

(A) SAMPLE AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 20____, by and between the SOUTHEASTERN REGIONAL TRANSIT AUTHORITY (SRTA) and _____ (“CONTRACTOR”).

WHEREAS, the SRTA desires to purchase _____ buses with an option to purchase an additional buses (which optional bus quantities may be assigned to other consortium agencies) to be delivered over the remaining term of the Contract and has issued a Request for Proposals dated _____, 20____, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, the CONTRACTOR desires to furnish such services and submitted a written proposal dated _____, 20____, a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The CONTRACTOR agrees to provide services to the SRTA in accordance with the terms and conditions of this Agreement.

2. SCOPE OF WORK

The Contractor shall perform all work and furnish all the labor, materials, tools, equipment, services, and incidentals as set forth in Exhibit A, as supplemented by Exhibit B, except when inconsistent with Exhibit A.

3. TERM OF AGREEMENT

The term of this Agreement will be for a five-year base term commencing upon the SRTA’S issuance of a written Notice to Proceed or unless sooner terminated pursuant to Section 22 of this Agreement. The CONTRACTOR shall furnish the SRTA with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Contract Specifications.

It is further understood that the term of Contract is subject to the SRTA’S right to terminate the Contract in accordance with Section 22 of this Agreement.

4. OWNERSHIP OF WORK

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by CONTRACTOR are and shall be the property of the SRTA. The SRTA shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the SRTA. If any materials are lost, damaged, or destroyed before final delivery to the SRTA, the CONTRACTOR shall replace them at its own expense and the CONTRACTOR assumes all risks of loss, damage, or destruction of or to such materials. The CONTRACTOR may retain a copy of all material produced under this Agreement for its use in its general business activities.

5. CONFIDENTIALITY

Any SRTA materials to which the CONTRACTOR has access or materials prepared by the CONTRACTOR during the course of this Agreement ("confidential information") shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the CONTRACTOR as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The CONTRACTOR shall not release any reports, information, or promotional materials prepared in connection with this Agreement, whether deemed confidential or not, without the approval of the SRTA'S General Manager.

6. USE OF SUBCONTRACTORS

The CONTRACTOR shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the SRTA, except for service firms engaged in drawing, reprographics, typing, and printing. The CONTRACTOR shall be solely responsible for reimbursing any subcontractors and the SRTA shall have no obligation to them.

7. CONTRACTOR'S KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that _____ shall serve as the primary staff person of CONTRACTOR to undertake, render, and oversee all of the services under this Agreement.

8. CHANGES

The SRTA may, make changes at any time, by written order, within the scope of services described in this Agreement. If such changes cause an increase or decrease in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 16 of this Agreement. In the event that CONTRACTOR encounters any unanticipated conditions or contingencies that may affect the scope of work or services and result in an adjustment in the amount of compensation specified herein, or identifies any SRTA conduct (including actions, inaction, and written or oral communications other than a formal contract modification) that the CONTRACTOR regards as a change to the contract terms and conditions, CONTRACTOR shall so advise the SRTA immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation. This notice shall be given to the SRTA prior to the time that CONTRACTOR performs work or services related to the proposed adjustment in compensation. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes. Failure to provide written notice and receive SRTA approval for extra work prior to performing extra work may, at the SRTA'S sole discretion, result in nonpayment of the invoices reflecting such work.

9. CLAIMS OR DISPUTES

The CONTRACTOR shall be solely responsible for providing timely written notice to SRTA of any claims for additional compensation and/or time in accordance with the provisions of this Agreement. It is the SRTA'S intent to investigate and attempt to resolve any CONTRACTOR claims before the CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR'S failure to provide timely notice shall constitute a waiver of CONTRACTOR'S claims for additional compensation and/or time.

The CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the SRTA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given the SRTA due written notice of potential claim. The potential claim shall set forth the reasons for which the CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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If based on an act or failure to act by the SRTA, such notice shall be given to the SRTA prior to the time that the CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

If there is a dispute over any claim, the CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by the SRTA, and shall be governed by all applicable provisions of the Contract. The CONTRACTOR shall maintain cost records of all work which is the basis of any dispute.

If an agreement can be reached which resolves the CONTRACTOR claim, the parties will execute a Contract modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONTRACTOR claim, they may choose to pursue a dispute resolution process or termination of the contract.

10. DISADVANTAGED BUSINESS ENTERPRISES

The SRTA, as a recipient of Federal financial assistance from the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program for Contracts in accordance with Federal regulations 49 CFR §26, issued by the U.S. Department of Transportation (DOT).

It is the policy of the SRTA to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBE) can compete fairly for contracts and subcontracts relating to the SRTA'S construction, procurement, and professional services activities. To this end, the SRTA has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. Concerning the performance of this contract, the CONTRACTOR will cooperate with the SRTA in meeting these commitments and objectives.

Pursuant to 49 CFR §26.13, and as a material term of any agreement with the SRTA, the CONTRACTOR hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

“The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR §26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR or subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the SRTA deems appropriate.”

11. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

In connection with the performance of this Agreement the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, gender, sexual orientation, age (over 40), marital status, pregnancy, medical condition, or disability as specified in federal, State, and local laws. The CONTRACTOR shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

12. CONFLICT OF INTEREST

Depending on the nature of the work performed, a CONTRACTOR of the SRTA is subject to the same conflict of interest prohibitions established by the Federal Transit Administration and Massachusetts law that govern SRTA employees and officials (MGL 268A). During the proposal process or the term of the Agreement, CONTRACTOR and their employees may be required to disclose financial interests.

The CONTRACTOR warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest during the performance of services under this Agreement. The CONTRACTOR further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, CONTRACTOR may be required to publicly disclose financial interests under the SRTA's Conflict of Interest Code. Upon receipt, the CONTRACTOR agrees to promptly submit a Statement of Economic Interest on the form provided by SRTA.

No person previously in the position of Director, Officer, employee or agent of the SRTA may act as an agent or attorney for, or otherwise represent the CONTRACTOR by making any formal or informal appearance, or any oral or written communication, before the SRTA, or any Officer or employee of the SRTA, for a period of twelve months after leaving office or employment with the SRTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant, or contract.

13. PROHIBITED INTEREST

No member, officer, or employee of the SRTA during his or her tenure or for one 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 Bidder or Contractor/Consultant by making a formal or informal appearance, or any oral or written communication, before the SRTA, or any officer or employee of the SRTA, for a period of one year after leaving office or employment with the SRTA if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a Contract.

14. RESPONSIBILITY: INDEMNIFICATION

The CONTRACTOR shall indemnify, keep and save harmless the SRTA, and its directors, officers, agents and employees against any and all suits, claims, or actions arising out of any injury to persons or property, including but not limited to damages arising from the infringement of intellectual property rights of third parties, that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the CONTRACTOR caused by a negligent act or omission of the CONTRACTOR or its employees, subcontractors or agents. The CONTRACTOR further agrees to defend any and all such actions, suits, or claims and pay all charges of attorneys and all other incurred costs and expenses. If any judgment is rendered against the SRTA or any of the other individuals enumerated above in any such action, CONTRACTOR shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

15. INSURANCE

The insurance requirements specified in this section shall apply to CONTRACTOR and any subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONTRACTOR authorizes to work under this Agreement (hereinafter collectively referred to as "Agents"). CONTRACTOR is required to procure and maintain at its sole cost and expense the insurance coverage's subject to all of the requirements set forth below. CONTRACTOR is also

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required to assess the risks associated with the work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover risks; the limit for the commercial general liability insurance in each subcontract shall not be less than **\$1 million**. Such insurance shall remain in full force and effect throughout the term of this Agreement. To the extent that any Agent does not procure and maintain such insurance coverage, CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONTRACTOR or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from the SRTA. Prior to beginning work under this contract, CONTRACTOR shall provide the SRTA with satisfactory evidence of compliance with the insurance requirements of this section.

A. Types of Insurance

1. Workers' Compensation and Employers' Liability Insurance

- a. Workers' Compensation with Statutory Limits, as required by MGL 152 sec 1 or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- b. Employer's Liability coverage with minimum limits of **\$1 million**.
- c. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.

2. Commercial General Liability Insurance

Commercial General Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least **\$1 million** per occurrence or claim and a general aggregate limit of at least **\$1 million**. 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 be 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 the Endorsements Section 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 years following termination of this Agreement.

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3. Automobile Liability Insurance

Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least **\$1 million** per occurrence.

- a. This insurance shall include coverage for, but not be limited to:
 - All Owned vehicles.
 - Non-owned vehicles.
 - Hired or rental vehicles.
- b. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
 - Additional Insured.
 - Primary and Non-Contributory wording.
 - Waiver of Subrogation.

4. Property Insurance

Property and/or transit insurance, whichever is applicable, with Special Form coverage including theft but excluding earthquake, with limits at least equal to the replacement cost of the property described below.

- a. This insurance shall include coverage for, but not be limited to:
 - CONTRACTOR's own business personal property and equipment to be used in performance of this Agreement.
 - Materials or property to be purchased and/or installed on behalf of the SRTA, if any.
 - Debris removal.
 - Builders risk for property in the course of construction.
- b. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
 - Waiver of Subrogation.

B. Endorsements

1. Additional Insured

The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds the SRTA and its directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

2. Waiver of Subrogation

The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of the SRTA and its officers, directors, employees, volunteers and agents while acting in such capacity, and their successors and assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

3. Primary Insurance

The referenced policies and any Excess or Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance affected or which may be affected by the SRTA.

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4. Severability of Interests or Cross Liability

The referenced policies and any Excess or Umbrella policies shall contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the SRTA as an Additional Insured shall not in any way affect SRTA's rights either as respects any claim, demand, suit or judgment made, brought or recovered against the CONTRACTOR. Said policy shall protect CONTRACTOR and the SRTA in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

C. Evidence Of Insurance

All Coverage's - Prior to commencing work or entering onto the Property, CONTRACTOR shall provide the Administrator of the SRTA with a certificate evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the CONTRACTORS' policy(ies) will not be cancelled or coverage altered without 30 days prior written notice to the SRTA's Administrator.

D. General Provisions

1. Notice of Cancellation

The policies shall provide that the CONTRACTORS' policies will not be cancelled or have limits reduced or coverage altered without 30 days prior written notice to the SRTA's Administrator.

2. Acceptable Insurers

All policies will be issued by insurers acceptable to the SRTA (generally with a Best's Rating of A- 10 or better).

3. Self-insurance

Upon evidence of financial capacity satisfactory to the SRTA and CONTRACTOR's agreement to waive subrogation against the SRTA respecting any and all claims that may arise, CONTRACTOR's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.

4. Failure to Maintain Insurance

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of CONTRACTOR's personnel and equipment have been removed from the SRTA property, and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

E. Claims Made Coverage

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

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

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2. CONTRACTOR shall make every effort to maintain similar insurance for at least three years following project completion, including the requirement of adding all named insured.
3. 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.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

F. Deductibles and Retentions

CONTRACTOR shall be responsible for payment of any deductible or retention on CONTRACTOR's policies without right of contribution from the SRTA.

16. COMPENSATION

The CONTRACTOR agrees to perform all the services included in Section 2, in accordance with the cost information provided in its Cost Proposal included in Exhibit B, which shall include all labor, materials, taxes, profit, overhead, insurance, delivery costs, subcontractor costs, and other costs and expenses incurred by the CONTRACTOR.

The Contractor's Base Offer per Bus as submitted on Appendix B, Cost Proposal, shall remain firm during the first 180 days of the Contract. After the initial 180 days of the Contract, the Contractor will be allowed, upon written request, to adjust prospectively the Base Offer per Bus based on the Producer Price Index (PPI). If requested, the Base Offer per Bus shall be that quoted 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 13.T of the RFP. However, in no event 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 order.

17. MANNER OF PAYMENT

SRTA shall pay the full price of each bus upon issuance of final acceptance of the bus and receipt of an approved invoice, as provided for in the RFP. Invoice entries shall conform to the rates specified in the Cost Proposal set forth in Exhibit B, as agreed upon. The SRTA will endeavor to pay approved invoices within 30 days of their receipt. Invoices shall be mailed or delivered to the SRTA at 700 Pleasant Street, Suite 320, New Bedford MA 02740.

18. CONTRACTOR'S STATUS

Neither the CONTRACTOR nor any party contracting with the CONTRACTOR shall be deemed to be an agent or employee of the SRTA. The CONTRACTOR is and shall be an independent CONTRACTOR and the legal relationship of any person performing services for the CONTRACTOR shall be one solely between that person and the CONTRACTOR.

19. ASSIGNMENT

The CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the SRTA.

20. SRTA WARRANTIES

The SRTA makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

21. SRTA REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of the SRTA, the SRTA'S Administrator or such person or persons as they shall designate in writing from time to time, shall represent and act for the SRTA.

22. TERMINATION

The SRTA shall have the right to terminate this Agreement at any time by giving written notice to the CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a default by CONTRACTOR, the SRTA shall pay to CONTRACTOR in accordance with the provisions of Sections 16 and 17 all sums actually due and owing from the SRTA for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by CONTRACTOR to effect such or termination. If the Agreement is terminated for default, the SRTA shall only pay CONTRACTOR the contract price for goods delivered and accepted in accordance with the requirements set forth in this contract.

23. MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

The CONTRACTOR shall permit the authorized representatives of the SRTA, to inspect, audit, make copies and transcriptions of books and all data and records of the CONTRACTOR relating to its performance under the Agreement. CONTRACTOR shall maintain all such records for a period of three years after the SRTA makes final payment under this Agreement.

24. NOTICES

All communications relating to the day to day activities of the project shall be exchanged between the SRTA'S Administrator, or designee, and the CONTRACTOR's.

All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the SRTA: Administrator
Southeastern Regional Transit Authority
700 Pleasant Street, Suite 320, New Bedford, MA 02740

If to the CONTRACTOR: Attn: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

25. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of Massachusetts.

The CONTRACTOR must comply with all federal, State, and local laws, rules, and regulations applicable to the Agreement and to the work to be done hereunder, including all rules and regulations of the SRTA.

26. RIGHTS AND REMEDIES OF THE SRTA

The rights and remedies of the SRTA provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

27. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement shall be binding upon and insure to the benefit of the parties and their respective successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

28. Purchase subject to funds – find Language

SRTA:

CONTRACTOR: (See footnote below*)

SOUTHEASTERN REGIONAL TRANSIT AUTHORITY

By: _____

By: _____

Title: Administrator

Title: _____

By: _____

ATTEST: _____

Title: : _____

By: _____

Secretary for the SRTA

APPROVED AS TO FORM:

By: _____

Attorney for the SRTA

***Note: If the CONTRACTOR is a Corporation, this Agreement must be executed by two Corporate Officers, consisting of:**

- (1) the President, Vice President or Chair of the Board, and
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to the SRTA is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws.)

(B) COST PROPOSAL

The Proposer shall use this form for submission of its cost proposal. SRTA and all of the Consortium Members are tax exempt. (Proposer must submit an offer on each of the three bus configurations as designated in the Technical Specifications.)

1. QUANTITY

This Proposal offers the buses as specified and is effective for a five-year period. The Proposer agrees to deliver a minimum of 13 buses and a maximum of up to 33 buses within 365 days from the date of contract award. The Proposer agrees to deliver up to an additional 173 buses over the remaining contract term pursuant to the terms of the contract for exercising options. All buses to be furnished under the contract shall be ordered by issuance(s) of a Purchase Order(s) by the SRT or another procuring agency in accordance with the specifications.

2. PRICES

The Southeastern Regional Transit Authority (SRTA) and other procuring agencies, reserve the right to order buses over the five-year period beginning upon the date the SRTA'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 SRTA or other procuring agencies within a period of 180 days of NTP. The price(s) of any buses or equipment ordered by the SRTA 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. **However, in no event 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.**

HEAVY DUTY BUS

	<u>30 Foot</u>	<u>35 Foot</u>	<u>40 Foot</u>
A. Base Offer Per Bus	\$ _____	\$ _____	\$ _____
B. *Delivery Cost per Bus (To SRTA location only)	\$ _____	\$ _____	\$ _____
C. Total Base Offer per Bus:	\$ _____	\$ _____	\$ _____
D. Date of FTA Bus Test: _____ (If required, see Appendix H)			
E. Vehicle Mfg. and Model: _____			

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

Additional Cost per Bus:

Hybrid Drive:	\$ _____	\$ _____	\$ _____
Compressed Natural Gas	\$ _____	\$ _____	\$ _____

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	<u>30 Foot</u>	<u>35 Foot</u>	<u>40 Foot</u>
<u>Wheels</u>			
(8) Alcoa Aluminum Machine Finish with Durabrite	\$ _____	\$ _____	\$ _____
(8) Steel Powder Coated Finish, White or Black	\$ _____	\$ _____	\$ _____

<u>Tires</u>			
Bus Builder Supply Michelin XU3 Tires (305/85R22.5)	\$ _____	\$ _____	\$ _____
Bus Builder Supply Michelin XU2 Tires (12R22.5)	\$ _____	\$ _____	\$ _____

<u>Intelligent Vehicle System</u>			
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	\$ _____	\$ _____	\$ _____

<u>Fare Collection</u>			
Scheidt & Bachmann	\$ _____	\$ _____	\$ _____
Farebox Guard	\$ _____	\$ _____	\$ _____
GFI 41" High Odyssey	\$ _____	\$ _____	\$ _____
LED Farebox Lamp, Ceiling Mounted	\$ _____	\$ _____	\$ _____

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30 Foot

35 Foot

40 Foot

Surveillance Camera Systems

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

\$ _____ \$ _____ \$ _____

Delete Video Surveillance and Provide (7) Camera Cable Re-Wire

\$ _____ \$ _____ \$ _____

(C) PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that SOUTHEASTERN REGIONAL TRANSIT AUTHORITY ("SRTA") has entered into a contract with _____, ("Principal") for the PROVISION OF _____; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond of faithful performance of the Contract;

NOW, THEREFORE, we, the Principal, and _____, as Surety duly organized under the laws of the State of _____, having its principal place of business at _____ in the State of _____ are held and firmly bound into the SRTA, in the penal sum of \$ _____ lawful money of the United States being a sum equal to 20% of the total amount payable for the initial order of buses by the term of said Contract, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions and agreements in the said Contract and any alteration thereof made as provided in the Contract, on his part to be kept and performed at the time and in the manner specified, and in all respects according to their true intent and meaning, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force; and

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

In the event that the SRTA, or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then, in addition to the penal sum herein above specified, we agree to pay to the SRTA, or its successors or assigns, a reasonable sum on account of attorney's fees in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their seals this ____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

TO BE CONSIDERED COMPLETE, BOTH THE PROPOSER AND AN ADMITTED SURETY INSURER AUTHORIZED BY THE CALIFORNIA INSURANCE COMMISSIONER TO TRANSACT SURETY BUSINESS IN THE STATE OF CALIFORNIA, MUST SIGN THIS PROPOSER'S BOND. IN ADDITION, THE **SURETY'S SIGNATURE MUST BE NOTARIZED AND A COPY OF THE SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.**

Notarized By:

(Notary Stamp)

Principal's Name (Print)

Principal's Signature

Surety's Name (Print)

Surety's Signature

Surety's Address:

City /State / Zip

REQUEST FOR PROPOSALS FOR
PURCHASE AND DELIVERY OF HEAVY DUTY BUSES
RFP SRTA 2014-01

NOTE: SAMPLE FORMAT ONLY. ORIGINAL LETTER MUST BE ON THE FINANCIAL INSTITUTION'S LETTERHEAD FROM WHICH IT IS DRAWN.

Date:

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

Re: Irrevocable Standby Letter of Credit No.

Director, Contracts & Procurement:

We hereby issue in your favor of the Southeastern Regional Transit Authority (SRTA) this Irrevocable Standby Letter of Credit for the account of _____, a (insert nature of organization, whether sole proprietorship, partnership, corporation), in the sum equal to 20% of the total amount of the initial order of buses by the term of the Contract, \$ _____, which is available upon your demand when accompanied by a signed statement from an officer of the SRTA, stating that:

The amount drafted is due to the SRTA because of the default or failure to perform by _____ in accordance with the terms of the Contract dated _____ by and between the SRTA and _____.

We hereby agree with the drawers and/or bona fide holders that drafts drawn and negotiated in conformity with the terms of this Letter of Credit will be duly honored upon presentation when presented on or before _____, 20____. Partial drawings are permitted.

Except so far as otherwise expressly stated, this credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) of the International Chamber of Commerce Publication No. 500.

Sincerely,

(Name of financial institution)

By: _____
(Signature)

Title: _____

**(D) BUY AMERICA CERTIFICATE OF COMPLIANCE
(Buses, Other Rolling Stock, and Associated Equipment)**

IMPORTANT: SELECT AND COMPLETE ONLY ONE OF THE FOLLOWING CERTIFICATES:

Certificate of Compliance with 49 USC 5323(j)(2)(C)

The bidder hereby certifies that it will comply with the requirements of 49 USC 5323(j)(2)(C) and the applicable regulations in 49 CFR 661.

_____ Firm Name
_____ Signature of Authorized Official
_____ Name and Title of Authorized Official
_____ Date

OR:

Certificate for Non-Compliance with 49 USC 5323(j)(2)(C)

The bidder hereby certifies that it cannot comply with the requirements of 49 USC 5323(j)(2)(C), but it may qualify for an exception pursuant to 49 USC 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

_____ Firm Name
_____ Signature of Authorized Official
_____ Name and Title of Authorized Official
_____ Date

(E) SUBCONTRACTOR/DBE FORMS

1. Is your firm a registered Disadvantaged Business Enterprise (DBE)?

Yes _____ No _____

If the answer is "Yes", please fill in your DBE Certification Number: _____

2. Does your firm plan to subcontract any of the work or services required under this contract to any subcontractors or subconsultants, or procure items from suppliers?

Yes _____ No _____

If the answer is "Yes", please continue with completing this questionnaire.

If the answer is "No", you may stop here and you do not need to continue to Question 3. Please sign and submit this page.

3. Describe briefly how your firm solicited small businesses, including DBEs, to participate on this contract.

4. Identify the portion(s) of the work or service that were selected for subcontracting and explain why these portions of work were selected:

5. Explain the reasons for rejecting bids and accepting the bids from the selected subcontractor, subconsultant or supplier:

6. Describe any efforts your firm made to assist small businesses, including DBEs, in obtaining (1) adequate information about this solicitation, and (2) necessary equipment, supplies, bonding, or insurance, among other requirements, to perform this contract:

7. Describe any other steps your firm used to encourage or select small businesses, including DBEs:

The undersigned certifies that the above narrative is true and accurate and may be relied upon by the Agency in evaluating the Proposer's compliance with the proposal requirements.

Signature of Owner or Authorized Representative

Title

Date

Designation of Subconsultants and Sub-bidders

Proposer's Name: _____ Is your firm a Disadvantaged Business Enterprise: Yes _____ No _____

Address: _____ Firm's Annual Gross Receipts: _____ Age of Firm: _____

Phone: (_____) _____ Fax: (_____) _____

Instructions: Proposer MUST provide information below for ALL subcontractors/subconsultants/suppliers ("sub-bidders") that provided Proposer a bid, quote, or proposal for work, services or supplies associated with this contract. This information shall be provided for all sub-bidders regardless of tier for both DBEs and non-DBEs alike. Include all bid acceptance(s) AND rejection(s). Please state "None" if there are no sub-bids.

	Subcontractor/Subconsultant/Supplier Firm Name/Address/Phone/Fax/Contact Person	DBE? (Yes/No)	Description of Work, Services, or Supplies	Dollar Amount of Work, Services, or Supplies	Bid/Quote Accepted? (Yes/No)
1					
2					
3					
4					
5					

Note: Do not indicate more than one 'Yes' in the column 'Bid/Quote Accepted' for alternative subcontractors for the same work. Use additional sheets if necessary.

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose bid/quote was accepted conditioned upon execution of a contract with the AGENCY. The undersigned certifies that any DBE listed whose quote was accepted will be performing a commercially useful function on the contract. I certify under penalty of perjury that the information included on this form is accurate and true.

Signature of Owner or Authorized Representative

Print Name

Date

**(F) FEDERAL MOTOR VEHICLE SAFETY
STANDARDS AND POLLUTION CERTIFICATE**

The undersigned bidder hereby certifies the following:

1. The horsepower of the vehicle is adequate for the speed, range and terrain in which it will be required to operate and also to meet the demands of the auxiliary power equipment.
2. All gases and vapors emanating from the crankcase of a spark-ignition engine are controlled to minimize their escape into the atmosphere.
3. Visible emission from the exhaust will not exceed #1 on the Ringlemann Scale when measured six inches from the tailpipe with the vehicle in steady operation.
4. When the vehicle has been idled for three minutes and then accelerated to 80% of rated speed under load, the opacity of the exhaust will not exceed #2 on the Ringlemann Scale for more than five seconds and not more than #1 on the Ringlemann Scale thereafter.
5. The vehicle engine furnished meets the Federal and State regulations for year of manufacture. Certificate to include the values of the H.C. + NO and Co and PM grams per BHP-HR.
6. The vehicles shall comply with the Federal Motor Vehicle Safety Standards as established by the United States Department of Transportation in effect on the date of manufacture.
7. That the vehicle shall comply with all requirements of the laws of the State of Massachusetts, including all regulations set forth by the Massachusetts DOT in effect on the date of manufacture.

Company Name: _____

Signature: _____

Title: _____

Date: _____

(G) PROPOSER SERVICE AND PARTS SUPPORT DATA

Location of nearest Authorized Dealership to Massachusetts with full Warranty

Repair capabilities:

Name_____

Address_____

Telephone_____

Proposer to describe technical services readily available from said representative.

Location of nearest Parts Distribution Center to Massachusetts:

Name_____

Address_____

Telephone_____

Proposer shall describe the extent of parts available at said center.

Policy for Delivery of Parts and Components to be Purchased for Service and

Maintenance:

Regular Method of Shipment:

Cost of delivery to be included in price of parts.

(H) FTA BUS TESTING CERTIFICATION

**(SELECT ONLY
ONE)**

_____ I. NEW BUS MODEL TO BE TESTED

In accordance with 49 CFR Part 665, "Bus Testing Program," the Proposer certifies that the bus model being proposed for this Contract is a new bus model or a bus model with a major change in configuration or components (as described in Subpart A of the interim rule). Contractor, at its own expense, will arrange for the required testing at the FTA Bus Testing Facility at Altoona, Pennsylvania prior to the SRTA's acceptance of the first vehicle in a manner that the Time for Performance outlined in the Contract Specifications will not be impacted. Contractor will provide a copy of the Test Report prepared for this bus model prior to acceptance.

OR

_____ II. BUS MODEL ALREADY TESTED

In accordance with 49 CFR Part 665, "Bus Testing Program," the Proposer certifies that the bus model being proposed for this Contract is not a new bus model and does not incorporate a major change in configuration or components (as described in Subpart A of the interim rule). The Contractor will provide, upon request of the SRTA, a copy of the Test Report prepared for the bus model accepted under this Contract.

Date:

Firm: _____

Signature: _____

(I) SOUTHEASTERN REGIONAL TRANSIT AUTHORITY
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

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

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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, renewal, continuation, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-. "DISCLOSURE FORM TO REPORT LOBBYING" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$1000 and not more than \$100,000 to reach such failure.

Signature _____

Title _____

Date _____

Organization/Company _____

(J) FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)

The Proposer and (if selected) Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted coaches will not be subject to FMVSS regulations.

District Name:

Date: _____

Signature: _____

Title: _____

Company Name: _____

(K) CERTIFICATE OF COMPLIANCE WITH COACH TESTING REQUIREMENT

The undersigned certifies that the vehicle offered in this procurement complies and will, when delivered, comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the indicated one of the following three alternatives.

(mark one and only one of the three blank spaces with an "x")

1. _____ The coaches offered herewith have been tested in accordance with 49 CFR Part 665 on _____ (date). The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Proposal. If the configuration or components are not identical, the manufacturer shall provide with its Proposal a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

2. _____ The manufacturer represents that the vehicle is "grandfathered" (had 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), and submits with this Proposal the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

3. _____ The vehicle is a new model and will be tested and the results will be submitted to SRTA prior to acceptance of the first coach.

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

Date: _____

Signature: _____

Title: _____

Company Name: _____

(L) ACKNOWLEDGEMENT OF ADDENDA

The following form shall be completed and included in the Proposal. Failure to acknowledge receipt of all addenda may cause the Proposal to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the Proposal.

The undersigned hereby acknowledges receipt of the following noted addenda from the Central Contra Costa Transit Authority for Proposal 2012-MA-02.

Addendum #	Dated	Received By
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Name of Proposer

Address

City, State, Zip Code

Authorized Signature

Title

Date

(M) BUY AMERICA AUDIT WORKSHEET -- ROLLING STOCK

A. **Law Regarding Compliance with Buy America Regulations** (49 CFR §661.11(a))

1. The cost of **components** produced in U.S. is more than 60% the cost of all components:
 - a. **component** is of domestic origin if more than 60% of the **subcomponents** of that **component**, by cost, are of domestic origin and component is manufactured in U.S. (49 CFR §661.11(i)).
 - b. a **subcomponent** is of domestic origin if manufactured in U.S. (49 CFR §661.11(j)).
2. Final assembly occurs in U.S. (defined as creation of the end product from individual elements brought together for that purpose through application of manufacturing processes (49 CFR §661.11(t)).

B. **Procedure for Showing Buy America Compliance**

1. **Step 1:** Show information for **components**, listing as many **components** needed to reach a cost percentage greater than 60% of the cost of all of the components. Example (assuming the bid price is \$200, the fully allocated cost of all components if \$100 and the cost of final assembly is \$100):

<u>Manufacture Component</u>	<u>Mfgr</u>	<u>Location</u>	<u>Cost</u>	or	<u>Percentage of Cost of All Components of the Rolling Stock</u>
Seating	XYZ	must be U.S.	\$30		30%
Car Shells	ABC	must be U.S.	\$31		31%
					Total must be greater than 60%

The cost information can be shown as a dollar amount or as the percentage of the cost of a specific component in relation to the cost of all components for the rolling stock.

2. **Step 2:** Show information for **subcomponents** for each component, listing as many **subcomponents** needed to reach a cost percentage greater than 60% of the cost of all subcomponents of that **component**. Example (assuming that the fully allocated cost of all subcomponents for the component, which excludes the manufacturing cost, is \$25):

Seating Component					
<u>Manufacture Subcomponents</u>	<u>Mfgr</u>	<u>Location</u>	<u>Cost</u>	or	<u>Percentage of Cost of All Subcomponents</u>
Cushions	LMT	must be U.S.	\$12		48%
Metal Frame	ARE	must be U.S.	\$10		40%
					Total greater than 60%

The cost information can be shown as a dollar amount or as the percentage of the cost of the specific subcomponent in relation to the cost of all of the subcomponents of the component.

3. **Step 3:** Final assembly occurs in U.S.
 - a. state location of final assembly;
 - b. briefly describe activities to occur during final assembly; and state proposed total cost of final assembly.

IMPORTANT: USE A SEPARATE FORM FOR EACH SEPARATE SOLICITATION, PROVISION, OR SPECIFICATION ITEM REQUEST! COPY THIS FORM AS NEEDED.

Submitted by: _____

Company name: _____



(N) REQUEST FOR APPROVED EQUALS

SUBMITTED BY: _____
COMPANY NAME

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in "Proposer Communications and Requests" (Section 1.1.2.2).

This form should be emailed to: procurement@srtabus.com with "Questions, Clarifications, Approved Equals" on the subject line.

Request Number: _____

Proposer: _____

Email Address: _____

Phone Number: _____

Page Number: _____

Section: _____

Questions/Clarifications or Approved Equal:

SRTA Response:

**(O) TRANSIT VEHICLE MANUFACTURER'S (TVM)
CERTIFICATION OF COMPLIANCE WITH 49 CFR
§26.49(a)**

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

**TRANSIT VEHICLE MANUFACTURER'S
CERTIFICATION**

(Name of Firm) _____, a TVM, hereby certifies that it has complied with the requirements of 49 CFR §26.49(a) by submitting a current annual DBE goal to FTA. The goal applies to Federal Fiscal Year _____ (October 1, _____, to September 30, _____), and has been approved or not disapproved by FTA.

(Name of Firm) _____, hereby certifies that
(Name of Firm) _____, manufacturer of
the transit vehicle to be supplied by (Name of Manufacturer) _____ has complied
with the above-referenced requirement of 49 CFR §26.49(a)

Signature: _____

Title: _____

Firm: _____

Date: _____

(P) SOUTHEASTERN REGIONAL TRANSIT AUTHORITY
CERTIFICATION OF PRIMARY PARTICIPANT (DEBARRED BIDDERS)

FTA Project No. _____

The primary participant _____, certifies to the best of

its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, purposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State or Local) terminated for cause of default.

The primary participant _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification on understands that the provisions of 31 U.S.C. sections 3801 ET SEQ. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under state and local law to comply with the subject assurance and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

(Q) SOUTHEASTERN REGIONAL TRANSIT AUTHORITY

PROTEST PROCESS

1. General

This procedure is applicable to all procurements in excess of \$100,000. Protests for procurements of less than \$100,000 shall be informally handled by the Procurement Department.

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

An interested party may protest to the Authority a solicitation issued by the Authority for the procurement of property or services, or the proposed award or the award of such a contract.

Protest must be in writing and addressed as follows:

CFO / Procurement Manager
SRTA, 700 Pleasant Street, Suite 320
New Bedford, MA 02740
ATTN: Protest

The protester shall furnish two complete copies of the protest to the Procurement Manager, addressed as stated above.

A protest filed with the Authority shall:

1. Include the name, address and telephone number of the protester;
2. Include an original signed by the protester or its representative;
3. Identify the solicitation and purchase order number;

4. Set forth a detailed statement of the legal and factual grounds of protest, including copies of relevant documents; and,
5. State the form of relief requested.

No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest. A protest filed with the Authority may be dismissed for failure to comply with any of the requirements of this section.

4. *Time of Filing*

Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing date for receipt of proposals following the incorporation.

In cases other than those covered above, protests shall be filed not later than 5 days after the basis of protest is known or should have been known, while within 5 days prior to the date specified for a bid opening of an IFB or for the due date for filing a response for RFP's.

The term "filed" regarding protests to SRTA means receipt of the protest submission to the SRTA's Administrator. SRTA, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider any protest which is not filed timely.

5. *Notice of Protest, Submission of Authority Report and Time for Filing of Comments on Report*

The Procurement Manager shall promptly give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The Procurement Manager shall furnish copies of the protest submissions to such parties, if requested to do so in writing. In addition, if a contract will be paid in part with funding from the FTA, then the FTA Region I office shall be notified in writing of the protest.

Material submitted by a protester will not be withheld from any interested party outside the Authority which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified whenever it appears.

Protests shall be reviewed by a panel consisting of representatives of Legal, the Procurement Manager and appropriate technical and other staff. Such review panel shall be chaired by the Procurement Manager or by a designee, as authorized in writing.

Documents that will be included in the review will consist of the protest, the bid or proposal submitted by the protester, the solicitation, including the specifications or portions relevant to the protest, the abstract of bids or

offers or relevant portions, any other documents that are relevant to the protest, or any additional evidence or information deemed necessary in determining the validity of the protest. Following final review, the Procurement Manager will furnish a copy of the report to the protester and interested parties who have responded to the notice.

Comments on the report shall be filed by the protester and interested parties with the Procurement Manager within 5 days after receipt of the report. Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension under this section within the 5-day period will result in dismissal of the protest.

Notwithstanding any other provision of this procedure, when on its face a protest does not state a valid basis for protest or is untimely, the Procurement Manager may summarily dismiss the protest. Among the protests which may be dismissed without consideration of the merits are those concerning the following:

1. SRTA's Purchasing Regulations and Procedures.
2. Contract Administration.
3. Affirmative Determination of Responsibility by the Procurement Manager. Because the determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.
4. Determinations by the Authority of "minor informalities" in bids or proposals which can be waived by the Authority, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsiveness criteria in the solicitation were not met.
5. Affirmative determination by the Authority that a bid or proposal is responsive to the Authority's specifications, absent a showing that such determination was made fraudulently or in bad faith or that definitive specification criteria in the solicitation were not met.
6. Protests not filed within the time limits set forth above.
7. Subcontractor Protests. The Authority will not consider subcontractor protests.
8. Judicial proceedings. The Authority will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the Authority in accordance with these procedures. The Authority will not consider protests where the matter involved has been decided on the merits by a court of competent jurisdiction.

6. *Withholding of Award and Suspension of Contract Performance*

When the Authority receives notice of a protest prior to award of a contract it may not award a contract under the protested procurement while the protest is pending unless the Procurement Manager determines in writing that urgent and compelling circumstances significantly affecting interests of SRTA will not permit waiting for the protest decision.

7. Conference Meeting

A conference meeting on the merits of the protest may, at the sole discretion of the review panel, be held at the request of the protester or interested parties who have responded to the notice given above. Requests for a conference should be made at the earliest possible time in the protest proceeding.

Conferences will be held on a date set by the review panel no later than 5 days after receipt by the protester and interested parties of the review panel report. All interested parties shall be invited to attend. Ordinarily, only one conference will be held on a protest.

If any party refuses to attend such a conference, or a witness fails to attend or fails to answer a relevant question, the review panel may draw an inference unfavorable to the party refusing to cooperate.

The review panel may request that a conference be held if at any time during the protest proceeding it decides that such a conference is needed to clarify material issues. If such a conference is held the review panel shall make such adjustments in the submission deadlines as it determines to be fair to all parties.

Failure of the protester to file comments or to file a statement requesting that the case be decided on the existing record will result in dismissal of the protest.

8. Remedies

If the review panel determines that a solicitation or proposed award does not comply with statute or regulation, it shall recommend that the Authority implement any combination of the following remedies which it deems appropriate under the circumstances:

1. Refrain from exercising options under the contract;
2. Re-compete the contract;
3. Issue a new solicitation;
4. Award a contract consistent with statute and regulation; or
5. Such other recommendations as the Procurement Manager determines necessary to promote compliance.

In determining the appropriate recommendation, the review panel shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the Authority, the urgency of the procurement and the impact of the recommendation on the Authority's mission.

9. Time for Decision by the Authority's Review Panel

The review panel shall issue a final decision on a protest within 60 days from the date the protest is filed with it. The determination of SRTA regarding a protest will be final.

10. Administrator Involvement

A Protester may ask the SRTA Administrator to review the decision made by the Authorities Review Panel. Review of protests by the Administrator will be limited to a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest.

11. 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.