintain Automobile Liability Insurance with limits not less than **One Million Dollars ($1,000,000)** combined single limit covering the use of all vehicles owned, non-owned, hired, rented or leased by the Contractor and its subcontractors and agents which are not covered under the Contractors' Commercial General Liability Insurance.

5.18.3.3. Workers' Compensation and Employer's Liability Insurance. The Contractor shall carry and maintain Worker's Compensation Insurance, including Employers Liability Insurance with minimum limits of **One Million Dollars ($1,000,000)** as provided by **Massachusetts General Laws, Chapter 152**, as amended, covering all work and services performed under the Contract. Such insurance shall contain a waiver of any and all subrogation rights against MVRTA.

5.18.3.4. Umbrella Liability Insurance. The Contractor shall carry and maintain Umbrella Liability Insurance with limits not less than **Five Million Dollars ($5,000,000)** per occurrence and annual aggregate covering all work and services performed under the Contract.

5.18.4. Insurer; Additional Insurance Requirements. The required insurance coverage hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any coverage maintained by MVRTA, and shall require that MVRTA and other applicable insureds be given at least thirty (30) days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance shall be written on an occurrence basis form as opposed to a claim made basis form. MVRTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. All Insurance Policies shall include a waiver of subrogation in favor of MVRTA. All such insurance as is required of the Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, MVRTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required.

5.18.5. Cancellation of Contractor Insurance. In the event of the cancellation of any policy during the term of this Contract, or the failure to keep in effect the insurance required by this section, MVRTA may, on twenty-four (24) hours notice and at its option, procure or renew such insurance on the account of the Contractor. The Contractor agrees to repay MVRTA's expense with interest thereon at the rate of ***eighteen percent (18%)*** annually from the date of the expenditure by MVRTA.

5.18.6. Claims Made Coverage

If any insurance specified above is provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:

(a) Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).

(b) Contractor shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all named insured.

(c) If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least three years to report claims arising from work performed in connection with this Agreement.

(d) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

5.18.7. Deductibles and Retentions

The Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from MVRTA.

5.19. LIMITATION OF LIABILITY

Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than death or personal injury) incurred by MVRTA as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT MVRTA SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

5.20. FORCE MAJEURE

Neither party hereto shall be in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by a Force Majeure Event. Should Contractor's services be delayed by a Force Majeure Event, the Agreement and Contractor's schedule for completion of tasks affected by such delay shall be extended. "Force Majeure" or a "Force Majeure Event" is an event beyond the control of a party and not due to the act or omission of such party, which materially and adversely affects the party's ability to meet its obligations under the Agreement and which event or the effects of the event would not have been anticipated and avoided by a prudent party acting commercially reasonably. Force Majeure Events may include, but are not limited to, Acts of God; acts or failures to act of government agencies and delays related to MVRTA in either their contractual, sovereign or regulatory capacities; fires, floods, earthquakes, epidemics quarantines, strikes, wars, riots, terrorism, interruptions of energy supply or civil disturbances. Within thirty (30) calendar days after the last day of delay, the Contractor shall furnish MVRTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Agreement references, and the measures taken to prevent or minimize the delay. Upon review of the detailed information concerning the delay, MVRTA shall assess the impact the delay may have on price and schedule of the work and modify the Contract as needed.

5.21. TERMINATION OF CONTRACT AND SUPENSION OF WORK

5.21.1. Default Termination

MVRTA may, without prejudice to or waiver of any other right or remedy available to it, terminate or suspend this Agreement, in whole or in part, either immediately upon receipt of such notice by the Contractor or upon written notice to the Contractor ten (10) calendar days prior to the effective date of such termination or suspension for an "Event of Default" as defined hereunder.

5.21.1.1. Event of Default. An "Event of Default" means that: (1) any of the following events have occurred; (2) MVRTA has issued a notice of default to the Contractor, indicating its intention to terminate this Agreement; and (3) the Contractor has failed to remedy the default within fifteen (15) calendar days after receipt of the notice.

(a) Contractor has failed to proceed with any work under this Agreement for a period of fourteen (14) consecutive days; or

(b) Contractor is adjudged bankrupt; or

(c) Contractor has a receiver appointed for its property; or

(d) Contractor assigns this Agreement or any claim thereunder in a manner other than that provided for in this Agreement; or

(e) Contractor has failed to deliver satisfactory services in conformance with the terms of the Contract; or

(f) Contractor has failed or refused to supply enough properly skilled workers or proper and/or required materials; or

(g) Contractor has, without good cause, failed to make prompt payment to subcontractors and suppliers for labor and/or materials; or

(h) Contractor materially disregards any laws, ordinances, rules, regulations or orders of any authority having jurisdiction over the Project; or

(i) Contractor has breached any material term or condition of this Agreement.

5.21.1.2. Discontinuance of Work. Upon an Event of Default, the Contractor shall, unless MVRTA's notice directs otherwise, promptly discontinue the work and make every reasonable effort to protect and preserve the work in place and, MVRTA shall have the right to have the surety or sureties, if applicable, complete the work or contract for the completion of the work. Notwithstanding the foregoing, in the event safety considerations so require, MVRTA reserves the right to terminate this Agreement immediately upon notice.

(a) **Contractor Remedies**. If, in its sole discretion, MVRTA terminates this Agreement in accordance with the terms set forth in this subsection, the Contractor shall have no claim for loss or damage or otherwise on account of such termination except as specifically provided herein.

(b) **MVRTA Remedies**. The Contractor shall be liable to MVRTA for all direct, indirect, and consequential damages and costs incurred by MVRTA as a result of any Event of Default hereunder, and all reasonable expenses incurred by or on behalf of MVRTA hereunder made necessary by the Contractor's default, subject always to the limitations of liability set forth in this Agreement. Any and all such damages and costs will be deducted and paid by MVRTA out of any monies then due or to become due to the Contractor under this

Agreement, or any part thereof. In the final accounting of the costs so incurred, MVRTA shall not be held to obtain the lowest figures for completing the work called for herein or for ensuring its proper completion, and all sums actually paid will be charged to the Contractor. MVRTA shall, however, use reasonable efforts to mitigate its damage, including any liquidated damages and excess re-procurement costs arising from the Contractor's breach. In case the expenses so charged are less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to MVRTA upon completion of the work immediately upon demand made by MVRTA.

(c) **Subsequent Determinations**. If, after notice of termination of this Agreement, it is determined for any reason that the Contractor was not in default, or that default was excusable, or that MVRTA's termination of this Agreement was wrongful, in any such event, any termination of this Agreement shall be converted to a Termination for Convenience hereunder, and the Contractor's sole and exclusive remedy for such wrongful termination shall be limited to the recovery permitted under said Section.

5.21.2. Termination for Default by MVRTA.

The Contractor may, without prejudice to or waiver of any other right or remedy available to it, terminate this Agreement in the event that MVRTA breaches any material provision of this Agreement and fails to remedy such breach within ninety (90) calendar days after written notice from the Contractor. In the event of such termination by the Contractor, MVRTA shall promptly pay for all accepted services performed and for all approved costs incurred in performance of the Contract up through and including the termination date.

5.21.3. Termination for Convenience.

MVRTA may, in its sole discretion, terminate all or any portion of this Agreement or the work required hereunder, at any time for its convenience and/or for any reason by giving written notice to the Contractor thirty (30) calendar days prior to the effective date of termination or such other period as is mutually agreed upon in advance by the parties. If the Contractor is not in default or in breach of any material term or condition of this Agreement, the Contractor shall be paid its reasonable, proper and verifiable costs in accordance with generally accepted government contracting principles as set forth in the Federal Acquisition Regulations, including demobilization and contract close-out costs, and profit on work performed and accepted up to the time of termination to the extent previous payments made by MVRTA to the Contractor have not already done so. Such payment shall be the Contractor's sole and exclusive remedy for any Termination for Convenience, and upon such payment by MVRTA to the Contractor, MVRTA shall have no further obligation to the Contractor. MVRTA shall not be responsible for the Contractor's anticipatory profits or overhead costs attributable to unperformed work.

5.21.3.1. Discontinuance of Work. Upon receipt of notice under this subsection, the Contractor shall, unless MVRTA's notice directs otherwise, promptly discontinue the work and it shall make every reasonable effort to protect

and preserve the work in place, and the Contractor shall promptly submit to MVRTA its request for payment under this subsection. The Contractor shall not be entitled to payment hereunder unless and until the Contractor delivers to MVRTA all materials, equipment, and other items or things for which costs are sought by the Contractor hereunder. If the Contractor has any property in its possession belonging to the MVRTA, the Contractor shall account for same, and dispose of it in the manner MVRTA directs.

5.21.3.2. Assignment of Rights. If so directed by MVRTA, the Contractor shall assign to MVRTA in the manner, time, and extent specified by MVRTA in writing, all of the rights, title, and interest of the Contractor to any subcontracts or purchase orders, which relate to the performance of the work Terminated for Convenience, in which case, MVRTA shall have the right to settle or authorize payments on any or all claims arising out of such termination.

5.21.4. Stop Work Order

Upon delivery of a written order to the Contractor, MVRTA may, at any time, direct the Contractor to stop all or any part of the work called for by this Contract for periods not to exceed thirty (30) calendar days and for any further periods to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section.

Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to mitigate the costs allocable to the work covered by the order during the period of work stoppage. Within a period of thirty (30) calendar days after a Stop Work Order is delivered to the Contractor or within any extension of that period to which the parties shall have agreed MVRTA shall:

(a) Cancel the Stop Work Order; or

(b) Terminate the work covered by such order and pay to the Contractor all reasonable termination charges.

If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract will be modified in writing accordingly, if:

(c) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to their performance of any part of this Contract; and

(d) The Contractor makes a written request for an equitable adjustment within (30) thirty calendar days after the end of the period of work stoppage. If MVRTA decides the facts justify such action, MVRTA may receive and act upon such request at any time prior to final payment under the Contract.

If a Stop Work Order is not canceled and the work covered by such order is terminated hereunder, all reasonable costs resulting from the Stop Work Order will be allowed in arriving at a termination settlement.

5.21.5. Vendor Assistance Upon Termination.

In the event of a termination, for whatever cause, including a breach by MVRTA, the Contractor shall provide MVRTA with transition assistance, as provided in this Agreement.

(a) The Contractor shall provide MVRTA with reasonable training and other assistance to minimize disruption in the transition of the scope of services performed under this Agreement, including any software or systems developed, to MVRTA or a third-party designated by MVRTA. At MVRTA's option, such training shall be provided from the time of MVRTA's request to the date of termination or expiration and for up to six (6) additional months (the "Transition Period") following termination or expiration. In the event of a termination due to a breach by MVRTA, the Contractor shall have the right to require MVRTA pre-pay for such transition assistance services.

(b) The Contractor acknowledges that the persons who may be most valuable to MVRTA upon any termination or expiration of this Agreement are members of the Contractor's Project Staff. The Contractor agrees that upon termination or expiration of this Agreement, MVRTA shall have the right reasonably to contact and engage members of the Project Staff. This Section shall not apply if the Agreement is terminated as a result of breach by MVRTA.

5.22. MUTUAL GENERAL REPRESENTATIONS AND WARRANTIES

5.22.1. Corporate Power. Each party represents (a) that it is duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and (b) that it has full corporate power to own, lease, and operate its properties and assets, to conduct its business as such business is currently being conducted, and to consummate the transactions contemplated by this Agreement.

5.22.2. Authority. Each party represents that this Agreement has been duly authorized, executed and delivered and constitutes a valid and binding Agreement, enforceable against such party in accordance with this Agreement's terms, subject to the effect of bankruptcy, insolvency, moratorium and other laws now or hereafter in effect relating to and affecting the rights of creditors generally and to equitable principles of general application.

5.22.3. No Breaches. Each party represents that neither the execution nor delivery of this Agreement, nor the consummation of any of the transactions contemplated herein, will result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, or material agreement (subject to any applicable required consent), order, law, rule or regulation to which it is a party or which is otherwise applicable to it.

5.23. LIQUIDATED DAMAGES

TIME IS OF THE ESSENCE IN THIS CONTRACT. The Contractor shall pay to the MVRTA the sum of $125.00 per day for each and every calendar day that the Contractor fails to provide the required services described in these solicitation documents, within the time periods specified, and subject to extensions granted thereto in writing by the MVRTA. The MVRTA may deduct, at its option, the amount of liquidated damages from any money due or to become due to the Contractor under this Contract.

The Contractor will be granted an extension of time and will not be assessed with liquidated damages for any excusable delay (e.g., Force Majeure Event), including actions of MVRTA, provided Contractor notifies the MVRTA Administrator in writing of the causes of delay within ten (10)

calendar days from the beginning of any such delay. The MVRTA Administrator shall ascertain the nature of the delay and determine whether an extension of time is warranted, which determination shall be final and conclusive. The Contractor has the burden of proof that the delay was beyond its control.

5.24. INTELLECTUAL PROPERTY WARRANTY

The MVRTA shall advise the Contractor of any impending patent suit related to this Contract against the MVRTA and provide all information available. The Contractor shall indemnify and defend any suit or proceeding brought against the MVRTA based on a claim that any equipment, or any part thereof, furnished by Contractor under this Contract constitutes an infringement of any patent, and the Contractor shall pay all damages and costs awarded therein. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or parts is enjoined, Contractor shall at its own expense and at its option, either procure for the MVRTA the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

5.25. DATA RIGHTS

The term "subject data" used in this clause means recorded information, whether copyrighted or not copyrighted, that is delivered or specified to be delivered under the Contract resulting from this solicitation. Included are the proprietary rights of:

(a) Technical data including manuals or instruction materials, computer or microprocessor software;

(b) Patented materials, equipment, devise or processes; and;

(c) License requirements.

The MVRTA shall protect proprietary information provided by the Contractor to the fullest extent of the law. The contractor shall grant a royalty-free, perpetual, non-exclusive license to allow the MVRTA to utilize such information in order to maintain the vehicles.

The MVRTA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes:

(a) Any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract whether or not a copyright has been obtained;

(b) Any rights of copyrights to which the Contractor, subcontractor or supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract; and

(c) The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

6. FEDERAL REQUIREMENTS

6.1. GOVERNING LAW

This Joint Procurement is supported with Federal assistance awarded by the Federal Transit Administration ("FTA") through Grant Agreements with the MVRTA and the other Procuring Agencies. As such, the MVRTA and the Procuring Agencies must comply at all times with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (25) dated October 1, 2018) between each Procuring Agency and FTA, as they may be amended or promulgated from time to time during the term of this Contract. These Federal requirements also apply to the Contractor and all subcontractors performing work under this Contract. Any violation of a Federal requirement applicable to this Joint Procurement may result in penalties to the violating party. A Contractor's failure to so comply shall constitute a material breach of this Contract.

6.2. CIVIL RIGHTS AND EQUAL OPPORTUNITY

The MVRTA and all other Procuring Agencies are Equal Opportunity Employers. As such, the MVRTA and the Procuring Agencies agree to comply with all applicable civil rights statutes and implementing regulations issued by the FTA. Apart from inconsistent requirements imposed by Federal laws or regulations, the MVRTA and the Procuring Agencies agree to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

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

6.2.1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

6.2.2. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates

of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6.2.3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6.2.4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6.3. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

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

(a) Debarred from participation in any federally assisted Award;

(b) Suspended from participation in any federally assisted Award;

(c) Proposed for debarment from participation in any federally assisted Award;

(d) Declared ineligible to participate in any federally assisted Award;

(e) Voluntarily excluded from participation in any federally assisted Award; or

(f) Disqualified from participation in any federally assisted Award.

By signing and submitting its offer, the Proposer certifies as follows:

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

6.4. LOBBYING

Federal lobbying requirements apply to all contracts and subcontracts of $100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. The Contractor, under this Agreement, shall comply with “New Restrictions on Lobbying,” 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

The Proposer shall submit with its proposal a signed Certification Regarding Lobbying form that is contained in Appendix H.

6.5. NO FEDERAL OBLIGATION TO THIRD PARTIES

Contracts between the MVRTA or the other Procuring Agencies and their respective representatives, and third parties, including all proposals thereof, shall be governed by applicable Federal requirements and standards as set forth in FTA Circular 4220.1F entitled "Third Party Contracting Requirements."

The Contractor acknowledges and agrees 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 MVRTA, other Procuring Agencies, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6.6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

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

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

6.7. ENERGY CONSERVATION

The Energy Policy and Conservation requirements are applicable to all federally funded contracts. 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, as amended, 42 U.S.C. § 6201 et seq.

6.8. CLEAN AIR AND FEDERAL WATER POLLUTION CONTROL

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding $150,000. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251-1387. The Contractor also agrees:

(a) It will not use any violating facilities;

(b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”

(c) It will report violations of use of prohibited, or likely prohibited facilities to MVRTA, FTA , and the Regional Office of the Environmental Protection Agency; and

(d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

6.9. CARGO PREFERENCE

The Contractor agrees:

(a) To use a privately owned United States Flag Commercial Vessels to ship at least fifty percent (50%) 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 this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy or

rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the paragraph above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the MVRTA.

(c) To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

6.10. 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 C.F.R. Part 301-10, which provide that grant recipients 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.

6.11. BUY AMERICA; PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS

FTA's Buy America law and regulations apply to projects that involve the purchase of more than $150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to its grant recipients to be used in the FTA assisted projected. For this Joint Procurement, the Contractor agrees to comply with FTA's requirements for the purchase of rolling stock in accordance with 49 U.S.C. 5323(j)(2)(c) and 49 C.F.R. part 661.11. General waivers are listed in 49 C.F.R. § 661.7.

Under the Fixing America's Surface Transportation (FAST) Act, purchases of rolling stock, which includes train control, communication, traction power equipment, and rolling stock prototypes, require the cost of the components and subcomponents produced in the U.S. to be **more than 70 percent** for FY2020 and beyond, and final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions set forth in 49 U.S.C. § 5323(m) and 49 C.F.R. part 663.

The Proposer shall submit a completed Certificate of Compliance with Buy America Rolling Stock Requirements (see Appendix I: Buy America Rolling Stock Certification).

6.12. BUS TESTING

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

In its efforts to comply with FTA's Bus Testing requirements, the Contractor shall, as a minimum, perform the following:

(a) For new bus models or a bus produced with a major change in components or configuration, the Contractor shall provide a copy of the final test report to the recipient at a point in the procurement process specified by MVRTA, which will be prior to final acceptance of the first vehicle.

(b) A manufacturer who releases a report under paragraph (a) 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 MVRTA prior to MVRTA'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 user/buyer of such a vehicle and the details of that vehicle's configuration and major components.

6.13. FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Each bus must comply with the Federal Motor Vehicle Safety Standards (FMVSS) administered by National Highway Safety Administration (NHTSA) in accordance with 49 C.F.R. part 571. The Contractor shall submit either: (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.

6.14. EMPLOYEE PROTECTIONS

The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of $100,000 that involve the employment of mechanics or laborers. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

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

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

6.15. ACCESS TO RECORDS AND REPORTS

The Federal record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers related to this Project. The Contractor will retain, and will require its subcontractors to retain complete and readily accessible records related to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. The Contractor also agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required. FTA and its contractors shall be permitted access to the sites of performance under this Contract as reasonably may be required.

6.16. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

It is the policy of the United States Department of Transportation (DOT) that Disadvantaged Business Enterprises (DBE's) as defined in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. For rolling stock procurements, 49 C.F.R § 26.49 requires receipts of FTA funds to obtain a certification from each transit vehicle manufacturer that desires to bid or propose upon a DOT-assisted transit vehicle procurement that it has complied with the requirements of 49 C.F.R. § 26.49.

Proposer, as a condition of being authorized to respond to this RFP, must certify that it has complied with the requirements of 49 C.F.R. § 26.49. by completing the Transit Vehicle Manufacturer's (TVM) Certification (see Appendix J: Disadvantaged Business Enterprise Transit Vehicle Manufacturer Certification) that it has on file with the FTA an approved or not disapproved DBE subcontracting participation goal.

7. REQUIRED SUBMISSIONS

Proposers responding to this RFP must fully complete, sign and submit the forms contained herein. All forms must be current, and, if requested, must be notarized. Proposers shall not: (1) leave any section of a form blank; (2) mark any section of a form not applicable (N/A); (3) make reference to other documents; or (4) make any response conditional.

The following list is provided as a matter of convenience to Proposers to ensure they submit a complete package.

CONTENTS OF PROPOSAL SUBMISSION PACKAGE

- Cover Letter of Introduction
- Table of Contents
- Proposers Capability, Experience, and Qualifications
    a. Most recent audited financial statement
    b. List of five (5) references
- Description of Proposer's Organization
- A letter from the Proposer's insurance carrier indicating that the insurance company has read the insurance requirements and that the Proposer will be able to provide the certificate and endorsement for the coverage required. A copy of Proposer's insurance policy will not satisfy this requirement to meet the insurance requirements
- Cost Proposal using the MVRTA's form (Appendix A)
- Request for Clarifications, Changes, Substitutions and Approved Equals s (Appendix B)
- Addenda Acknowledgement Form (Appendix C)
- MVRTA Protest Process (Appendix D)
- Conflict of Interest Certification (Appendix E)
- Contract Cover Agreement (Appendix F); return unsigned
- Performance Guarantee (Appendix G)
- Certification Regarding Lobbying (Appendix H)
- Buy America Rolling Stock Certification (Appendix I)
- Disadvantage Business Enterprise Transit Vehicle Manufacturer Certification (Appendix J)

8. APPENDICIES

A. COST PROPOSAL

B. REQUEST FOR CLARIFICATIONS, CHANGES, SUBSTITUTIONS AND APPROVED EQUALS

C. ADDENDA ACKNOWLEDGEMENT FORM

D. MVRTA PROTEST PROCESS

E. CONFLICT OF INTEREST

F. CONTRACT COVER AGREEMENT

G. PERFORMANCE GUARANTEE

H. CERTIFICATION REGARDING LOBBYING

I. BUY AMERICA ROLLING STOCK CERTIFICATION

J. DISADVANTAGED BUSINESS ENTERPRISE TRANSIT VEHICLE MANUFACTURER'S (TVM) CERTIFICATION

APPENDIX A: COST PROPOSAL

The Proposer shall use the cost proposal forms below for each bus type and size submission. MVRTA and the other Procuring Agencies are tax exempt.

MVRTA and the other Procuring Agencies reserve the right to order buses and equipment over the five (5) year period beginning upon the date the MVRTA's Administrator issues a written Notice to Proceed (NTP). The prices of such buses and equipment shall be at the prices quoted below. These prices shall remain firm, fixed for any orders issued by the MVRTA or other procuring agencies within a period of 180 days of NTP. The price(s) of any buses or equipment ordered by the MVRTA or other Procuring Agencies after the initial 180 day firm fixed price period shall be that quoted (Base Offer per Bus) plus/minus any adjustment which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index (PPI) Category 1413, "Trucks and Bus Bodies" formula as described in the Section 11.Q of the RFP. In no event, however, will the price(s) for any order issued exceed, by more than five percent, the price(s) that would have been in effect 12 months prior to the date of issuance of the purchase order.

APPENDIX A: COST PROPOSAL (continued)

HEAVY DUTY COST PROPOSAL ($ PER BUS)

CLEAN DIESEL

	30 Foot	35 Foot	40 Foot
A. Base Offer:	$_____	$_____	$_____
K. Delivery Charge to MVRTA:	$_____	$_____	$_____
L. **Total Base Offer per Bus:**	$_____	$_____	$_____
M. Date of FTA Bus Test:	_____	_____	_____
N. Vehicle Mfg. and Model:	_____	_____	_____

Deduction for Wheels Supplied by Buyer

$_____ $_____ $_____

Deduction for Tires Supplied by Buyer

$_____ $_____ $_____

OPTIONS

Intelligent Vehicle System-

Clever Devices IVN III with AVA, WLAN, APC, CAD/AVL & Predictive Arrival

	$_____	$_____	$_____
AVAIL ITS System	$_____	$_____	$_____
INIT ITS System	$_____	$_____	$_____
Trapeze Transit Master ITS System	$_____	$_____	$_____
ACS ITS System	$_____	$_____	$_____
Approved Alternate	$_____	$_____	$_____

Fare Collection

Scheidt & Bachmann	$_____	$_____	$_____
GFI 41” High Odyssey	$_____	$_____	$_____

Farebox Guard $_____ $_____ $_____

LED Farebox Lamp,
Ceiling Mounted $_____ $_____ $_____

Wheelchair Securement

2-positon w/ Retractable tie-downs$_____ $_____ $_____

1-positon w/ Retractable tie-downs$_____ $_____ $_____

Q'Straint Q-Pod $_____ $_____ $_____
Q'Straint Quantum. $_____ $_____ $$_____

Surveillance Camera Systems- needs to be updated

UTC Penta Digital (7) Color Cameras, LCD Key Pad, DVR & Auto

$_____ $_____ $_____

Verint MDVR 12S (7) Color Cameras 320GB DVR & Audio

$_____ $_____ $_____

REI Buswatch, (7) Color Cameras, HD800 w/500GB HDD DVR & Audio

$_____ $_____ $_____

Seon Explorer TXB, (7) Color Cameras, DVR & Audio

$_____ $_____ $_____

Apollo Road Runner, (7) Color Camera, DVR & Audio

$_____ $_____ $_____

Safety Vision 7000NVR (7) Color Cameras, 1TB HD

$_____ $_____ $_____

Delete Video Surveillance $_____ $_____ $_____

Provide (7) Camera Cable Re-Wire with Equipment Cabinet only; Driver's side

$_____ $_____

HEAVY DUTY COST PROPOSAL ($ PER BUS)

HYBRID

	30 Foot	35 Foot	40 Foot
A. Base Offer:	$_____	$_____	$_____
O. Delivery Charge to MVRTA:	$_____	$_____	$_____
P. **Total Base Offer per Bus:**	$_____	$_____	$_____
Q. Date of FTA Bus Test:	_____	_____	_____
R. Vehicle Mfg. and Model:	_____	_____	_____

HEAVY DUTY COST PROPOSAL ($ PER BUS)

ELECTRIC

	30 Foot	35 Foot	40 Foot
A. Base Offer:	$_____	$_____	$_____
S. Delivery Charge to MVRTA:	$_____	$_____	$_____
T. **Total Base Offer per Bus:**	$_____	$_____	$_____
U. Date of FTA Bus Test:	_____	_____	_____
V. Vehicle Mfg. and Model:	_____	_____	_____

*Delivery charges to other procuring agencies shall be determined at time of contract with each individual agency

APPENDIX B: REQUESTS FOR CLARIFICATIONS, CHANGES, SUBSTITUTIONS AND APPROVED EQUALS

Proposers must use this form to request clarifications, changes, substitutes or "approved equals." All requests must be emailed to: **staff@mvrta.com** **no later than November 8 at 2:00 PM.**

SUBJECT MATTER: PURCHASE AND DELIVERY OF HEAVY DUTY BUSES

CONTRACT NO: G1941

PROPOSER: _____

EMAIL ADDRESS: _____

TELEPHONE NUMBER: _____

REQUEST

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

APPENDIX C: ADDENDA ACKNOWLEDGEMENT FORM

Proposer acknowledges receipt of the following amendments to RFP No: _____.

Amendment No._____ Dated: _____
Amendment No._____ Dated: _____
Amendment No._____ Dated: _____
Amendment No._____ Dated: _____
Amendment No._____ Dated: _____
Amendment No._____ Dated: _____
Amendment No._____ Dated: _____

PROPOSER'S NAME:_____

AUTHORIZED SIGNATURE:_____

TITLE:_____

DATE:_____

APPENDIX D: MVRTA PROTEST PROCEDURES

1. General

Protests will only be accepted by the MVTRA from prospective bidders or offers whose direct economic impact would be affected by the award of the contract or refusal of the contract. The MVRTA will consider all such protests, whether submitted before or after the award of a contract. All protests must be in writing and conform to the following requirements.

2. Definitions

“Interested Party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. It does not include subcontractors or potential subcontractors.

All "days" referred to are deemed to be normal business days. Except as otherwise provided, in computing a period of time prescribed by these regulations, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is not a normal business day, in which event the period shall include the next working day. Time for filing any document or copy thereof with the Authority expires at 4:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, as applicable on the last day on which such filing may be made.

"Adverse agency action" is any action or inaction on the part of the Authority which is prejudicial to the position taken in a protest filed with the Authority. It may include but is not limited to: a decision on the merits of a protest; a procurement action such as the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite the pendency of a protest; or the Authority acquiescence in and active support of continued and substantial contract performance.

3. Filing of Protest

All Protests must be in writing and conform to the following requirements:

a) Be concise and legally arranged.
b) Provide name, address, telephone number and email address of protestor.
c) Identification of the solicitation or contract number.
d) Provide a clear and detailed statement of the legal and factual grounds of the protest including copies of all relevant documents.
e) A statement as to what relief is requested.
f) Protests must be submitted within the time frames as specified below. If the written protest is not received by the specified time the bid or evaluation process shall continue.

Protest must be in writing and addressed as follows:

Merrimack Valley Regional Transit Authority

85 Railroad Ave, Haverhill, MA 01835
ATTN: Joseph J. Costanzo, Administrator
Protest Award of Contract

4. Protest Before the Award

Protests before the bid opening/ receipt of proposals addressing the adequacy of the IFB, RFPs, including the pre-award procedure, the Instructions to Bidders, General terms and conditions, specifications and scope of work must be filed with MVRTA not less than seven (7) working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties.

Upon receipt of the written protest MVRTA will determine if the date set for the bid opening or proposal due date should be postponed. If the bid date is postponed, the MVRTA will immediately contact all interested parties who have been furnished a copy of the IFB, RFP that a protest has been filed and the bid opening or receipt of proposal is postponed until final decision is issued. Any appropriate addenda will be issued regarding a rescheduling of the bid opening or receipt of proposal. Any protest may be withdrawn at anytime before the MVRTA has issued its decision.

5. Protest After Bid Opening/ Receipt of Proposals

Protests of a decision of the MVTRA to award a contract must conform to section 3 above and be received by the MVRTA with in ten (10) working days of its decision. Thereafter, such issues are deemed waived by all interested parties.
In addition when the protest against the making of an award is received and the MVRTA determines to withhold award pending disposition of the protest, the bidders or proposers (Whose bids or proposals might be eligible for award) shall be requested, before expiration of the time for acceptance of the bid or proposal, to extend the time for acceptance (with the consent of sureties if any) to avoid the need for re-advertising .
When a written protest against making of an award is received the award shall not be made until five (5) days after the matter is resolved. The MVRTA may, however, proceed to make an award if it determines that:

a) The items to be procured are urgently requested; or
b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
c) Failure to make a prompt award will otherwise cause undue harm to the MVRTA, the Commonwealth of Massachusetts or the Federal Government

If an award is made the appropriate documents will be prepared to explain the need for the award with notice going to the protestor and other concerned parties.

6. Protest After Award

Protest against an award must be filed with the MVRTA, within five (5) full working days immediately following the award. This protest shall conform to section 3 above. Thereafter, such issues are deemed waived by all interested parties.
Although the number of persons involved in or affected by filing of a protest may be limited to instances where an award has been made; the contractor shall be furnished with the notice of protest

and related information. Also, if it appears that the award may be invalidated and a delay in receiving the supplies or service is not prejudicial to MVRTA's interest, the MVRTA shall consider a mutual agreement with the contractor to suspend performance on a no-cost basis.

7. MVRTA's Decision on Protest

The MVRTA shall render its decision in writing within fourteen (14) full working days from the receipt of the written protest and shall provide notice of this decision to all interested parties.

8. FTA Involvement

FTA Circular 4220.1F provides the following advice regarding appeals from the Authority's determination:

...A protester must exhaust all administrative remedies with the grantee (Authority) before pursuing a protest with FTA. Review of protests by FTA will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

Violations of Federal law or regulation will be handled by the complaint process stated in that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

APPENDIX E: CONFLICT OF INTEREST CERTIFICATION

The undersigned hereby certifies that the Proposer shall comply with Massachusetts Conflict of Interest Laws, G.L. c. 268A and with MVRTA's Conflict of Interest terms stated in Section 2.18 of these Contract Documents.

BIDDER'S NAME:_____

AUTHORIZED SIGNATURE:_____

TITLE:_____

DATE:_____

APPENDIX F: CONTRACT COVER AGREEMENT

MERRIMACK VALLEY REGIONAL TRANSIT AGENCY

REQUEST FOR PROPOSAL NO. 2020-25
PURCHASE AND DELIVERY OF HEAVY-DUTY TRANSIT BUSES

Agreement made this ____ day of _____, 2020, by and between the Merrimack Valley Regional Transit Authority (herein referred to as **"MVRTA"**), an authority established and existing under Chapter 161B of the Massachusetts General Laws, having its principal place of business at 85 Railroad Avenue, Haverhill, MA 01835, and _____ (herein referred to as the **"CONTRACTOR"**), with a usual place of business at _____ _____ (collectively the "Parties").

The Parties to this Contract, each in consideration of the agreements on the part of the other herein contained, do hereby agree as follows:

The **CONTRACTOR** agrees to produce and deliver 30', 35' and 40' foot Heavy-Duty Low Floor transit buses in the types and quantities as follows:

_____

_____

_____

_____

The **CONTRACTOR** shall deliver buses shall be delivered to **MVRTA's** Maintenance Facility located at:

_____

All labor, tools, material and equipment needed needed to complete the production, testing, training, delivery, and acceptance requirements of MVRTA shall be provided by the Contractor in strict accordance with the with the attached Agreement, RFP No. 2020-25, addenda, clarifications, and

responses thereof, referenced and incorporated therein. Such Agreement represents the understanding of the Parties in response to the **MVRTA's** *Request For Proposal No. 2020-25, Joint Procurement for the Purchase and Delivery of Heavy-Duty Transit Buses*.

MVRTA agrees to pay the **CONTRACTOR** an amount not to exceed _____ _____ to provide the number of Heavy-Duty Low Floor Transit Buses listed above and in strict accordance with the attached Agreement. In the event that the during the Contract period it becomes necessary to increase or decrease the quantities provided herein, the Parties agree that negotiations may take place for changes that are within the scope of the Contract.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by its duly authorized respective representatives as of the date first mentioned above.

MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY	**COMPANY**
By:_____	By:_____
Joseph J. Costanzo	Name
Administrator	Title

NOTE: Contractor's signature must be accompanied by Certification in the form of a **Note, Seal,** or **Notarized Letter** attesting to the signer's authorization to enter into this Agreement on behalf of the Company.

APPENDIX G: PERFORMANCE GUARANTEE CERTIFICATION

The undersigned hereby certifies that the Proposer shall provide a Performance Guarantee in accordance with the Request for Proposal requirements.

Designate below which form of Performance Guarantee shall be provided:

_____ Performance Bond

_____ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

APPENDIX G.1: PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

_____*(Insert full name and address and legal title of Contractor)* as Principal, hereinafter called Contractor, and

_____

_____*(Insert full name and address or legal title of Surety)* as Surety, hereinafter called Surety, are held and firmly bound unto Merrimack Valley Regional Transit Authority ("MVRTA") as Obligee, hereinafter called MVRTA, in the amount of ____ _____Dollars ($_____) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20____, entered into a contract with the MVRTA for MVRTA Contract No._____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by MVRTA.

Whenever Contractor shall be, and is declared by MVRTA to be in default under the Contract, MVRTA having performed MVRTA's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with it terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if MVRTA elects, upon determination by MVRTA and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and MVRTA, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the

total amount payable by MVRTA to Contractor under the Contract and any amendments thereto, less the amount properly paid by MVRTA to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than MVRTA or the heirs, executors, administrators or successors of MVRTA.

Signed and sealed this _____day of _____20____.

WITNESS	PRINCIPAL
_____	_____ (SEAL)
	_____(Title)
WITNESS	SURETY
_____	_____ (SEAL)
	_____(Title)

Attach hereto proof of authority of officers or agents to sign bond.

APPENDIX G.2: IRREVOCABLE STANDY LETTER OF CREDIT

The undersigned states that he/she is _____ of the
(Title)

_____ (The "Beneficiary") and hereby
(Name of Beneficiary)

Certifies on behalf of the Beneficiary to _____ (the "Bank), with
(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No._____ issued by the

Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.

2. The Beneficiary is making a drawing under the Letter of Credit.

3. An Event of Default has occurred under Contract No._____.

4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this _____ day of_____, 20____.

(NAME OF BENEFICIARY)

By:_____

Its:_____

APPENDIX G.3: BANK DRAFT

FOR VALUE RECEIVED

Pay on presentment to _____the sum of _____.
(Name of Beneficiary) Dollars ($)

Charge the Account of _____ Irrevocably Standby Letter of
(Name of Issuing Bank)

Credit No. _____Dated:_____, 20_____.

To_____
(Name of Issuing Bank)

NAME OF BENEFICIARY

By_____

Its_____

APPENDIX H: CERTIFICATION REGARDING LOBBYING

I,_____, hereby certify on behalf of_____
(Name and Title) (Bidder)

that to the best of my knowledge and belief:

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, 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 making lobbying contacts to 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, subgrants 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 31 U.S.C. § 1352. 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.

BIDDER'S NAME:_____

AUTHORIZED SIGNATURE:_____

TITLE:_____

DATE:_____

APPENDIX I: BUY AMERICA ROLLING STOCK CERTIFICATION

Certificate of Compliance with Buy America Rolling Stock Requirements

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

Date:_____

Signature:_____

Company:_____

Name:_____

Title: _____

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

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

Date:_____

Signature:_____

Company:_____

Name:_____

Title: _____

APPENDIX I: DISADVANTAGED BUSINESS ENTERPRISE (DBE) TRANSIT VEHICLE MANUFACTURER'S (TVM) CERTIFICATION

The Proposer, a Transit Vehicle Manufacturer, hereby certifies that it has complied with the requirements of 49 C.F.R. § 26.49(b) by submitting an annual overall DBE goal. to FTA for approval. The goal applies to the Federal Fiscal Year _____ (October 1, _____ to September 30, _____), and has been approved or not disapproved by FTA.

Signature:_____

Title:_____

Firm:_____

Date:_____