



REQUEST FOR PROPOSALS

GOODS AND SERVICES

Purchase of CNG Cutaway Buses

POSTING DATE: March 16, 2023

Address Proposals to:

City of Wilsonville
Attn: Scott Simonton
29799 SW Town Center Loop East
Wilsonville, OR 97070

Proposals Due: Thursday, April 27, 2023 at 3:00 PM, local time

All Proposals must be sealed in an opaque envelope, plainly marked as follows: "Request for Proposals – SMART Bus Purchase Project." Include the name and address of the Proposer. All proposals must be submitted and received via e-mail (simonton@ci.wilsonville.or.us), U.S. mail, or by hand-delivery by Thursday, April 27, 2023, at 3:00 PM, mailing address: 29799 SW Town Center Loop East, Wilsonville, OR 97070, Attn: Scott Simonton, SMART Fleet Services Manager. Proposals received after the deadline will not be opened, and will be rejected without consideration.

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Request for Proposals

The City of Wilsonville, through its Transit Department, South Metro Area Regional Transit (hereinafter “SMART”), is requesting price quotes for the purchase of four (4) medium size buses (the “Project”) that:

- Are light duty transit buses;
- Have a dedicated compressed natural gas (CNG) engine;
- Hold approximately 21 ambulatory passengers;
- Have two (2) wheelchair stations in tandem (not side by side); and
- Have a front loading lift.

Because SMART intends to keep these vehicles in service for at least five (5) years, these buses must be Altoona/STURAA tested for 5-yr/150,000 miles. In addition, because SMART views Class 1 failures as serious defects, vehicles must not have any Class 1 failures or more than two (2) Class 2 failures reported in the most recent executive summary. This is a Minimum Required Specification. (Responsive/Non-Responsive). This Project does does not involve federal funds.

I. Scope of Equipment

For a more detailed description of the required specifications, see **Attachment A – Goods and Services Contract** and the Scope of Equipment attached as **Exhibit A** thereto.

II. Minimum Qualifications

To be considered for award of the Contract for this Project, each Proposer shall demonstrate the following minimum criteria as part of the Proposal.

1. Ability to meet the required specifications in the Scope of Equipment (Exhibit A to Goods and Services Contract).
2. All Proposers must complete the Proposal Form attached hereto as **Attachment B**.
3. All Proposers must submit references from three (3) existing or past Transit customers to be used in the proposal scoring process.
4. All Proposers must include the following certificates with their quotes:
 - Buy America with pre-award audit and estimated cost of final assembly (Exhibit C to Goods and Services Contract);
 - Federal Motor Vehicle Safety Standards Certification;
 - Transit Vehicle Manufacturers certification of compliance with Disadvantaged Business Enterprise (DBE) regulations;
 - Most recent Altoona test with Executive Summary and listed Class 1 and Class 2 failures; and

- Certification regarding suspension/debarment status (see **Attachment C**).

5. Failure to include the required certificates/reports will be deemed non-responsive.

III. Proposal Requirements

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

Proposer Information

Proposals should specifically highlight how they meet the Scope of Equipment set forth in Exhibit A to the Goods and Services Contract and note any differences in their Proposal from what has been called out in the required specifications. See Proposal Form, **Attachment B**.

Delivery Time Period

Proposers must recognize that time is of the essence. In light of the current vehicle supply difficulties, we are not suggesting a preferred delivery window. Rather, we are expecting proposers to estimate the delivery date based on their suppliers estimates. Proposers should bear in mind that delivery time remains one of the elements considered in scoring Proposals, as this is a "best value" procurement.

Liquidated Damages for Late Delivery of Buses

The successful Proposer will be subject to a liquidated damages clause, as stated in Section 10 of the Goods and Services Contract (**Attachment A**). By submitting a Proposal in response to this RFP, the Proposer acknowledges and accepts that this contract provision is required.

Project Schedule

Proposals shall include a proposed delivery date for each of the four (4) buses.

Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos.

IV. Proposal Submission

Proposal Submission Requirements

Proposers must submit their written Proposals via email to: simonton@ci.wilsonville.or.us or via U.S. mail or hand-delivery to: City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon 97070. Proposals must be clearly marked "Request for Proposals – SMART Bus

Purchase Project” and must include the name and address of the Proposer. Proposals must arrive at the issuing office, or inbox if submitting electronically, on or before **3:00 p.m. local time on Thursday, April 27, 2023**. Late Proposals received by mail, email, or hand-delivery will be returned unopened and without review.

RFP Change Requests

A prospective Proposer may request clarifications, a change to any provision, specification, or contract term contained in the RFP documents, substitutions, and/or approved equals by completing the included form “Request for Pre-Offer Change or Approved Equal” (see **Attachment D**) and submitting it to:

City of Wilsonville
Attn: Scott Simonton, SMART Fleet Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

OR

simonton@ci.wilsonville.or.us

All change requests shall include “RFP Change Request – SMART Bus Purchase Project” in the subject line or written on the front of the envelope and be submitted, in writing, by **3:00 p.m. local time on Thursday, April 13, 2023**. Each request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed changes.

The City will evaluate and resolve all change requests submitted before the listed time and date due within a reasonable time following receipt of the change request. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

V. Proposal Evaluation and Selection

All written Proposals received at City Hall by the deadline will be reviewed by a Selection Review Committee. The Selection Review Committee will be comprised of City staff. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

Selection will be made on BEST VALUE PURCHASE subject to the selection criteria noted below. SMART shall have the right to reject any or all Proposals, and to waive any informality and/or irregularity in the Proposals and in the bidding.

Best Value Selection

Vehicle selection will be based on the following evaluation criteria and values. Meeting the minimum required specifications will determine if the Proposal is responsive. Vendor’s products not meeting the minimum required specifications set forth in the Scope of Equipment (Exhibit A to the Goods and Services Contract - **Attachment A**) or the required certificates listed on page 1 will not be considered further.

| | |
|--|-------------------|
| A. Meets the minimum requirements (responsive/non-responsive) <i>(Requests for changes taken into consideration.)</i> | Pass/Fail |
| B. Product design and performance <i>(Altoona results will be considered. The design of the vehicle, and the sub components, will be evaluated by SMART's subject matter experts.)</i> | 20 points |
| C. Manufacturer's past performance <i>(Performance of both the manufacturer and representing dealer, in service, parts, and warranty, will be considered. Proposer's supplied references are considered. Additionally, the past performance of the vehicles themselves will be considered.)</i> | 20 points |
| D. Delivery schedule <i>(Proposer to submit anticipated delivery date. Points awarded based on time to delivery.)</i> | 30 points |
| E. Cost quote <i>(Total price quote, including all options.)</i> | 30 points |
| TOTAL: | 100 points |

Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, shall be identified as the Successful Proposer.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal. The City retains the right to accept any or no Proposal that is deemed to best fit the needs of the City.

The Selection Review Committee shall determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final Contract that is in the best interest of the City. The City will only negotiate those provisions of the Contract that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Proposer, the Selection Review Committee will make a recommendation to the Wilsonville City Council. The Wilsonville City Council will then make the final contract award decision.

Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-047-0740. The protest must be in writing and submitted to:

City of Wilsonville
Attn: Scott Simonton, Fleet Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070
OR
simonton@ci.wilsonville.or.us

Award protests shall include “Award Protest – SMART Bus Purchase Project” in the subject line or written on the front of the envelope. The written protest must be received by the City no later than **3:00 p.m. local time on May 18, 2023**. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City’s written decision on the protest results in a change to the RFP, the City shall cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City’s decision regarding the protest is final and concludes the administrative appeals process.

VI. Schedule

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

| | |
|----------------------------------|---------------------------|
| Advertise Request for Proposals | March 16, 2023 |
| RFP Change Request Deadline | April 13, 2023 3:00 p.m. |
| RFP Question Submission Deadline | April 13, 2023 3:00 p.m. |
| Addenda Issuance Deadline | April 20, 2023, 3:00 p.m. |
| Proposals Due | April 27, 2023, 3:00 p.m. |
| Evaluation of Proposals Complete | May 9, 2023 |
| Notice of Intent to Award | May 11, 2023 |
| Award Protest Deadline | May 18, 2023 |
| City Council Award Hearing | June 5, 2023, 7:00 p.m. |
| Notice of Award | June 6, 2023 |

VII. RFP Documents

Request for Proposal (RFP) documents may be obtained electronically on the City website (www.ci.wilsonville.or.us) under “Business” by clicking on “Bids and RFPs.” The City of

Wilsonville shall not be held responsible for the delivery of the documents. Contact Scott Simonton, Fleet Manager at simonton@ci.wilsonville.or.us to obtain RFP documents by mail.

VIII. Project Manager

The City's Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Scott Simonton
Fleet Services Manger
(503) 570-1541
simonton@ci.wilsonville.or.us

IX. RFP Questions

Proposers shall direct all questions regarding RFP documents in writing or by email to:

City of Wilsonville
Attn: Scott Simonton
29799 SW Town Center Loop East
Wilsonville, OR 97070
OR
simonton@ci.wilsonville.or.us

All questions shall include "RFP Questions – SMART Bus Purchase Project" in the subject line or written on the front of the envelope and be submitted in writing by **3:00 p.m. local time on Thursday, April 13, 2023**. Questions and answers will be provided by email to all firms on the RFP holders list.

Access to the City's Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until **3:00 p.m. local time on Thursday, April 13, 2023**. During this time Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted after 3:01 p.m. local time on Thursday, April 13, will not be addressed.

For the sake of fairness, Proposers are not allowed to contact any City staff or official, other than the Project Manager, concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.

X. General RFP Information

Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which shall be issued by email format only to all those who have obtained the RFP documents by pick-up or

standard mail, and will be made available for download at www.ci.wilsonville.or.us under “Doing Business.”

All addenda shall have the same binding effect as though contained in the main body of the RFP and Scope of Work.

No addenda will be issued later than **April 20, 2023**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

“This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

Identifying the Proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer’s sole expense, if the Proposer wishes to deny or withhold the information.

Cancellation

The City reserves the right to cancel this RFP or the contract award, at any time before execution of the Contract by both parties, if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered and will be returned unopened to the Proposer. Delays due to mail and/or delivery handling, including but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. The Proposer has carefully examined all RFP documents, including the draft **Goods and Services Contract (attached as Attachment A)**, all addenda, and all other attachments, fully understands the RFP intent, is able to provide the vehicles described in the Scope of Equipment (Exhibit A to Goods and Services Contract), and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, the Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Contract.
2. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
3. The Proposer accepts all of the terms of the City's Goods and Services Contract and warrants that Proposer will fully meet all of the insurance requirements contained therein. If the Proposer wishes to amend or modify any terms of the Goods and Services Contract, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Goods and Services Contract not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, the Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award the Contract to the next highest ranked Proposer.
4. The Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the Proposal or in the services to which it relates, or in

any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.

5. The Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Proposer.
6. The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed Contract.
7. The Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.
8. The Proposer shall also certify Proposer's state of residence.

Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated against minorities, women, or emerging small business enterprises, or a business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any required subcontracts.***

Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so.

Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City at the Proposal submittal location prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

Local and Federal Requirements

The City of Wilsonville intends to select a supplier in accordance with Oregon law and the City's municipal code. Selection of a supplier under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected supplier shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 695A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

The selected supplier is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this Contract. The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

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ATTACHMENT A

SAMPLE GOODS AND SERVICES CONTRACT

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**CITY OF WILSONVILLE
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) is made and entered into on this ____ day of _____ 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [corporation/LLC] (hereinafter referred to as “Supplier”).

RECITALS

WHEREAS, the City wishes to purchase equipment that Supplier is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Supplier represents that Supplier is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Supplier is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional documents: Request for Proposals dated March 16, 2023, and Supplier’s Proposal in response thereto (together with the Contract collectively referred to herein as “Contract Documents”). Supplier must be familiar with all of the foregoing and comply with them. All Contract Documents should be read in concert and Supplier is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Goods Purchased

Supplier will supply to the City four (4) buses as described in the Contract Documents and as more particularly described in the Scope of Equipment, attached hereto as **Exhibit A** and incorporated by reference herein (“Equipment”).

Section 3. Equipment Price and Delivery Date

The price of the Equipment is _____ DOLLARS (\$ _____), as shown on **Exhibit A**, and includes delivery to 28879 SW Boberg Road, Wilsonville, Oregon 97070

("Delivery Location"). Sale shall occur upon inspection of the Equipment and acceptance of delivery by the City at the Delivery Location. The City will pay Supplier in full within 30 days of acceptance of delivery of the Equipment. Supplier will schedule a date and time for delivery. Delivery must occur on or before _____, 20__.

The Equipment price is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

Section 4. Subcontractors and Assignments

Supplier shall not subcontract with others for any of the services prescribed herein. Supplier shall not assign any of Supplier's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

Section 5. Insurance

5.1. Business Automobile Liability Insurance. If Supplier will be using a motor vehicle in the performance of the Services herein, Supplier shall provide the City a certificate indicating that Supplier has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

5.2. Workers Compensation Insurance. Supplier and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Suppliers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

5.3. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Supplier shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Supplier agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Supplier will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

5.4. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Supplier shall be responsible for any deductible

amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Supplier will be required to maintain such policies in full force and effect throughout any warranty period.

Section 6. Warranties.

Equipment warranties are attached hereto as **Exhibit B**. Supplier hereby represents that Supplier will promptly and thoroughly perform all warranty work at its location in _____ [city/state] or at another location mutually agreed upon, in writing, by the parties.

Section 7. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Supplier.

Section 8. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Scott Simonton, SMART Fleet Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070-9454

To Supplier: _____
Attn: _____

Section 9. Required Federal Provisions

This Contract is funded, in whole or in part, with federal funds. Supplier must therefore comply with all of the following, in addition to the provisions listed above:

9.1. **Energy Conservation.** Supplier agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

9.2. **Bus Testing.** Supplier agrees to comply with the Bus Testing requirements under 49 USC § 5318(e) and the FTA’s implementing regulation at 49 CFR Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Supplier shall obtain a copy of the bus testing report(s) from the operator

of the testing facility and is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the City prior to final acceptance of the first vehicle by the City. The complete bus testing reporting requirements are provided in 49 CFR § 665.11.

9.3. **Recovered Materials.** Supplier agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247).

9.4. **Buy America.** Supplier agrees to comply with 49 USC § 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless all steel, iron, and manufactured products used in Federal Transit Administration-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR § 661.7. Separate requirements for rolling stock are set out at 49 USC § 5323(j)(2)(C) and 49 CFR § 661.11. All steel must originate in the USA and not leave the USA at any point. Supplier shall have submitted the appropriate Buy America certification to the City before commencement of any Work. Supplier must have submitted to the City the appropriate Buy America certification with its Proposal, as proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. See **Exhibit C**.

9.5. **Clean Air and Clean Water.** Supplier agrees to comply with the inspection and other requirements of the Clean Air Act, as amended (42 USC § 7401 *et seq.*), and the Federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*). Supplier agrees it will not use any violating facilities, it will report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (EPA) “List of Violating Facilities,” and it will report any violation of use of prohibited facilities to the City. Supplier understands and agrees that the City will, in turn, report each violation, as required, to assure notification to the Federal Transit Administration and the appropriate EPA Regional Office.

9.6. **Pre-Award and Post-Delivery Audit Requirements.** Supplier agrees to comply with 49 USC § 5323(m) and the FTA’s implementing regulation at 49 CFR Part 663. Supplier shall comply with the Buy America certification submitted with its Proposal. Supplier agrees to participate and cooperate in any pre-award or post-delivery audits performed pursuant to 49 CFR Part 663 and related FTA guidance.

9.7. **Access to Records.** The following federal access to records requirements apply to this Contract:

9.7.1. Supplier agrees to retain complete and readily accessible records related in whole or in part to this Contract, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

9.7.2. Supplier agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Supplier will maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records will be until the City, SMART, the Federal Transit Administration (FTA) Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

9.7.3. Supplier agrees to provide the City, SMART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Supplier which are related to performance of this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Supplier also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

9.8. **Lobbying Restrictions.** Supplier certifies, to the best of its knowledge and belief, that:

9.8.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Supplier, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

9.8.2. 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, Supplier will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

9.9. **Contract Work Hours and Safety Standards.** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Supplier will comply with the Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708), as supplemented by the Department of Labor regulations at 29 CFR Part 5. Under 40 USC § 3702 of the Act, Supplier will compute the wages of every mechanic and laborer, including watchmen and guards, on the

basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

9.9.1. Liquidated Damages. In the event of any violation of the requirements of this Section, Supplier will be liable for the unpaid wages. In addition, Supplier and subcontractor will be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the requirements of this Section in the sum of ten dollars (\$10) for each calendar day on which such individual was required to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this Section.

9.9.2. Withholding. The FTA shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in this Section.

9.10. **Civil Rights Requirements.** The following civil rights and equal employment opportunity requirements apply to this Contract, and Supplier shall at all times comply with these requirements:

9.10.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Supplier agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Supplier agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

9.10.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Supplier agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity

in Federal Employment,” September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Supplier agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

9.10.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, “Age Discrimination in Employment Act” (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR Part 90); and federal transit law at 49 USC § 5332, Supplier agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

9.10.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Supplier agrees that it will not discriminate against individuals on the basis of disability. In addition, Supplier agrees to comply with any implementing requirements the FTA may issue.

9.11. **Disadvantaged Business Enterprises.**

If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Contract becomes subject to the City’s DBE program. Supplier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Supplier shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Supplier 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 City deems appropriate.

9.12. **Program Fraud and False or Fraudulent Statements and Related Acts.**

9.12.1. Supplier acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, “Program Fraud Civil Remedies” (49 CFR Part 31), apply to its actions pertaining to this equipment purchase. Upon execution of this Contract, Supplier certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it

may make, or causes to be made, pertaining to this Contract or the FTA assisted equipment purchase. In addition to other penalties that may be applicable, Supplier further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Supplier to the extent the Federal Government deems appropriate.

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

9.13. **Suspension and Debarment.** Supplier will comply with and facilitate compliance with U.S. Department of Transportation regulations, “Nonprocurement Suspension and Debarment” (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Supplier is required to verify that its principals, affiliates, and any subcontracts are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

Supplier is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its Proposal, Supplier has certified as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Supplier knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Supplier agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9.14. **Trafficking in Persons.**

9.14.1. Supplier agrees that it and its employees that participate in the Project covered under this Contract may not:

9.14.1.1. Withhold monthly progress payments;

9.14.1.2. Engage in forms of trafficking in persons during the period of time that this Contract is in effect;

9.14.1.3. Procure a commercial sex act during the period of time that this Contract is in effect; or

9.14.1.4. Use forced labor in the performance of the Contract or any subcontracts thereunder.

9.14.2. Supplier agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

9.14.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

9.14.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

9.14.3. Supplier agrees to, and assures that each subrecipient will:

9.14.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

9.14.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

9.15. Safe Operation of Motor Vehicles. Supplier is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Supplier agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Supplier owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Work performed under this Contract.

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

9.17. **Violation and Breach of Contract; Termination.** The clauses concerning violation and breach of this Contract and termination of this Contract can be found in **Section 10**, below.

9.18. **No Obligation by the Federal Government.** The City and Supplier acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Supplier, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.

9.19. **Federal Transit Administration (FTA) Terms Controlling.** Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Supplier shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

Section 10. Early Termination; Default

10.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

10.1.1. By mutual written consent of the parties;

10.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Supplier by mail or in person; or

10.1.3. By Supplier, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Supplier, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

10.2. If the City terminates this Contract, in whole or in part, due to default or failure of Supplier to perform Services in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Supplier shall be liable for all costs and damages incurred by the City as a result of the default by Supplier, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Supplier. In the event of a default, the City will provide Supplier with written notice of the default and a period of ten (10) days to cure the default. If Supplier notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

10.3. If the City terminates this Contract for its own convenience not due to any default by Supplier, payment of Supplier shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Supplier against the City under this Contract.

10.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Supplier or the City that accrued prior to such termination.

Section 11. Liquidated Damages

11.1. The City and Supplier recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the buses are not delivered on time in accordance with this Contract. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the buses are not delivered on time. Accordingly, instead of requiring any such proof, the City and Supplier agree that as Liquidated Damages for delay (but not as a penalty), Supplier shall pay the City the amount of One Hundred Dollars (\$100) per day for each and every day that expires after the agreed upon delivery date (“Liquidated Damages”).

11.2. The parties further agree that this amount of Liquidated Damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the Liquidated Damages above, Supplier shall reimburse the City for all costs incurred by the City for inspection and project management services required beyond the time specified for final delivery of the buses. If Supplier fails to reimburse the City directly, the City will deduct the cost from Supplier’s final pay request.

11.3. Supplier will not be responsible for Liquidated Damages or be deemed to be in default by reason of delays in performance due to reasons beyond Supplier’s reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Supplier’s direction and control that preclude Supplier from performing under the Contract (“Force Majeure”). In the case of the happening of any Force Majeure event, the time for completion of Supplier’s performance under the Contract will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 12. Miscellaneous Provisions

12.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City’s sole discretion, will apply.

12.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

12.3. Equal Opportunity. No person shall be discriminated against by Supplier in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City.

12.4. No Assignment. Supplier may not delegate the performance of any obligation to a third party unless mutually agreed, in writing.

12.5. Adherence to Law. This Contract shall be subject to, and Supplier shall adhere to, all applicable federal, state, and local laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Supplier is required by law to obtain or maintain in order to perform the Services described in this Contract shall be obtained and maintained throughout the term of this Contract.

12.6. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

12.7. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

12.8. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

12.9. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

12.10. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

12.11. Modification. This Contract may not be modified except by written instrument executed by Supplier and the City.

12.12. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

12.13. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

12.14. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

12.15. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

12.16. Interpretation. As a further condition of this Contract, the City and Supplier acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

12.17. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

12.18. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

12.19. Authority. Each party signing on behalf of Supplier and the City hereby warrants actual authority to bind their respective party.

The Supplier and the City hereby agree to all provisions of this Contract.

SUPPLIER:

CITY:

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No.: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of Wilsonville, Oregon

EXHIBIT A

SCOPE OF EQUIPMENT

Supplier to provide four (4) transit buses which:

Have passed a five (5) year, 150,000 mile Altoona/STURRA test, meaning the bus cannot have any Class 1 failures, or more than two (2) Class 2 failures reported in the most recent executive summary, and;

Meet or exceed the following required specifications:

| |
|--|
| Vehicle to be approximately 26 feet in length w/ 186" wheelbase Ford E-450 chassis (or approved equal). |
| Desired seating capacity 21 (or 15+2). See desired floorplan, page 2. |
| Total of three (3) double passenger foldaway seats, creating two wheelchair securement positions. |
| Floor mounted securement track to run full length of the foldaway seat area. |
| Power adjustable driver's seat. Seat to be upholstered in vinyl, color to be Transit gray. |
| Passenger seating to be Freedman Citi-seat (or approved equal) with level 1 vinyl upholstery, Oxen gray. |
| Passenger seats shall be equipped with armrests on the aisle side (excluding foldaway seats). |
| Passenger seats to be equipped with grab handles on aisle side. |
| Delete passenger seatbelts. |
| Plexiglas driver modesty panel. |
| Minimum 36" electric passenger entrance door, 40" door preferred. |
| Braun NCL919 wheelchair lift (or approved equal). Lift to be mounted directly aft of passenger entrance door. Lift shall feature a dedicated entry door. |
| Emergency escape roof hatch. |
| Public address system with a minimum of one auxiliary port. |
| Public address system to include six (6) speakers, evenly spaced in the ceiling of the bus. |
| Interior lighting shall be LED. |
| Interior advertising rail package. |
| Passenger signal system w/ stop requested sign, operated by pull cords (no touch tape) with one time only chime (dual chime for ADA positions). Stop requested light on dashboard. |
| Wheelchair door ajar warning light on dashboard. |
| Motorola APX 4500 two-way radio. Radio must meet current Clackamas County C800 digital specifications. |
| Hanover Displays amber LED front and side destination signs w/ software package (or approved equal). |
| REI HD5-600 six camera surveillance system with 750 GB storage drive (or approved equal), system to be Wi-Fi/GPS enabled. |
| Minimum 58,000 BTU A/C system. Skirt mounted condenser unit must be mounted fore of rear axle. Units mounted aft of rear axle will not be deemed acceptable. Roof mounted units may be considered, vendor to provide height dimension on any roof mounted A/C equipment. |
| Minimum 40,000 BTU passenger cabin heater, under seat or floor mount acceptable. |
| ITS system: GMV Syncromatics, to include MDT w/ RAM mount, APC, and automated stop announcements. Bidder to work directly with GMV to ensure proper equipment. |

| |
|--|
| Gerflor anti-skid flooring (or approved equal), color Griffon gray, flooring material covered to seat rail. |
| Rubber step nosing, color to be safety yellow. |
| Standee line. |
| Vehicle to be equipped with OEM gaseous fuel prep package and dedicated 3600 lb. CNG conversion. All CNG components and installation to be factory QVM approved. |
| CNG storage cylinder capacity to be a minimum of 40 GGE. |
| Charging system shall be supplied by chassis OEM in the highest amperage rating offered by the OEM. |
| Skirt mounted battery box with sliding battery tray. |
| Driver side running board. |
| Heated/remote exterior mirrors. |
| Electronic LED Yield sign wired to left turn signal. |
| Exterior LED lighting package. |
| Flush mounted or shielded LED side turn signals, midship mounted. |
| Docking lights for lift entrance. |
| Front standoff mount, capable of accepting owner supplied Sportworks Apex 3 bicycle rack. |
| Romeo Rim rear bumper, or approved equal. |
| Exterior paint color shall be fleet white. |
| 5 lb. ABC fire extinguisher. |
| First aid kit. |
| Biohazard cleanup kit. |
| Total of three (3) ignition keys per bus. |

Sample floorplan

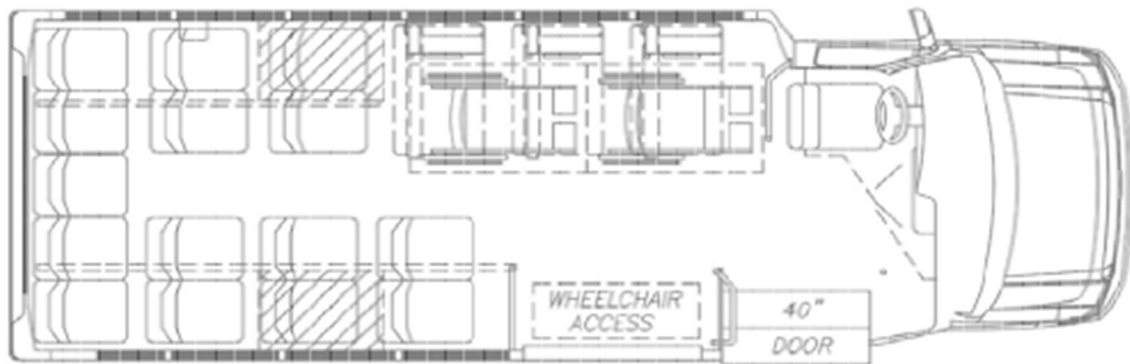


EXHIBIT B
EQUIPMENT WARRANTIES

[placeholder]

BUY AMERICA CERTIFICATION

Certification Requirement for the Procurement of Steel, Iron, or Manufactured Products

SMART Bus Purchase

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

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

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CERTIFICATE OF NON-COMPLIANCE WITH BUY AMERICA REQUIREMENTS:

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

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

ATTACHMENT B

PROPOSAL FORM

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Proposal Form

VENDOR: _____

Base vehicle price: \$ _____

Total vehicle cost, FOB: Wilsonville, Oregon: \$ _____

(Total cost to include all options, additional materials, and delivery to Wilsonville)

Anticipated days to delivery: _____ days

(Proposer to estimate days to elapse from issuance of Notice to Proceed to final delivery date)

The general specifications for these vehicles are as follows:

Supplier to provide four (4) transit buses which:

Have passed a five (5) year, 150,000 mile Altoona/STURRA test, meaning the bus cannot have any Class 1 failures, or more than two (2) Class 2 failures reported in the most recent executive summary, and;

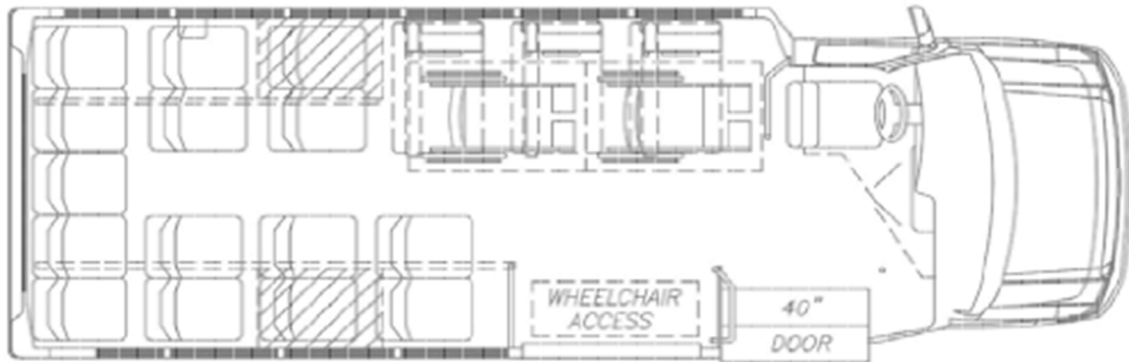
Meet or exceed the following required specifications:

| Description of required specification | Provided in base cost? Y or N | Additional cost |
|--|----------------------------------|-----------------|
| Vehicle to be approximately 26 feet in length w/ 186" wheelbase Ford E-450 chassis (or approved equal). | | |
| Desired seating capacity 21 (or 15+2). See desired floorplan, page 3. | | |
| Total of three (3) double passenger foldaway seats, creating two wheelchair securement positions. | | |
| Floor mounted securement track to run full length of the foldaway seat area. | | |
| Power adjustable driver's seat. Seat to be upholstered in vinyl, color to be Transit gray. | | |
| Passenger seating to be Freedman Citi-seat (or approved equal) with level 1 vinyl upholstery, Oxen gray. | | |
| Passenger seats shall be equipped with armrests on the aisle side (excluding foldaway seats). | | |
| Passenger seats to be equipped with grab handles on aisle side. | | |
| Delete passenger seatbelts. | | |
| Plexiglas driver modesty panel. | | |
| Minimum 36" electric passenger entrance door, 40" door preferred. | | |
| Braun NCL919 wheelchair lift (or approved equal). Lift to be mounted directly aft of passenger entrance door. Lift shall feature a dedicated entry door. | | |
| Emergency escape roof hatch. | | |

| | | |
|--|--|--|
| Public address system with a minimum of one auxiliary port. | | |
| Public address system to include six (6) speakers, evenly spaced in the ceiling of the bus. | | |
| Interior lighting shall be LED. | | |
| Interior advertising rail package. | | |
| Passenger signal system w/ stop requested sign, operated by pull cords (no touch tape) with one time only chime (dual chime for ADA positions). Stop requested light on dashboard. | | |
| Wheelchair door ajar warning light on dashboard. | | |
| Motorola APX 4500 two-way radio. Radio must meet current Clackamas County C800 digital specifications. | | |
| Hanover Displays amber LED front and side destination signs w/ software package (or approved equal). | | |
| REI HD5-600 six camera surveillance system with 750 GB storage drive (or approved equal), system to be Wi-Fi/GPS enabled. | | |
| Minimum 58,000 BTU A/C system. Skirt mounted condenser unit must be mounted fore of rear axle. Units mounted aft of rear axle will not be deemed acceptable. Roof mounted units may be considered, vendor to provide height dimension on any roof mounted A/C equipment. | | |
| Minimum 40,000 BTU passenger cabin heater, under seat or floor mount acceptable. | | |
| ITS system: GMV Syncromatics, to include MDT w/ RAM mount, APC, and automated stop announcements. Bidder to work directly with GMV to ensure proper equipment. | | |
| Gerflor anti-skid flooring (or approved equal), color Griffon gray, flooring material covered to seat rail. | | |
| Rubber step nosing, color to be safety yellow. | | |
| Standee line. | | |
| Vehicle to be equipped with OEM gaseous fuel prep package and dedicated 3600 lb. CNG conversion. All CNG components and installation to be factory QVM approved. | | |
| CNG storage cylinder capacity to be a minimum of 40 GGE. | | |
| Charging system shall be supplied by chassis OEM in the highest amperage rating offered by the OEM. | | |
| Skirt mounted battery box with sliding battery tray. | | |
| Driver side running board. | | |
| Heated/remote exterior mirrors. | | |
| Electronic LED Yield sign wired to left turn signal. | | |
| Exterior LED lighting package. | | |

| | | |
|---|--|--|
| Flush mounted or shielded LED side turn signals, midship mounted. | | |
| Docking lights for lift entrance. | | |
| Front standoff mount, capable of accepting owner supplied Sportworks Apex 3 bicycle rack. | | |
| Romeo Rim rear bumper, or approved equal. | | |
| Exterior paint color shall be fleet white. | | |
| 5 lb. ABC fire extinguisher. | | |
| First aid kit. | | |
| Biohazard cleanup kit. | | |
| Total of three (3) ignition keys per bus. | | |

Sample floorplan



Proposer's References

Proposers are required to supply three (3) references from current or past customers. Supplied references are to be current or past Transit customers, who have experience with Proposer's product offerings and service.

Reference 1: _____
Contact name *e-mail address* *telephone number*

Reference 2: _____
Contact name *e-mail address* *telephone number*

Reference 3: _____
Contact name *e-mail address* *telephone number*

ATTACHMENT C

CERTIFICATION REGARDING SUSPENSION/DEBARMENT

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CERTIFICATION REGARDING CONTRACTOR STATUS SUSPENSION / DEBARMENT

SMART Bus Purchase

This Contract may be a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified, as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower tier covered transaction Contractor enters into.

By signing and submitting its bid or proposal, the Bidder certified as follows:

The certification in this clause is a material representation of fact relied upon by the City of Wilsonville. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to the City of Wilsonville, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

_____ Signature of Contractor
_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ Date

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ATTACHMENT D

REQUEST FOR PRE-OFFER CHANGE OR APPROVED EQUAL

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Request for Pre-Offer Change or Approved Equal

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 “Questions, Clarifications and Omissions” on page 1.

SMART Transit Bus Purchase

| |
|--|
| Request#: Proposer: RFP Section: Page: |
| Questions/clarification or approved equal |
| Agency action: <input type="checkbox"/> Approved <input type="checkbox"/> Denied |
| Agency response: |