



CalACT/MBTA

COOPERATIVE PURCHASING SCHEDULE

**BID REQUIREMENTS/
TERMS AND CONDITIONS**

**MEDIUM-HEAVY DUTY
TRANSIT BUS**

RFP # 10-01

**Morongo Basin Transit Authority
Lead Agency for the
California Association for Coordinated Transportation
May 2010**



1.0 Background Information

The Morongo Basin Transit Authority (“MBTA”) a member of the California Association for Coordinated Transportation (“CalACT”) takes the lead agency role in the formation of the CalACT/MBTA Vehicle and Materials Purchasing Cooperative. For the purposes of this Cooperative Purchasing Schedule, the informal arrangement entered into by the MBTA and CalACT shall hereinafter be referred to as the “Cooperative.”

The specific roles and obligations of the MBTA and CalACT are described in detail in the Cooperative Purchasing Agreement entered into by the parties. As a general matter, MBTA staff, consultants, and counsel shall be responsible for the development of bid requirements, product specifications and the awarding of vehicle contracts on behalf of the Cooperative. After the vehicle contract is awarded, CalACT shall be responsible for assigning the vehicles, collecting fees, and the general administration of the vehicle contract.

2.0 Solicitation Details

The Cooperative seeks sealed proposals for the Vehicle Classes detailed in Attachment A and A-1. These vehicles may be purchased using Federal Transit Administration (“FTA”) funding by Cooperative members. Said proposals to be submitted **without** price information are to be received by MBTA at the office of the General Manager, Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, Ca 92252 up to and no later than June 25, 2010 at 12:00 pm for Class E vehicle proposals and July 2, 2010 at 12:00 pm for Class H vehicle proposals. Proposals are to be delivered in person by a representative of the proposing firm. Proposals are to be submitted in a separate three ring binder per manufacturer proposed. No proposals received after the above specified date and time will be accepted. After evaluation of non-cost factors is complete, the Cooperative will correspond with responsive firms requesting price information.

Calendar of Events for this procurement are as follows:

- Friday, May 21, 2010. Official Release of RFP Details, Technical Specifications for Class E.
- Friday, May 28, 2010. Questions, comments and requests for approved equals due for Class E 1200 pm. Release of Technical Specifications for Class H buses.
- Friday, June 4, 2010 1200 pm. MBTA responses due Class E. Questions, comments and requests for approved equals due for Class H.
- Friday, June 11, 2010 1200 pm, MBTA responses due Class H.
- Friday, June 25, 2010, 2:00 pm, technical (non-cost) proposals due Class E and H.

- Cost proposals will be requested from responsive bidders via subsequent correspondence.

The form of procurement for this solicitation is the development of a **Local Government Purchasing Schedule** as defined in the FTA Circular 4220.1F Chapter V, Part 4. Wherein the FTA authorizes local governments to make arrangements with multiple vendors to provide options for goods or services in the future at established prices to the local government or others that the local government chooses to share these arrangements with. Unlike other forms of procurement, the FTA does not require the specification of a minimum or maximum quantity of purchase for such a schedule, however for planning purposes, the Cooperative will upon request provide the potential vendors with an estimate derived from a vehicle survey conducted amongst the CalACT membership.

The FTA's Best Practice Procurement Manual (Ch 2, pp 68-69) also provides grantees with a justification for Multiple Award Contracting "in order to ensure the quality or timeliness of deliveries by not limiting the grantee to a single supplier who may not perform according to the grantee's expectations or needs or who may not be able to meet peak delivery requirements. In this event, another supplier is immediately available to assure that needs will be met."

In accordance with 49 U.S.C. § 5325 (c), FTA recipients may award contracts to parties other than a low bidder in order to further objectives such as long term efficiency and lower costs. In addition, 49 U.S.C. § 5325 (f) (1b) authorizes recipients to base awards for rolling stock on factors such as performance, standardization, life cycle costs or other factors or on a competitive process for selection of award such as this solicitation's. (49 U.S.C. 5325 (f) (2).)

Further, the California legislature in Public Contract Code § 20217 (a) finds and declares that it is in the public interest for **transit agencies** to "consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery timetables, support logistics, and other similar factors in addition to price in the award of these contracts."

The above, as well as precedents set by practices in other states provide a preponderance of clear and compelling justifications for the Cooperative to create and maintain a bid schedule with multiple awards for products and for its assignees to purchase from the schedule considering factors other than lowest price.

The MBTA specifically reserves the unilateral right to exercise part or all of the options for vehicles covered under this document for a period of twenty-four (24) months after the date of award of the contract(s). The MBTA further reserves the unilateral right to assign or withhold assignment of vehicles under this

procurement to any other public agency, government entity, or non-profit organizations performing governmental services under intergovernmental contracting procedures. The assignment of deliverable vehicles under these options shall be accomplished in accordance with the terms of this Contract. The assignment shall be in writing, signed between The MBTA or its designated agent(s) and the assignee, and be approved by the contractor. Assignees shall acknowledge in writing their responsibility for inspection of product and enforcement of contract. Further, assignees and the contractor will hold the MBTA and its agent(s) harmless from any liabilities.

Outside the State of California, public entities that are authorized to perform public transit operations may utilize the award of this contract in the fashion local regulations allow provided the use falls within the scope and the award of this contract. Such users may make use of the support and benefit of this contract. All of the RFP's terms and conditions apply. This contract does not modify or supplant the territories assigned by vehicle manufacturers. To utilize this contract, the dealer must agree to comparable terms and conditions and agree to support the upkeep of the contract through the submittal of required reports and applicable contract administration fee payments. A dealer that fails to meet the provided prices, provide comparable service, and agree to these terms will not be authorized to access the contract. Out of state procurements using this contract as authorization must be assigned in writing by CalACT and the successful bidder awarded to and be reported to the CalACT-MBTA Cooperative Administrator to track activity against the scope of the procurement.

Each proposal shall conform to and be responsible to this Request for Proposal ("RFP"). The RFP for this contract opportunity, including information for proposing firms, vehicle specifications, and all other documents are now on file and copies thereof may be obtained at the MBTA office.

The MBTA reserves the right to reject any or all proposals and to waive any irregularities and informalities in proposals received.

The Cooperative may assign any/all of the non-exercised units to other publicly funded transit agencies, city transit systems, other governmental agencies or non-profit organizations performing governmental services. Other political subdivisions authorized to purchase with public funds may be allowed to purchase from bid schedule with written consent from the Cooperative and Contractor. Contractor agrees to sell vehicle(s), including proposed optional equipment, at the same price, terms and conditions from the time of contract award to the expiration of the contract term. The Cooperative will consider granting one (1) substantiated request for adjustment only in the event of an inordinate or unusual price increase from the chassis manufacturer during the contract term. Such a price increase should be due to an unusual event causing the Original Equipment Manufacturer ("OEM") to make such a price increase such as regulatory changes outside the OEM's control or OEM manufacturer

increasing prices for chassis at a rate that is at a minimum twice the historical rate of increase for this item in the past five years. The documentation of such factors shall be provided by the dealer. Should the Cooperative not grant this price increase, the vehicle(s) affected by the chassis or manufacturers price increase may be removed by the Cooperative's purchasing schedule upon the responsible dealer's request.

Subsequently there shall be two (2) one-year renewal options at the end of each model year after the initial twenty-four (24) month period. A cost increase shall be considered at each renewal date, up to a maximum of 4%, due to chassis cost increases and/or manufacturer's option cost increases. Vendor is responsible for requesting and providing justification for such cost increase in a timely manner for consideration by the MBTA. The MBTA, in its sole and absolute discretion, may choose to accept or reject each new model year renewal cost increase.

During the proposal process, all correspondence and verbal contact shall be directed to the General Manager, Morongo Basin Transit Authority: 62405 Verbena Road, Joshua Tree, California, 92252. Telephone 760.366.2986, Fax 760.366.2445, email joe@mbtabus.com.

Proposers must submit one (1) original signature signed copies and two (2) hard copies per proposal. Bidder shall submit one (1) copy of financial statement as specified herein.

3.0 Method of Selection and Awards

The Cooperative's objective in this procurement is to conduct a solicitation that provides members the ability to select the vendor and product of their choice while maintaining compliance with FTA standards regarding competitive acquisition of goods and services by recipients. Towards this end, the competitive method of selection by the Cooperative will be by ***Negotiated Procurement***.

Successful inclusion into the Procurement schedule requires the following steps:

1. Demonstration of sufficient financial strength and resources to perform the work contracted for by providing financial statements supported by correspondence by an outside professional certified public accountant. MBTA will determine the acceptability and sufficiency of the documents submitted at its sole and absolute discretion. Proposer to submit one (1) copy of this document separately to the MBTA in a sealed envelope identifying its contents marking each page with a notation stating "Confidential for MBTA only".
2. Evidence of adequate manufacturing facilities to produce and factory test equipment on schedule and the existence of a spare parts distribution system

sufficient to support equipment without delays and a service organization with skills and equipment sufficient to perform all warranty and on-site work.

3. Evidence of satisfactory performance and integrity on contracts in making deliveries on time, meeting specifications and warranty provisions, parts availability and steps offeror took to resolve any judgments, liens, fleet defects history and warranty Claims. Offeror shall submit five (5) client references with its proposal.
4. Proposed vehicle(s) meeting Vehicle Specifications and other bid requirements specified in this solicitation. Offeror must submit a narrative description detailing which vehicles classes it is making a proposal for and the technical specifications for each vehicle class in one consolidated (1) proposal package without including pricing information.
5. Offerors meeting the non-cost based criteria of the solicitation will be then asked to submit pricing information. The opening of the pricing information will not be public.
6. Proposals that offer a product compliant with the solicitation's specifications and whose price meets a pre-determined but undisclosed competitive range will be included in the Notice of Intent to Award for the vehicle schedule. Pricing offered must fall within a competitive range, pre-determined for the base vehicle price, and within a competitive range for the total aggregate price of the evaluated options identified by the solicitation. Pricing will not be disclosed to any party until after all the awards are made.
7. Proposals that offer a product compliant with the solicitation's specifications but whose pricing is not the within pre-determined but undisclosed competitive ranges will be afforded one (1) opportunity to make one (1) Best and Final Offer ("BAFO") to provide pricing within the competitive ranges.

Offerors of any proposals that have been determined as not compliant with the solicitation requirements and/or not in the competitive pricing ranges, and cannot be reasonably made to be within the competitive ranges or compliant, will be notified in writing, including the shortcomings of their proposals.

4.0 Vehicle Specifications (Attachment A, A-1 and A-2)

5.0 Required Certifications and Assurances (Attachment B)

6.0 Successful Bidder(s) Notes and Requirements

- 1) The Successful Bidders or Prime Contractor(s) shall be the single point of contact for all warranty issues. The Bidder shall coordinate any or all warranty issues to correct defects in materials and workmanship during the warranty period, which shall begin on the date that payment is authorized (the date of full

acceptance). This requires the Successful Bidder to provide a single point of contact for all warranty issues to the Procuring Agency in coordinating all OEM, and component warranties, etc. The warranty of each unit shall include the chassis, engine, drive train, add-on equipment, vehicle modifications, etc., and shall be for the current OEM standard warranty and shall start at the date and mileage of acceptance. Delayed warranty certification shall be provided for each vehicle at time of acceptance. Proposing firms shall describe their policy and procedures on warranty(s) both on workmanship and material as applying to this equipment along with the method of adjustment. Manufacturer shall assume responsibility and warranty for materials and accessories used in the vehicles whether the same are made by the manufacturer or purchased from an outside source. A copy of this warranty shall be provided. The Successful Bidder warrants and guarantees to the Procuring Agency each complete bus and specific subsystem and components for parts and labor as follows:

A. OEM standard factory warranties for chassis, engine and transmission.

The wheelchair lift shall be warranted for a minimum of sixty (60) months, unlimited mileage and cycles.

1. The complete bus body and body structure, exterior, wiring, and paint shall be warranted to be free from defects, related defects, and to maintain structural integrity for a minimum period of forty eight (48) months or 100,000 miles. When the body manufacturer has modified or caused the chassis wheelbase to be modified the body manufacturer shall warrant that modification for a minimum of 60 months or 150,000 miles whichever comes first. The body manufacture shall warrant this modification whether performed by the manufacturer or an outside contractor or vendor. The modification warranty shall cover failure or degradation in performance of items modified or failures as a result of modification to the wheelbase including but not limited to frame members (including cross-members, gussets, brackets, etc.), drive lines, brake lines, fuel lines and electrical harnesses.

The air-conditioning system shall be warranted for a minimum of twenty-four (24) months, unlimited mileage.

B. CNG Warranty

CNG warranty shall cover: All fittings, steel tubing, flexible conductive hose and non electrical components shall have a limited lifetime warranty. All electrical components shall be warranted for three (3) years or 36,000 miles. All installation hardware (nuts, bolts, washers) shall be warranted from manufacturer defects for the life of the vehicle.

- All aluminum or composite cylinders shall be warranted no less than 15 years from the original hydrostat test date stamped on the cylinder label with the condition the cylinder is properly maintained and used in accordance to

manufacturer recommendations. Throughout the entire fifteen (15) year warranty period, the cylinder must be visually inspected internally and externally by properly trained and certified inspectors at intervals required by applicable regulations. The results of each required inspection must be properly documented in accordance with applicable regulations ANSI/NGV 2 & FMVSS 304.

- All tank brackets and cradles shall have a limited lifetime warranty from manufacture defects for the life of the product.
- All CNG cylinder valves shall be warranted from defects in the design, materials and workmanship for two years unlimited mileage.
- CNG conversion kits shall be warranted for no less than three (3) years or 36,000 miles (Including the regulator, fuel rail, fuel hose, fuel injectors, electrical harness, electrical connectors.)
- The installing organization shall warrant all workmanship for five (5) years or 100,000miles from date of installation.

The warranty shall not apply to any part or component of the vehicle that has been repaired or altered in any way so as to adversely affect its performance or reliability, except insofar as such repairs were made in accordance with the contractor's maintenance manuals and the workmanship was in accordance with recognized standards of the industry. The warranty shall be void if the buyer fails to conduct normal inspections and schedule preventative maintenance procedures as recommended in the contractor's maintenance manuals.

- 2) The warranty shall not apply to any part or component of the vehicle that has been repaired or altered in any way so as to adversely affect its performance or reliability, except insofar as such repairs were in accordance with maintenance manuals provided by the Successful Bidder and the workmanship was in accordance with recognized industry standards. The warranty may be voided if the buyer fails to conduct normal inspections and/or scheduled preventative maintenance procedures as recommended in the maintenance manuals provided by the Successful Bidder. Warranty shall not apply to normal wear items such as brake pads, belts, bulbs or lubricants.
- 3) **Fleet Defects:** A fleet defect is defined as the failure of identical items covered by the warranty and occurring in the warranty period in a proportion of the vehicles delivered under this Contract. For the purposes of this bid, identical defects occurring within twenty five (25) percent of vehicles delivered shall be considered a "fleet defect". The Successful Bidder shall correct any and all fleet defects under the warranty provisions. The Successful Bidder is responsible for the inspection and/or correction of the potential or defective parts in all of the vehicles affected.

- 4) Successful Bidder(s) are required to meet with the Cooperative every six (6) months to review contract requirements, warranty issues, the delivery schedule, usage reports, and to resolve any customer issues. The first meeting shall be scheduled at the pre-production meeting. Meetings will occur approximately every six (6) months for the length of the contract. The meetings will take place at the agency or at the point of manufacture.
- 5) Each Bidder shall describe its policy and procedures concerning warranties, both on workmanship and material, as they apply to this equipment, and the Successful Bidder's/manufacture's method of adjustment. The final stage manufacturer and/or the Successful Bidder shall assume responsibility and warranty for all materials and accessories used in the vehicles, whether they are made by the manufacturer or purchased from an outside source. The warranty, as well as any recall notifications, shall cover each vehicle, and the ultimate purchaser or recipient agency.
- 6) **Service Warranty:** Any recognized service or warranty work required, which is performed by the Successful Bidder, under the Bidder's or manufacturer's warranty shall be performed within the State of California. It shall be the responsibility of, and paid for by the Successful Bidder. This location shall be within two (2) hours travel time of the recipient's location or the Successful Bidder shall provide warranty work certification to a local shop capable of performing the work or provide for mobile service to the buyer's facilities to make repairs.
- 7) **Parts:** An adequate stock of repair parts and qualified service facilities shall be readily available within the State of California, and shall be available and delivered to the transportation providers repair shop within seventy-two (72) hours of the time requested/ordered from the Successful Bidder.
- 8) The Successful Bidder shall bear all reasonable financial costs for providing backup service from alternative sources, for failure to provide repair parts within the seventy-two (72) hour time limit. The Successful Bidder shall bear all costs until the parts are received. Freight and transportation for the parts shall be the responsibility of the Successful Bidder and the use of an overnight delivery is required when the bus is put out of service due to the needed parts. If overnight delivery is not available, the part shall be sent by the fastest method available and at a minimum using UPS Ground.
- 9) **Experience:** Each bidder shall submit evidence of its ability and experience in providing the equipment described in these specifications with the bid, by including a list of five (5) users' names, addresses, and telephone numbers who have been provided similar equipment on the same chassis from the same

Successful Bidder/manufacturer during the past two (2) years. If a newly available vehicle is bid, the MBTA will determine the acceptability and qualifications of the manufacturer and consider the proposing dealer's previous experience delivering similar products. The MBTA's decision shall be final.

- 10) **Inspection:** The intent of this inspection is to resolve as many discrepancies, as possible, on the equipment and allow the manufacturer the opportunity to correct the discrepancies while the equipment is still in the manufacturer's plant and before its shipment. The cost of this inspection shall be included as part of the Bidder's Proposal. This inspection in itself *will not* constitute acceptance of the vehicle. Final acceptance shall be made upon delivery of an acceptable product complying with the specifications at the designated location indicated on the purchase order.
- 11) **At Delivery:** The odometer reading on any bus shall not exceed 3,000 miles at the time of delivery of the completed vehicle to the purchasing agency. There will be a charge of one dollar (\$1.00) per mile for each vehicle with an odometer reading in excess of 3,000 miles payable to the purchasing agency at the time of delivery. Under no circumstances are tow vehicles to be attached to any buses.
- 12) **Pre-Production Meeting:** Upon bid award(s), a pre-production meeting will be required. The manufacturer(s) shall produce a pilot model that shall serve as a standard for the units that follow as ordered. This shall not relieve the Successful Bidder from an obligation to manufacture all units in compliance with all specifications. The pilot vehicle will be available for inspection by the Cooperative prior to the start of the meeting. The meeting will include, at a minimum, representative(s) from the successful manufacturer, the Successful Bidder, and representative(s) from the Cooperative. If these meetings are not held within Southern California, the Successful Bidder/manufacturer shall pay travel expenses up to \$1000 and \$50 per day per diem for one (1) Cooperative representative per vehicle/facility inspection and shall pay, upon the Cooperative's request, the hourly rate up to \$2000 per vehicle and travel expenses of up to \$1000 for one (1) independent inspection consultant per vehicle directly invoiced to the Successful Bidder. The Cooperative shall be notified in writing, a minimum of thirty (30) calendar days prior to meeting date.
- 13) Vehicles inspected at the manufacturer's plants which do not comply with the specifications, will not be approved for delivery. Twenty (20) calendar days will be allowed to correct any and all deficiencies. Additional inspection trips for compliance shall be at the expense of the Successful Bidder at the rates detailed above.

14) **Service:** Prior to delivery, each vehicle shall be inspected and serviced by the Successful Bidder or by an authorized dealer of the manufacturer in a service shop within southern California. The service shall include not less than the following:

- A. Check and fill all fluid levels as necessary. This shall include but not be limited to engine oil, hydraulic oil, transmission fluid, coolant level and mixture, battery levels, brake fluid, differential oil, washer fluid, and any and all other fluid levels.
- B. Complete wash and detail of the vehicle and removal of all unnecessary dealer stickers prior to delivery and inspection.
- C. A four-wheel alignment at final point of inspection. Wheel alignment shall take place after delivery to the Successful Bidder's location. Documentation of alignment settings for camber, caster, and toe-in settings shall be furnished for the final inspection, and must accompany delivery documentation to Purchasing Agency.
- D. Full tank of fuel at the Successful Bidder's location.
- F. Documentation of the alignment of headlights shall be provided to the Purchasing Agency at delivery.
- G. Check to insure proper operation of all accessories, gauges, lights, mechanical, and hydraulic features. Particular attention shall be given to door alignment, lift operation, weather-stripping, hardware, paint condition, and labeling of the cooling system.
- H. Copy of the Successful Bidder's pre-delivery inspection and all subsequent inspections by Successful Bidder's inspectors shall be provided to the Purchasing Agency upon delivery.
- I. A certified four-corner weight certificate showing the "as built" weight of the vehicle shall be provided with each vehicle at the time of delivery. The vehicle shall be full of fuel and all fluids and weighed with all equipment installed. The weight certificate shall be included with the bus and available for review at time of inspection.
- J. **Acceptance:** Final acceptance will be made upon delivery of completed vehicles complying with the specifications at the designated location(s) on the purchase order and upon the signed acceptance by the agency listed on the purchase order. Acceptance of delivery or placement in operation of any equipment shall not release the manufacturer from liability for faulty design, workmanship, or materials appearing after final payment has been made.

15) **Vehicle Registration Documents Required:** The Successful Bidder shall register all vehicles. A certification of compliance for vehicle emissions must be supplied at the time of delivery of each unit.

16) **General:** All accessories and equipment cataloged as standard for the basic vehicle, unless superseded by these specifications, shall be furnished and included in the purchase price of each vehicle. Complete printed specifications,

published literature, and photos, or illustrations of the basic unit, or units that the bidder proposes to furnish with this bid shall accompany each bid.

- 17) Bids will not be considered if the Successful Bidder's designated Freight on Board (F.O.B.) delivery destination is other than that specified in this solicitation.
- 18) Bids will be considered only from manufacturers having a California representative carrying an adequate supply of repair parts in the State of California. This representative shall have the ability to perform all warranty work in California.
- 19) The successful bidder is to furnish evidence that they hold a valid distributor agreement from the bus manufacturer, or that they are the bus manufacturer.
- 20) The manufacturer shall provide full and competent engineering services to handle and correct any and all problems associated with the performance of these vehicles and equipment. At least one (1) qualified service representative shall be available to render prompt service.
- 21) All equipment/options are to be factory installed. If the equipment/options are not available for factory installation, dealer installed equipment/accessories may be acceptable to meet the specifications. Any component added to the vehicle by the dealer must meet manufacturers approved instructions for additions. The bidder is to specify those items that will be dealer installed.
- 22) Modifications to the vehicles may be performed by final-stage manufacturers provided that they are certified and registered by the National Highway Traffic Safety Administration to manufacture and/or alter vehicles in accordance with the Code of Federal Regulations, Title 49, Parts 567 and 568. In addition, all modifications shall be in accordance with the OEM guidelines for building on an incomplete chassis. The vehicle manufacturer shall be ISO 9001:2000 certified. A copy of all pertinent certifications shall be submitted with the bid documents.
- 23) Due to the critical nature of these vehicles, the requirements, pertinent regulations and standards will be strictly enforced. It is the **Successful Bidder's responsibility to obtain current copies of the regulations for bidding and/or construction purposes.**
- 24) The Successful Bidder(s) are required to provide certification affixed to each vehicle that each unit meets or exceeds all State and Federal requirements as of the date of manufacture. California Air Resources Board ("CARB") re-certification shall be supplied for any components not supplied with the OEM chassis that effects the fuel and/or exhaust systems.

- 25) The bus manufacturer, as final-stage manufacturer, will be required to provide all test data, drawings, etc., relating to the certification of the vehicle as an accessible vehicle.
- 26) Upon delivery, it shall be the Successful Bidder's responsibility to provide any evidence necessary that the vehicles provided fully comply with all requirements of this specification.
- 27) **Quality of Materials:** Whenever, under the contract documents, it is provided that the Successful Bidder shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured article shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation.
- 28) **Welding:** Welding procedures and materials shall be in accordance with standards of the American Society of Testing Materials and the American Welding Society. Where metal is welded, the contact surface shall be free of scale, spatter, and grease and shall be treated to preclude rusting.
- 29) **Invoice Payments:** The manufacturer's invoice(s) submitted to the Purchasing Agency identified on the Purchase Order for payment shall include the tax exemption for handicapped equipment (California Revenue and Taxation Code Section 6394.4).
- 30) A procurement fee of 1.5% of total pre-tax price per vehicle up to \$15,000 per purchase order shall be collected by the vendor(s) and remitted to the Cooperative monthly based on activity on this contract, due within forty five (45) days of acceptance by the purchasing agencies. Offeror will **not** include the cost of the procurement fee in the proposed price of the vehicle. The vendor will reflect the procurement charge on each invoice to the purchaser as a separate line item. Contractors will supply monthly activity reports and payments to the Cooperative. This activity may be audited. Vendors not reporting sales by way of this Contract will be subject to the cost of auditing and reasonable charges for collections. Failure to report will also be seen as failure to perform the contract and may lead to corrective action up to and including termination. These fees will support the cost of contract development and maintenance. The MBTA may choose to assign vehicles directly to itself or to agencies within the political subdivisions comprising the MBTA's joint powers authority, waiving procurement fees in exchange for appropriate discounting by the contractor. MBTA may adjust the procurement fee during the course of the contract; vendors are to adjust pricing to reflect this increase or decrease.
- 31) **Hybrid Training:** In cooperation with CalAct, a comprehensive training course shall be provided to the drivers and/or driver's trainers of the fleet. The course shall provide information on basic system function, system operation, driver

interface with system, 'what to expect when operating', and best practices for optimization of system performance.

A multi-day course shall also be provided for the fleet vehicle support team on repair and diagnosis of the hybrid system. This training shall contain information on the system architecture, detailed system operation, use and function of system specific diagnostic tooling, navigation and use of available service information including wiring schematics and repair manuals, service procedures for system supplied components, and system diagnostic and troubleshooting procedures. (2.5 days)

Training shall be provided in locations that are convenient to where the hybrid buses are in service.

7.0 General Provisions

1. **PRE-AWARD INSPECTIONS:** The Cooperative and/or its designated agent(s), reserve the right to perform a pre-award inspection of the proposing firm's facility. The purpose of the evaluation will be to assure that the proposing firm:
 - a. Has in operation, or has the capability to have in operation, a manufacturing location and dealership infrastructure adequate to assure delivery of all equipment within the time specified under contract;
 - b. Has adequate engineering and service personnel to satisfy any engineering or service problem that may arise during the warranty period;
 - c. Has the necessary facilities and financial resources, or has the capability to obtain such facilities and resources, to complete the contract in a satisfactory manner within the required time;
 - d. Has adequate control to assure that workmanship will comply with the specifications.
2. **DELIVERY:** For Class E vehicles delivery of the vehicles shall be completed within 240 calendar days after issuance of purchase orders by the Cooperative's participants. Delivery of alternative fueled Class E vehicles shall be completed within 270 calendar days. For Class H Vehicles delivery of the vehicles shall be completed within 365 calendar days after issuance of purchase orders by the Cooperative's participants. If the delivery is delayed because of strike, injunctions, governmental controls, or any cause or circumstances beyond the

reasonable control of the manufacturer, supplier or contractor, the time of completion of delivery may be extended upon written request from the proposing firm and approval by the Cooperative and the ordering agency. The request for extension must include detailed justification for the length of the time extension. The purchase price of the vehicle will be reduced by \$100.00 per day, per bus, as liquidated damages for each day beyond the delivery deadline if the proposing firm fails to request written approval for a time extension prior to the delivery deadline or if the delay cannot be justified as being beyond the proposing firm's control.

3. COORDINATING DELIVERY TIME: All vehicle deliveries shall be coordinated with the Cooperative's participating agency. The proposing firm shall contact purchasing agencies to agree upon a delivery schedule at least three working days prior to delivery. Delivery shall be made during normal working hours. Delivery terms are Freight on Board (FOB) to be specified by the purchaser, either at their place of business or at closest dealer location. No additional charges shall apply for deliveries made within 100 miles of closest dealer location. Dealers shall only charge additional mileage fees for distance delivered exceeding 100 miles from the closest dealer location. Example: delivery made 150 miles from dealer shall only be charged for 50 miles.
4. TRAINING: Included, as part of this proposal shall be a 4-hour session of vehicle operation training. This training will be made available by the qualified personnel representing the successful proposing firm to the purchasing agency upon its request. The training session shall be held no later than thirty (30) days after delivery of the first vehicle at a time convenient to both parties.
5. TERMS OF PAYMENT: Proposing firm is to detail their terms of payment. Proposing firms are to submit the discounted amount, if any, for full payment within forty-five (45) days of delivery and to show this amount on the Proposal Form. Delivery and acceptance of the vehicle shall not release the successful firm from liability for and repair of faulty workmanship or materials found after final payment has been made.
6. INDEMNIFICATION: The proposing firm and all of the Cooperative's assignees hereby agree to indemnify, hold harmless, and defend the Cooperative, its officers, officials, employees, representatives, and agents, from and against any and all claims, losses, demands, damages, costs, expenses or liabilities, including the cost of defense of any lawsuit arising therefrom, including, but not limited to, actions arising out of, related to, or caused by the Proposing Firm or the Cooperative's assignees' breach of a contract, injuries to or death of any person including without limitation workmen and the public, damage to property resulting from the performance of a contract, except as otherwise provided by statute, and any negligent or willfully wrongful act of the Proposing Firm or the Cooperative's assignees or any of their agents, contractors, employees or

licensees, except liability arising out of the concurrent active or sole negligence of the Cooperative.. The Proposing Firm and all of the Cooperative's assignees hereby agree to waive any and all rights or claims to any type of express or implied indemnity from the Cooperative, its officers, officials, employees, representatives, and agents.

7. ACCEPTANCE: Vehicles delivered to the Cooperative's assignees in a condition below retail customer acceptance levels will not be accepted. Items which determine this acceptance level shall include, but not be limited to: the general appearance of the interior and exterior of the vehicle for completeness and quality of workmanship, lubrication and fluid levels, mechanical operation of the vehicle and all electronic components. If any vehicle is delivered incomplete, incorrect, or contains any defective or damaged parts, the proposing firm shall, at their expense, furnish and replace parts acceptable to the Cooperative's participants. Any delivered vehicle not confirming to this RFP, without the expressed written consent of the Cooperative's assignees, will be rejected.

Within five (5) days after delivery, the Cooperative's purchasers must inspect the vehicle to determine if it is in an acceptable operating condition. The purchaser shall notify the vendor, in writing, within five (5) days after delivery if the vehicle has or has not been "accepted". Failure of the purchaser to furnish to the vendor a written statement of acceptance or non-acceptance postmarked within five (5) days after delivery shall be deemed to constitute acceptance of the vehicle. A letter of conditional acceptance or a letter of non-acceptance must furnish details of the deficiencies. Dealer is not to deliver more than three (3) vehicles per day unless this requirement is waived in writing by the purchasing agency.

The vendor shall promptly correct all defects and resubmit the vehicle for acceptance. The Cooperative's participants shall not be required to furnish space, labor, or material to perform the bidder's responsibilities so as to permit acceptance of a vehicle in compliance with this RFP. The Cooperative's assignees must accept or reject the resubmitted vehicle within ten (10) days from the date of re-submittal. The Purchasing Agency shall not place a vehicle into passenger service until after acceptance.

In the event the vendor fails to comply with the written order of purchase to complete and/or repair the vehicle prior to acceptance, and purchaser finds it necessary to perform any work on any vehicle which should have been done by the vendor within the intent of this RFP, The Purchasing Agency will be reimbursed for all incidental costs including materials, labor and reasonable overhead expenses.

8. PROTEST PROCEDURE: Anyone wishing to file a protest concerning this proposal package must do so in writing. Such protest must be received by the MBTA no later than five (5) working days prior to proposal opening. The MBTA,

in its sole and absolute discretion, may delay the proposal opening until the protest is resolved.

Pre-Award protests must be made within five (5) working days of receipt of the Notice of Intent to Award Contracts. Protests must be made in writing and addressed to the MBTA General Manager. Protests must outline a factual and procedural basis for the protest. Upon receipt of protest MBTA staff and counsel will review and may bring forward to the MBTA Board of Directors at an appropriate time for consideration. At its sole discretion, the MBTA may elect to have the General Manager receive the protest. The MBTA Board by resolution authorizes the General Manager to issue solicitations, award, modify and cancel contracts and hear protests. This action and their decision will complete the proposal opening / award announcement administrative protest remedy at the Cooperative level. Failure to object in the manner specified shall constitute a waiver on offerors part to protest the solicitation.

Written protests shall be addressed to General Manager, Morongo Basin Transit Authority, 62405 Verbena Road, Joshua Tree, Ca, 92252 by direct mail, postage prepaid or personal delivery with copy of protest to MBTA General Counsel, Rutan & Tucker LLP at 611 Anton Boulevard, suite 140, Costa Mesa, California, 92626 attn: Patrick Munoz.

Beyond the Cooperative level, a protester must deliver its appeal to the Federal Transit Administration (FTA) Region IX Administrator at 211 Main Street, Suite 1160, San Francisco, CA, 94105 within five (5) working days of the date when the protester has received actual or constructive notice of the MBTA's final decision.

The FTA will only entertain a protest that alleges the grantee failed to follow their protest procedures and that such a protest must be filed in accordance with Circular 4220.1F.

Proposer(s) receiving awards based on this solicitation may not protest and agree to waive pursuit of any legal remedies regarding the Cooperative's decision to award to any other proposers.

9. OR EQUAL AND OR APPROVED EQUAL: The vehicle specifications may include the terms "or equal" and "or approved equal" pertaining to certain specified components. The meaning of these terms is not the same. The term "or equal" means as "minimally meets or exceeds" specification standards, or "is the same as or exceeds" bid specification standards as set. The item must still meet the requirements of the technical specification.

When the term "or approved equal" is used, anyone desiring to provide an alternate to the product referenced as acceptable is required to submit the

proposed alternate item for evaluation and approval to The Cooperative within the first seven working days after the RFP is released. Proposed alternates should be sent by FAX or next day mail and will not be considered for evaluation past this period.

Proposing firms are specifically instructed to provide full and complete technical information concerning each alternate item, including all similarities and differences. In general, items that are proprietary with availability only to a single vendor will not be approved.

The decision to accept or reject proposed alternatives will be determined solely by the MBTA. If a proposed alternative is found to be acceptable, all potential proposing firms will be notified of this change in the specification. A decision of rejection is final, and need not be explained by the MBTA. Proposing firms not following the "approved equal" rules may be judged as non-responsive by the Cooperative. Non-responsive means the proposal has been declared as not meeting the intent of the product desired for purchase in a major area and therefore will not be considered further in the evaluation for purchase.

10. DISCOUNTING: Any cash discounts from the proposed price offered to Cooperative participants must be identified in the purchasing schedule, pre-approved by the MBTA and reflected on purchase orders and invoices. If the purchase is federally funded, FTA must participate in the discount.

8.0 Bidders Authorized Offer

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the RFP are conditions precedent to the award or continuation of the resulting Contract.

1. The attached Response (and corresponding, responsive price information) is a firm offer and shall be held open for a period of 120 days following the Bid due date and time specified in the RFP, and it may be accepted by the Cooperative without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120-day period. In the case of protest, our Response will remain valid for 180 days or until the protest and any related court action is resolved, whichever is later.
2. In preparing this Response, we have not been assisted by any employee of the MBTA whose duties relate (or did relate) to this Solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have

any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)

3. We understand that the MBTA will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the MBTA, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the Solicitation document.
4. We understand that any Contract awarded, as a result of this Response will incorporate all the Solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in this solicitation, MBTA RFP #09-02, if selected as a contractor.
5. Under the requirements of [Lobbying Disclosure Act](#), 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
6. We **are not** submitting proposed Contract exceptions to this solicitation.
7. The authorized signatory below acknowledges having read and understood the entire Solicitation and agrees to comply with the terms and conditions of the Solicitation in submitting and fulfilling the offer made in its Bid.
8. By submitting this Bid, Bidder hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this Solicitation.
9. By submitting this Bid, Bidder hereby agrees to abide by all applicable federal regulations, including those provided in this solicitation in Attachment B.

The signatory below represents that he/she has the authority to bind the company named below to the Bid submitted and any contract awarded as a result of this Solicitation.

Printed Name, Title

Company Name

Signature

Date

Proposing Firm Name:

Mailing Address:

Phone Number:

By: _____